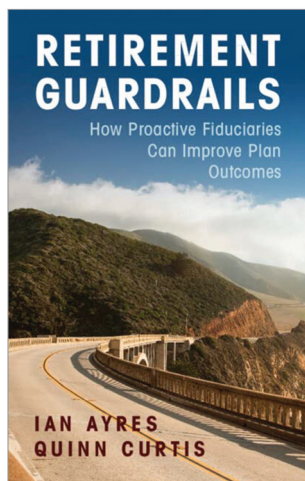
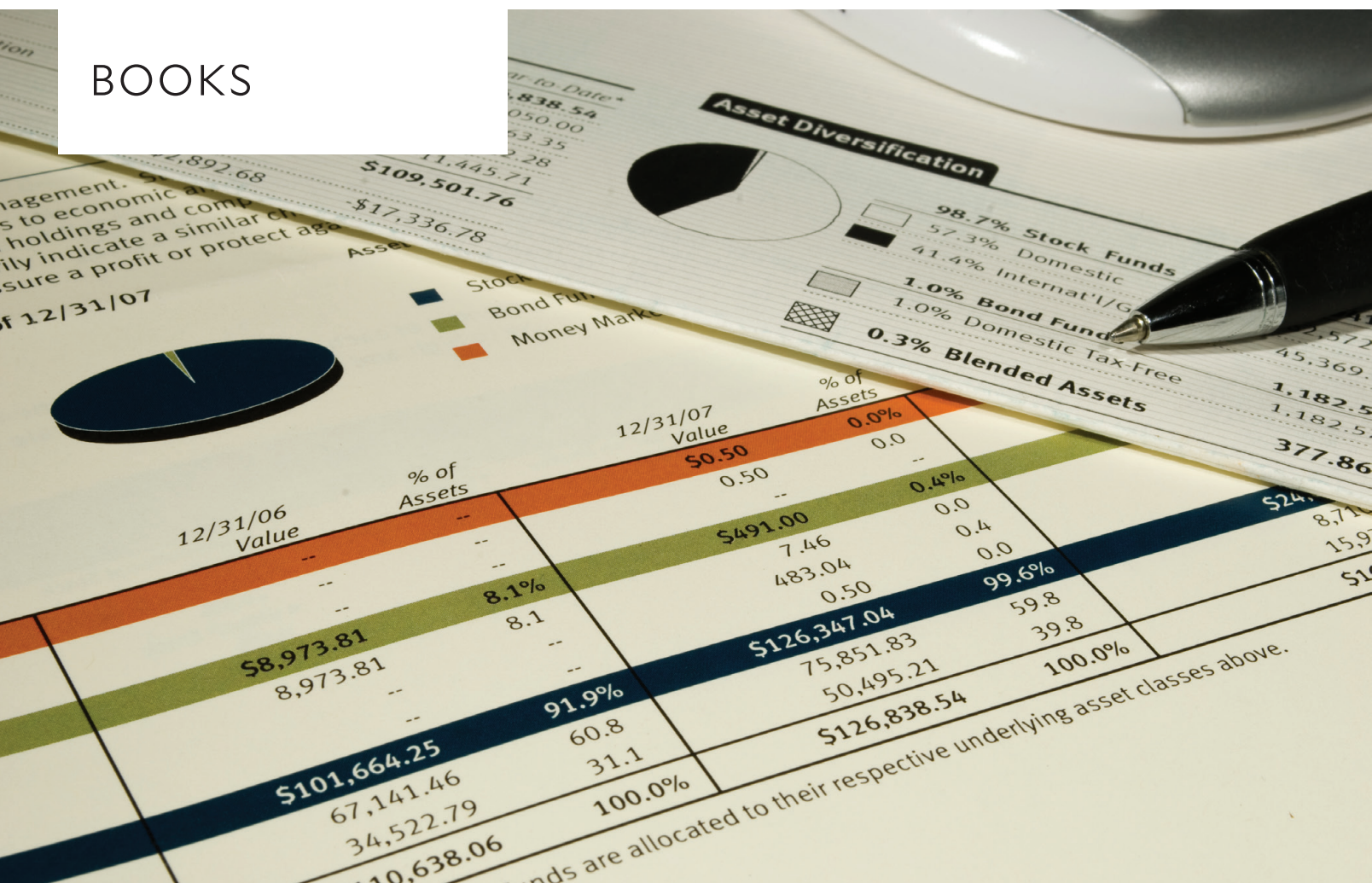


BOOKS



Ian Ayres and Quinn Curtis
**Retirement Guardrails:
 How Proactive Fiduciaries Can
 Improve Plan Outcomes**
 Cambridge University Press, 2023



How Retirement Plan Guardrails Can Protect Employees

What companies owe to employees and their investments

In their book *Retirement Guardrails: How Proactive Fiduciaries Can Improve Plan Outcomes*, Yale Law School Professor Ian Ayres '86 and University of Virginia Professor Quinn Curtis '09 argue that employers have the fiduciary duty to structure their retirement plans so that employees invest wisely. Though the law has long required that employers include only prudent options in plan menus, Ayres and Curtis make the legal case for proactively helping investors choose among them.

Retirement Guardrails seeks to fill a gap in the academic literature, given that legal scholars have rarely considered whether employers' fiduciary duty encompasses menu construction, the way investment options are presented within a retirement plan. A bevy of recent lawsuits has accused employers of listing options that carry "imprudently high" fees, therefore breaching their fiduciary duty. As plan menus increasingly draw scrutiny, the co-authors contend that employers should learn whether employees are making substantial menu mistakes and, if so, adopt concrete measures to safeguard investors.

To prove their point, Ayres and Curtis turn to an extensive case study that they know well: how more than 11,000 former and current University of Virginia employees, a group that includes both authors, allocate their savings in the university's retirement plan. "We do not use this plan because it is an egregious example of subpar fiduciary behavior," they write. Rather, the well-managed plan reveals "how even well-educated employees in a university setting may still fall prey to substantial allocation errors."

Ayres and Curtis describe three types of allocation errors frequently made by investors: paying excessive fund-level or plan expenses, failing to diversify holdings across asset classes, and exposing portfolios to too much or too little market risk. They find that about 10% of employees make substantial allocation errors. For example, more than one-third of the participants who invested in the University of Virginia's gold fund had more than half of their plan savings in this one fund.

Most employers have no idea whether plan participants are making such poor choices. That's because the advisers who administer the plan usually don't give the employer any information on how individual employees allocate their savings. Employers have fiduciary committees that are given reams of information about the returns of each investment option at quarterly meetings with the advisers as well as comparisons to the returns of similar funds. But they aren't told whether individual participants are misusing the menu by creating unbalanced or expensive investment portfolios.

"When reviewing their menu design," they write, "fiduciaries should learn more and do more." They argue that fiduciaries should correct mistakes by dropping (aka "streamlining") funds where misuse is particularly prevalent or "guardrailing" those funds with soft or hard caps on how much can be invested. Guardrail caps are already prevalent with regard to company stock. Roughly two-thirds of plans that offer company stock limit participants' stake in these shares to 20% of their portfolio.

Guardrails are a way fiduciaries can "constrain but maintain choice," thereby encouraging participants to invest prudently. Ayres and Curtis argue there is nothing wrong in offering participants the option to invest in gold (or company stock or even cryptocurrency) as long as the retirement plan doesn't allow unreasonably large allocations to these esoteric options.

In the closing chapters, the co-authors examine a broader range of systemic problems that affect retirement savings. They sketch constructive possibilities, including "the public option of purchasing supplemental Social Security benefits." Ayres and Curtis stress that menu construction is only a single, though crucial, means of reforming how people save for retirement. "The struggle to improve retirement protections for Americans is far from over," they write, "and this book is not the final word on policies that might aid in this struggle."

COVID-19's Legal Legacy

The impact of the pandemic on the law of healthcare

Professor Abbe R. Gluck '00 has co-edited a new volume that examines the wide-ranging implications of the COVID-19 pandemic on the law of health-care and beyond. Gluck, a preeminent scholar who has helped lead the nation's pandemic response, worked alongside I. Glenn Cohen, Katherine Kraschel, and Carmel Shachar on the volume, titled *COVID-19 and the Law: Disruption, Impact, and Legacy*.



Comprising research by more than four dozen individual contributors, the volume argues that the COVID-19 pandemic posed a "stress test" to public health systems worldwide and connects the legacy of the pandemic to the broader legal

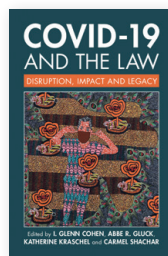
system. Contributors trace how those systems both succeeded and failed in the pandemic's wake. Each of the 25 chapters considers a distinct set of legal and policy changes that have emerged since 2020. They include matters of health equity and racial justice, the prison system, reproductive rights, administrative law, constitutional and election law, and federal benefits programs.

Yale Law School's Solomon Center for Health Law and Policy, where Gluck serves as founding Faculty Director, played a crucial role in making the volume possible. The Solomon Center has supported the work of many of the contributors, including Nina A. Kohn, currently the Solomon Center Distinguished Scholar in Elder Law; Joseph Fins, M.D., a leading medical

ethicist and Visting Professor of Law who co-teaches Brain Injury and the Law and co-directs the Solomon Center's Brain Injury Project with Weill Cornell Medical College; and Laura Hoffman, formerly a Solomon Center Senior Research Fellow and now a professor at Cleveland State University College of Law. Kraschel, one of the book's co-editors, served as Executive Director of the Solomon Center from 2017 to 2023.

Yale Law School faculty members Clinical Professor of Law Marisol Orihuela '08 and Arthur Liman Professor of Law Judith Resnik collaborated on a chapter — "Tolerating the Harms of Detention, With and Without COVID-19" — with Jaimie Meyer, Associate Professor of Medicine and Public Health at Yale.

Contributors also include several Yale Law School alumni. Andrew Hammond '14, Ariel Jurow Kleiman '14, Lisa Larrimore Ouellette '11, Jessica L. Roberts '06, and Gabriel Scheffler '14 all co-authored chapters, as did current third-year student Jacob Hutt '24.



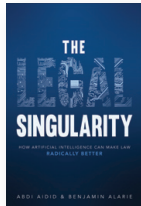
I. Glenn Cohen,
Abbe R. Gluck,
Katherine Kraschel, and
Carmel Shachar, eds.

**COVID-19 and the Law:
Disruption, Impact,
and Legacy**

Cambridge University
Press, 2023

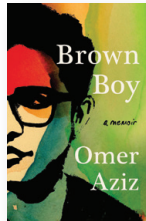
SURVEY OF BOOKS

Here's 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.



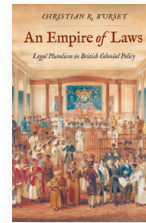
Abdi Aidid and Benjamin Alarie
**The Legal Singularity:
 How Artificial Intelligence
 Can Make Law Radically Better**
University of Toronto Press, 2023

Aidid '16 and Alarie '03 LLM argue that rapid advances in artificial intelligence (AI) can make the legal field fairer and more consistent than ever before. The co-authors, who are colleagues at the University of Toronto Faculty of Law, draw upon their joint experiences as executives at Blue J Legal, an AI-based legal research service. They contend that software capable of predicting legal outcomes will usher in a new era of "legal singularity," presenting emergent risks and opportunities.



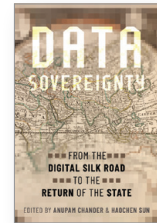
Omer Aziz
Brown Boy: A Memoir
Scribner, 2023

Aziz '17 grapples with themes of race, class, and identity in his memoir, the title of which echoes Richard Wright's *Black Boy*. He narrates his upbringing in Canada as the son of working-class Pakistani Muslim parents. Aziz, the first member of his family to attend university in the West, reflects on his life as a student, writer, and public servant in an elite, predominantly white world. He questions hegemonic assumptions about what it means to assimilate and belong.



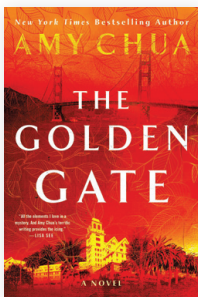
Christian R. Burset
**An Empire of Laws:
 Legal Pluralism in British
 Colonial Policy**
Yale University Press, 2023

Burset '14 argues that the doctrine of legal pluralism helped the British Empire maintain global dominance in the 1700s. He explains why colonial authorities pursued legal pluralism alongside common law, the framework that Great Britain had previously imposed. Burset contends that in contrast to common law, legal pluralism kept colonies on unequal commercial footing with the metropole. His argument contextualizes why common law became especially prized by American colonists.



Anupam Chander and
 Haochen Sun, eds.
**Data Sovereignty:
 From the Digital
 Silk Road to
 the Return of the State**
Oxford University Press, 2023

Chander '92 and Sun co-edit a volume on data sovereignty — the authority that governments have to regulate the internet. The chapters theorize why states exercise territorial control over the free movement of data, drawing from the fields of political economy, international law, human rights, and data protection. The book also delves into the challenges that data sovereignty faces from artificial intelligence and other technologies. Contributors include Frank Pasquale '01.



Amy Chua
The Golden Gate
Minotaur Books, 2023

Power, Privilege, and Murder

A historical mystery examines 20th-century California

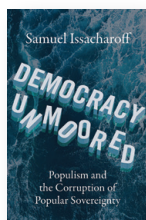
In her debut novel, *The Golden Gate*, Yale Law School's Amy Chua blends fact and fiction, immersing readers in a historical murder mystery. Chua sets the scene at the Claremont Hotel, a legendary resort in Berkeley, California, in 1944.

The novel follows Al Sullivan, a mixed-race police detective, after presidential candidate Walter Wilkinson (based loosely on Wendell Willkie) is found murdered at the Claremont. Sullivan's investigation leads him to another cold case: the death of seven-year-old Iris Stafford, the scion of an influential family, at the Claremont a decade prior.

As Sullivan sifts through an ever-deepening web of lies, he comes face-to-face against San Francisco's coterie of power brokers, desperate to preserve their dominance in an era of monumental social change. Madame Chiang Kai-Shek, who lived briefly in Berkeley, is one of several historical figures to feature in the plot.

Chua examines the racial politics of midcentury San Francisco through Sullivan, who has passed as white to rise through the police ranks. *The Golden Gate* delves into the region's history of racism, including the U.S. government's mass internment of Japanese Americans during World War II. The result draws upon historical evidence to address themes of race, power, and identity.

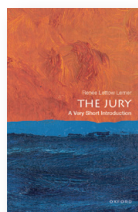




Samuel Issacharoff
**Democracy Unmoored:
Populism and the Corruption
of Popular Sovereignty**

Oxford University Press, 2023

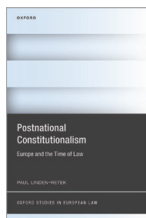
Issacharoff '83 charts how populist movements have come to imperil democracies around the world. *Democracy Unmoored* counteracts the widespread tendency among scholars to consider populism only in wealthy countries. Issacharoff examines the recent trajectories of middle-income countries — such as Brazil, India, and Poland — alongside the United States. He articulates the conditions that are needed to sustain democracy and explains why populism threatens them.



Renée Lettow Lerner
**The Jury:
A Very Short Introduction**

Oxford University Press, 2023

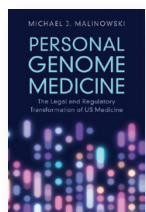
Lerner '95 surveys the history of trial by jury — premised on the notion that laypeople should participate in the judicial process. A title in the Oxford University Press series "Very Short Introductions," *The Jury* describes how the concept emerged across cultural contexts and follows its global spread. Lerner discusses contested issues, such as jury nullification. She also assesses why jury usage has declined in English-speaking countries, describing legal innovations that may affect its future.



Paul Linden-Retek
**Postnational Constitutionalism:
Europe and the Time of Law**

Oxford University Press, 2023

Linden-Retek '12 formulates a critical theory of postnational constitutionalism, responding to the crises that face constitutional law across Europe. He asserts that the fallacy of viewing historical relationships as timeless has endangered the project of European integration. With a focus on migration and asylum, Linden-Retek urges policymakers to recognize "the time of law," which places constitutional law in historical context. He centers principles of solidarity, legal tradition, and belonging.



Michael J. Malinowski
**Personal Genome Medicine:
The Legal and Regulatory
Transformation of U.S. Medicine**

Cambridge University Press, 2023

Malinowski '91 asserts that the medical field must uphold evidentiary science to mitigate the risks posed by direct-to-consumer, genetic-health-risk testing. He narrates the explosive rise of personal genome testing and describes the ethical, legal, and social questions that it has raised. Malinowski examines how the technology's lack of professional medical oversight has transformed the practice of U.S. medicine. He outlines regulatory reforms for governmental authorities and medical practitioners alike.

SPOTLIGHT



Tracing 100 Years of the American Law Institute

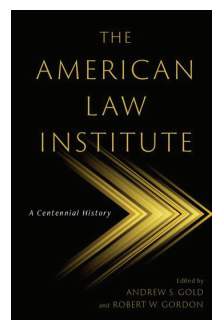
A centennial celebration

Yale Law School's Robert W. Gordon and Brooklyn Law School's Andrew Gold have co-edited a volume that considers pivotal moments in the history of the American Law Institute (ALI), which marked its 100th anniversary in 2023. *The American Law Institute: A Centennial History* traces how the ALI, one of the most important legal institutions in the United States, continues to pursue its original mission of reducing complexity and promoting uniformity in American law.

ALI held its first Annual Meeting in February 1923, and early leaders included William Howard Taft, Charles Evans Hughes, Learned Hand, and Benjamin Cardozo. Gordon and Gold describe the ALI as an enduring movement for legal

reform, exemplary not only for its influence but also its longevity.

"Most such projects terminate when they achieve their limited initial goals, they fail, or their members lose interest and their funding runs out," the co-editors write. "The ALI remains an enterprise in full vigor, with an enormous number of projects completed and an impressive array of projects in forward motion."



Andrew S. Gold and
Robert W. Gordon, eds.

**The American
Law Institute:
A Centennial History**

Oxford University Press,
2023

Gordon and Gold's volume spans 20 chapters, which consider the ALI's work from a range of practical and conceptual angles. Rather than give a comprehensive history, contributors examine crucial debates and decisions that have shaped the organization. Many bring personal insight, having themselves written ALI projects. "The authors, as readers will see, approach the ALI and its works from a variety of perspectives," Gordon and Gold write. "The resulting book is a window into the course of legal thought over a century."

In addition to Gordon, the volume's contributors include Anne Urowsky Professor of Law Douglas NeJaime and Florence Rogatz Visiting Professor of Law Richard Brooks.

The volume also features work by Yale Law School alumni Kenneth Abraham '71, the David and Mary Harrison Distinguished Professor of Law at the University of Virginia School of Law; George A. Bermann '71, the Walter Gellhorn Professor of Law and Jean Monnet Professor of European Union Law at Columbia Law School; Richard L. Revesz '83, Dean Emeritus of New York University School of Law and former Director of the ALI; Henry Smith '96, the Fessenden Professor of Law at Harvard Law School; and Allison Tait '11, Associate Dean for Faculty Development and Professor of Law at the University of Richmond School of Law.

Prejudice in the Criminal Justice System

Exploring the courts' unequal treatment of racial minorities and the poor

In *The Fear of Too Much Justice: Race, Poverty, and the Persistence of Inequality in the Criminal Courts*, Stephen B. Bright, Harvey L. Karp Visiting Lecturer in Law at Yale Law School, partners with his former student James Kwak '11 to examine how racism and classism pervade the criminal legal system. The book draws upon Bright's four decades of experience representing clients on death row to explain why the system betrays its promise of equal justice.

Bright and Kwak take their title from the famous dissent that Supreme Court Justice William Brennan penned to *McCleskey v. Kemp* (1987), in which the Court refused to recognize racial bias in Georgia's application of the death penalty. The majority feared that if it found racism in capital punishment "impermissible," other aspects of the

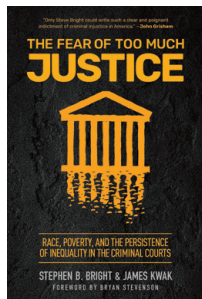
criminal legal system would fall under scrutiny — leading Brennan to denounce what struck him as "a fear of too much justice."

More than 35 years later, Bright and Kwak argue that little has changed. "The fear of too much justice," they write, "helps explain the ineffective responses of federal, state, and local governments to the systematic failures that have led to the conviction of innocent people and the unequal treatment of racial minorities and the poor in the courts."

Bright and Kwak describe the flagrant injustices, which range from prosecutorial misconduct to incompetent and overworked defense counsel, that under-

privileged defendants face upon being charged with a crime. "These incidents have led to concern about policing practices," they write, "but there is an equally urgent need for attention to how people are treated in the courts after they are arrested."

Though Bright and Kwak detail grave challenges, they also express cause for hope. *The Fear of Too Much Justice* considers how activists, attorneys, and local communities have achieved recent victories, which include successful campaigns against the death penalty. The co-authors stress, echoing Brennan, that the criminal legal system cannot suffer from "too much" justice. "It is never wrong to remedy discrimination," they write. "[T]he fact that it may open the door to other claims of discrimination can only advance the cause of justice."



Stephen B. Bright
and James Kwak

**The Fear of
Too Much Justice:
Race, Poverty, and the
Persistence of Inequality
in the Criminal Courts**

The New Press, 2023

SURVEY OF BOOKS



David Alan Richards
**I Give These Books:
The History of
Yale University Library,
1656–2022**

Oak Knoll Press, 2022

Richards '72 chronicles Yale University Library's history, which begins decades before Yale College was itself established. *I Give These Books* explains why Puritan settlers first provided for a library in New Haven and narrates how the earliest staff safeguarded Yale's books through political tumult. Richards traces the rise of professional librarians and describes the modern transformation of Yale's holdings. His account sheds light on the library's changing role in the digital era.



David M. Schizer
**How to Save the World in
Six (Not So Easy) Steps:
Bringing Out the
Best in Nonprofits**

Post Hill Press, 2023

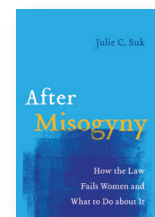
Schizer '93 outlines how to maximize impact within a nonprofit, giving readers a management manual. *How to Save the World in Six (Not So Easy) Steps* draws on Schizer's experience leading Columbia Law School and the JDC, an international humanitarian organization. Schizer argues that every nonprofit must determine how best to fulfill its mission — and then work to sustain support. He distills the twofold process into "six Ps": plan, persevere, prioritize, pivot, publicize, and partner.



Nathan J. Robinson
**Responding to the Right:
Brief Replies to
25 Conservative Arguments**

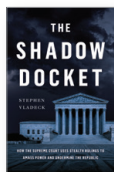
St. Martin's Griffin, 2023

Robinson '14 gives rebuttals to 25 talking points commonly raised in American conservative circles. He characterizes each position, which range from opposing abortion rights to favoring libertarian policies, and contests its underlying logic. In addition to the specific points, Robinson, editor of the magazine *Current Affairs*, also gives general tips for reaching across the aisle.



Julie C. Suk
**After Misogyny:
How the Law Fails Women
and What to Do about It**
University of California Press, 2023

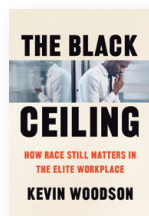
Suk '03 traces how misogyny has persisted in the law even after the end of legal patriarchy. Adopting a global perspective, Suk defines misogyny not only as hatred against women but also as over-entitlement to women's sacrifices. She examines how abortion bans compel women's reproductive labor and assume a patriarchal notion of the public good. Suk also discusses how past generations of women have resisted misogynistic legal structures, including through the temperance movement.



Stephen Vladeck
**The Shadow Docket:
 How the Supreme Court Uses
 Stealth Rulings to Amass Power
 and Undermine the Republic**

Basic Books, 2023

Vladeck '04 warns that the Supreme Court's expanding use of the "shadow docket," a provision that allows the justices to issue emergency rulings, threatens the rule of law. He documents how the court's unsigned rulings, which require neither oral arguments nor written opinions, have shaped policies ranging from vaccine mandates to immigration. Vladeck argues that the Supreme Court's conservative majority has leveraged the shadow docket to turn American jurisprudence rightward.



Kevin Woodson
**The Black Ceiling:
 How Race Still Matters
 in the Elite Workplace**

University of Chicago Press, 2023

Woodson '03 examines the entrenched inequities that Black professionals face in elite law firms, investment banks, and management consulting firms. He surveys the experiences of more than 100 Black lawyers and other professionals, demonstrating how their employers perpetuate a culture of whiteness. Woodson introduces the concept of "racial discomfort" to describe the toll that predominantly white workplaces exact upon Black professionals. He proposes a range of solutions.

ALSO OF NOTE

Sherri L. Burr '85
**Wills and Trusts in a Nutshell,
 6th Edition**

*West Academic Publishing,
 2022*

James T. Carney '67
**Catiline, Rebel of
 the Roman Republic:
 Lucius Sergius Catilina
 and His Conspiracy**

Pen and Sword History, 2023

Dean Cycon '84
**Finding Home
 (Hungary, 1945)**

Koehler Books, 2023

Pintip Dunn '03
 and Love Dunn
**The Lotus Flower
 Champion**

Entangled Teen, 2023

Susan Godshall '72
 and Jack Tripp
**The Builder Book:
 Carpenters, Masons,
 and Contractors
 in Historic New Haven**

*The New Haven Preservation
 Trust, 2022*

Burt W. Griffin '59
**JFK, Oswald, and Ruby:
 Politics, Prejudice
 and Truth**

McFarland, 2023

Lawrence M. Martin '81
**Foreigners in Their
 Own Country:
 Identity and Rejection
 in France**

Berghahn Books, 2023



Samuel Moyn
**Liberalism Against
 Itself: Cold War
 Intellectuals and the
 Making of Our Times**

Yale University Press, 2023

The Roots of Liberalism's Woes

How the Cold War changed politics



Professor Samuel Moyn writes about an influential group of liberal intellectuals of the last century and finds in their work where, in his view, today's liberals go wrong.

*Liberalism Against Itself: Cold War
 Intellectuals and the Making of Our Times*

recounts how a group of political theorists, philosophers, and others remade liberalism in the post-war years. Moyn shows how these thinkers — Isaiah Berlin, Gertrude Himmelfarb, Karl Popper, Judith Shklar, Lionel Trilling, and those in their orbit — redefined their movement's ideals. However, Moyn argues, the ideas they put forth hardly helped their cause.

"Cold War liberalism was catastrophe — for liberalism," Moyn declares at the start of the book.

Having lived through the horrors of the 20th century — World War II, the Holocaust, and Stalinism — the group that later became known as the Cold War liberals developed a new strain of liberalism for their times. They presented liberalism as an alternative to totalitarianism while being careful to distinguish it from communism. One difficulty, according to Moyn: communism had claimed as its own some of liberalism's most appealing features, progress among them. Rather than reclaim these ideals, Moyn is distressed to note, the Cold War liberals downplayed or rejected them.

Moyn argues that the liberalism of the 19th and early 20th centuries, grounded in the ideas of John Stuart Mill and other Enlightenment thinkers, had a sweeping vision of freedom and worldwide emancipation. After World War II, leading thinkers made liberalism much smaller and less inspiring by making freedom from the state its central tenet. In doing so, Moyn shows, the Cold War liberals gave fuel to others who could actively harm the movement. He shows how early neoliberals borrowed from the Cold War liberals and set the stage for Reaganism. One of the thinkers Moyn profiles, Gertrude Himmelfarb, went on to become a founding figure of neoconservatism.

Despite his frustration with liberals who can't give up an idea that, he argues, has been shown repeatedly not to work, Moyn does see a future for liberalism.

"Our best chance to save liberalism will be by reaching back to before the Cold War creed we have inherited for the sake of an entirely new version," Moyn writes. "Reexamining the makings of Cold War liberalism reminds us that it matters less that we preserve and rescue traditions than that we exercise our freedom to reconfigure them beyond their limitations for the sake of our collective future."