

One dollar from Rhode Island, c. 1780

Life, Liberty, and the Pursuit of Credit

The Foundations of Credit and Property Law



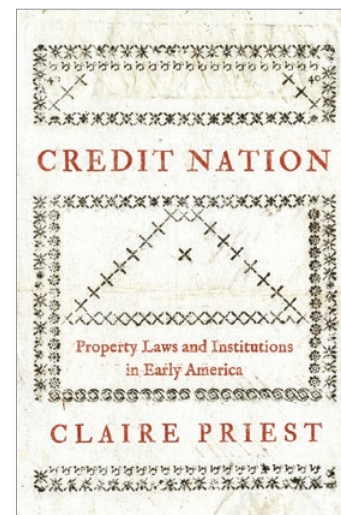
In her book, *Credit Nation: Property Laws and Institutions in Early America*, Professor Claire Priest '01 reveals how the drive to expand credit propelled the creation of new property laws and legal institutions in the Colonial and founding eras of the United States, spanning from the 1660s into the 1790s. By treating land and slaves as mere commodities and by creating streamlined institutions protecting creditors, the Colonial governments and the British Parliament promoted the expansion of slavery and laid the foundations for 19th-century capitalism in America, according to the author.

Today, we take access to credit as a given for anyone who owns property or has an income with the most basic risk of losing either that property or income if unable to deliver on what is promised. Yet, “the legal origins of our credit economy were shaped in the British Colonial era and the American founding period,” Priest writes. The British system of politics and economies were rooted in the laws of inheritance, yet the American project allowed landed individuals of any size to access rights formally held only by expansive land owners. In gaining access to these property rights, the everyman became more invested in the titles, used for the first time as commodities instead of birthrights, that upheld these newfound landed advantages. Subsequently, these new landowners were inclined to fight to sustain what they had through civic engagement.

Priest’s original research on the legal foundations of property and credit brings a new perspective to the early American economy as well as the role of property in the founding era republican ideology. The fact that the Colonial American legal system, from its formation, prioritized access to both credit and property set early America apart from the rest of the world and encouraged a civic engagement that had yet to be seen elsewhere.

Priest divides the book into the foundations of property and credit, the exemptions within the systems, how risk was managed in Colonial America, and the catalyzing events that encouraged the founding of America as a separate independent nation. Priest writes, “This book differs from those that center exclusively on the American Revolution as the time period when Colonial society rejected English property law and its emphasis on inheritance.” Themes in her work cover a spectrum of time and subject matter previously overlooked or missed in scholarship. She covers topics from the reform of British Colonial law and the role of collateral and credit in early America to issues such as the expansion of slavery and the origins of current American economic, legal, political, and social systems with an emphasis on an active past weighing on the present.

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Claire Priest

Credit Nation:

**Property Laws and Institutions
in Early America**

Princeton University Press, 2021

SPOTLIGHT

Law Applied to Life

The Essentials of Contract Law

Nearly five decades of teaching contracts to first-year law students has led Professor Lea Brilmayer to her latest book, *Contracts: The Five Essential Concepts*. The book was inspired by, and written with the participation of, her 2018 and 2019 Contracts small groups at the Law School.

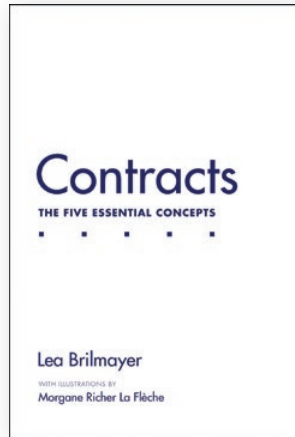


Short, readable, and priced to be accessible, the book is sprinkled with original illustrations by one of the students, Morgane Richer La Flèche '20.

It features a memorable cast of characters, including the Jones family (Desmond, Molly, Harrison, Lucy, and pet ferret Jojo); Professor Ono, a law school professor; and Edward, the class loudmouth. They all manage somehow to survive three years of contracts escapades as Harrison and Edward make their way through the fictitious Ivy Tower Law School.

Along the way, the book introduces the reader to the five fundamental concepts of contracts law: consideration, offer and acceptance, parole evidence, conditions, and quasi contracts. The legal doctrines are explained with familiar, contemporary examples: taking out a student loan, renting an apartment, and ordering things online.

In the introduction, Brilmayer writes that the book is designed for students entering law school, curious general readers, and “for people who want to brush up on contracts law that they once knew but now suspect that they’ve forgotten.”



Lea Brilmayer
**Contracts:
The Five Essential
Concepts**
Carolina Academic Press, 2020



Illustration from *Contracts: The Five Essential Concepts*, courtesy of Morgane Richer La Flèche '20 © copyright 2019

Legal History

A Panoramic View of the Development of the Constitution

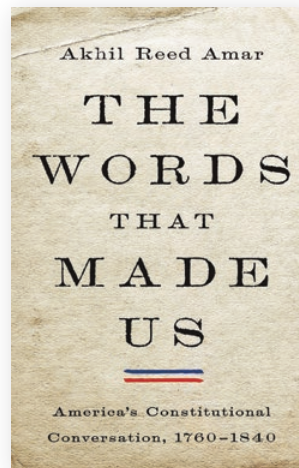
In his history of the Constitution, *The Words That Made Us: America's Constitutional Conversation, 1760–1840*, Professor Akhil Reed Amar '84 combines historical and legal perspective to bring together “between a single set of [book] covers the main constitutional episodes of the fateful era in which America became America.”

By combining the two approaches, Amar aims to solve what he sees as a fundamental problem in constitutional literacy — previous works on this subject are by historians who are not well versed in the law and legal scholars who don't pay enough attention to history in shaping modern constitutional rhetoric.



The Words That Made Us covers the era beginning in 1760, when neither America nor an American constitution existed. Amar pinpoints the value of constitutional conversation in the development of the document itself. Conversation was the catalyst that made spoken words in taverns or at communal gatherings and written words in newspapers and pamphlets real and actionable.

While well-known men are often credited with the creation of America's guiding documents after the Revolutionary War,



Akhil Reed Amar
**The Words That Made Us:
America's Constitutional
Conversation, 1760–1840**
Basic Books, 2021

the late 1780s were flush with discussion by everyday people whose discourse would help shape the documents that became the Constitution.

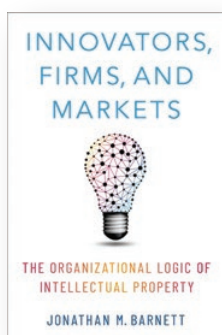
Amar challenges common perceptions of the winners and losers of the constitutional process. Amar pinpoints George Washington as the only man who got everything he wanted in the process, specifically a strong executive. He also counts Alexander Hamilton among the winners in the process and exposes James Madison, who is often credited as the father of the Constitution, and Thomas Jefferson, as smaller players than they are given credit for.

Amar aims to unite history and law in a wide-angled, multigenerational narrative

that seems both to understand the past and to evaluate it using proper historical and legal tools of analysis. At every point in the progression of creating, ratifying, and utilizing the Constitution, “history's kaleidoscope continues to turn and create new patterns of constitutional discourse.” Amar highlights how history weighs on the present as the Constitution influences today's “courtrooms, classrooms, newsrooms, homes, and the like.”

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.

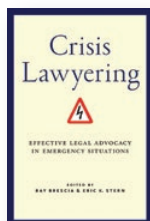


Jonathan M. Barnett
**Innovators, Firms,
and Markets:**

**The Organizational Logic
of Intellectual Property**

Oxford University Press, 2021

Barnett '99 challenges the assumption that strong enforcement of intellectual property rights hinders innovation and discourages competition through strong barriers to entry. Instead, by confronting the common assumptions around IP law, *Innovators, Firms, and Markets* lays out an inter-sectional analysis between IP rights, firm organization, and market structures, ultimately highlighting the positive nature of weak IP rights in shaping and protecting competition and innovation in the economy.



Ray Brescia and
Eric K. Stern, eds.

**Crisis Lawyering:
Effective Legal Advocacy
in Emergency Situations**

NYU Press, 2021

Brescia '92 and Stern explore the phenomenon of lawyers as first responders during a crisis. Contributors explore cases surrounding domestic violence; immigrants in detention and banned from travel; policing in Ferguson, Missouri; the kidnapping of journalists; and climate change, among other cases.

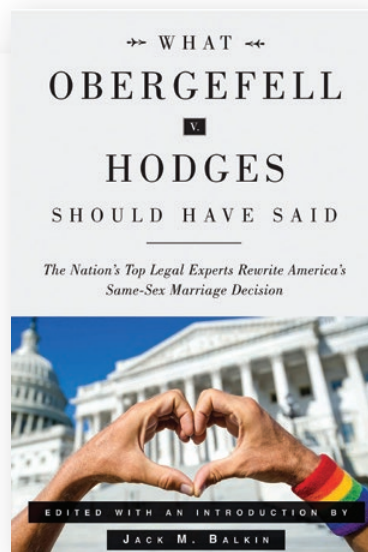


Orville Vernon Burton
and Armand Derfner

**Justice Deferred:
Race and the Supreme Court**

Belknap Press, 2021

Burton and Derfner '63 give a comprehensive accounting of the U.S. Supreme Court's race-related jurisprudence. Addressing nearly 200 cases involving America's racial minorities, the authors probe the parties involved, the justices' reasoning, and the impact of individual rulings. This sweeping history shows both the triumphs and disgraces of the Court's record.



Jack M. Balkin, ed.

**What Obergefell v. Hodges Should Have
Said: The Nation's Top Legal Experts Rewrite
America's Same-Sex Marriage Decision**

Yale University Press, 2020

Rewriting the Gay Rights Decision

Balkin Edits Book on *Obergefell v. Hodges*

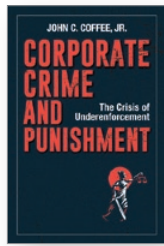
In his book, *What Obergefell v. Hodges Should Have Said: The Nation's Top Legal Experts Rewrite America's Same-Sex Marriage Decision*, Professor Jack M. Balkin and an all-star cast of legal scholars rewrite the Supreme Court's landmark gay rights decision in *Obergefell v. Hodges*, which held that same-sex couples have the right to marry. The book features 11 opinions from authors who argue both for and against the constitutional right to same-sex marriage.

In addition to serving as Chief Justice of this imaginary Supreme Court, Balkin provides an extensive critical introduction to the case. He recounts the story of the gay rights litigation that ultimately led to *Obergefell*, explaining how courts respond to political mobilizations for new rights claims. Balkin argues that the social movement for gay rights and marriage equality is one of the most important recent examples of how legal arguments that were once dismissed as off-the-wall can later become established in American constitutional law through political struggle and legal imagination.

Contributors to the book include Helen M. Alvaré; John A. Garver Professor of Jurisprudence William N. Eskridge Jr. '78; Katherine Franke '93 LLM, '98 JSD; Robert P. George; Sherif Girgis '16; John C. Harrison '80; Andrew Koppelman '89; Melissa Murray '02; Anne Urowsky Professor of Law Douglas NeJaime; Catherine Smith; Nicholas deB. Katzenbach Professor of Law Reva B. Siegel; and Jeremy Waldron.

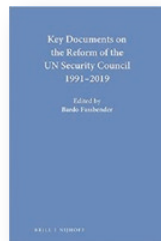


SURVEY OF BOOKS



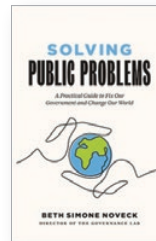
John C. Coffee Jr.
Corporate Crime and Punishment: The Crisis of Underenforcement
 Berrett-Koehler, 2020

Coffee '69 provides a list of bold proposals to ensure that corporate malfeasance is punished. In an era after the sentencing of white-collar criminals from Enron and WorldCom, corporations have benefited from deferred prosecution agreements, avoiding criminal convictions for malpractice. *Corporate Crime and Punishment* offers guidance to navigate future cases.



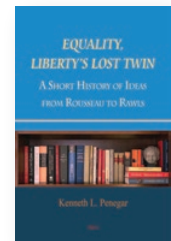
Bardo Fassbender, ed.
Key Documents on the Reform of the U.N. Security Council, 1991-2019
 Brill/Nijhoff, 2020

Fassbender '92 LLM, '99 JSD brings together the primary source documents that reflect the major political, legal, and academic reforms of the United Nations Security Council since 1991. By looking back to the late 1940s and the buildup into this modern era, the extensive collection represents an unbiased picture of the debate as a whole, including various positions of stakeholders, global participants, and civil society. The comprehensive volume will act as a resource for researchers and students going forward.



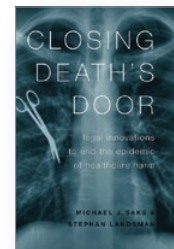
Beth Simone Noveck
Solving Public Problems: A Practical Guide to Fix Our Government and Change Our World
 Yale University Press, 2021

Yesterday's social governance toolkit is not adequately prepared to take on the contemporary challenges facing society today. Noveck '97 educates readers on how to take advantage of technology, data, and community wisdom to deliver powerful ways forward on issues such as climate change, systemic racism, and inequality. *Solving Public Problems* highlights the divide between failing public institutions and the multitude of extraordinary social entrepreneurs who want to abolish that divide.



Kenneth L. Penegar
Equality, Liberty's Lost Twin: A Short History of Ideas from Rousseau to Rawls
 Algora Publishing, 2020

Penegar '62 LLM presents a historic and contemporary understanding of an ideal much talked about today: equality. *Equality, Liberty's Lost Twin* frames the conversation by asking what society asks of the term today, and by looking at what the American Founders had in mind in creating America's foundational policies.



Michael J. Saks and Stephan Landsman
Closing Death's Door: Legal Innovations to End the Epidemic of Healthcare Harm
 Oxford University Press, 2021

Saks '83 MSL and Landsman hope to start a conversation that will lead to new legal policies to lower the risk of harm to patients. Avoidable injury or infection caused by a healer is the third leading cause of death in the United States. The authors shed light on the culture and structure of a health care industry that has failed to effectively address the problem and has influenced legislation to weaken existing legal protections and impede the adoption of potentially promising reforms.

A Philosophical Memoir

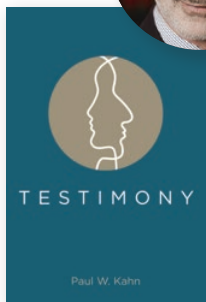
The Revelation of Family Secrets

In *Testimony*, Professor Paul W. Kahn '80 pursues the themes that have been at the core of his work on law and politics: sacrifice, love, memory, and faith. *Testimony*, however, is no ordinary work of academic inquiry. It is a memoir of the last five years of his mother's life.

Testimony opens: "On my mother's 75th birthday, she began to confess. By her 80th birthday, she was dead. In those five years, my parents' quiet life in retirement became the scene of a battle of mythic proportions. Love and hatred, sex and possession, memory and truth, life and death were all at issue."

It was to his father that his mother confessed. Instead of bringing forgiveness and peace, the confession brought unforgiving rage. She acted out of love; he sought revenge. Their battle consumed everything and everyone around them. In the middle of this struggle, she was diagnosed with cancer. Two years later, she died.

Kahn finds in their struggle the story of the 20th century. Their lives begin with poverty in the Depression and immigration from Hitler's Germany. He follows his father's experience of World War II in Europe and his return with PTSD. He traces his parents' movements through the turbulent '60s. Even more than a study of 20th-century culture, *Testimony* is a vivid, poignant, and sometimes painful meditation on the possibility of faith in a secular age.

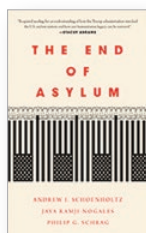


Paul W. Kahn
Testimony
 Cascade Books, 2021



James Gustave Speth and
Kathleen Courrier, eds.
**The New Systems Reader:
Alternatives
to a Failed Economy**
Routledge, 2020

By exploring new ideas and breaking free of stale political debate, *The New Systems Reader* highlights how society can be reimagined for the common good by changing America's economic, political, and communal systems of operation. Speth '69 and Courrier compile 29 essays from contributors spanning academia, politics, and community organizing. The book poses the question: What next steps are possible to change today's systems of political economy in order to serve people, place, and planet?



Andrew I. Schoenholtz,
Jaya Ramji-Nogales, and
Philip G. Schrag
The End of Asylum
Georgetown University Press, 2021

Schoenholtz, Ramji-Nogales '99, and Schrag '67 offer a comprehensive examination of the rise and demise of the U.S. asylum system. Beginning with the Refugee Act of 1980, the authors chart the evolution of the process. The book concludes with a road map to repair and reform the system.

ALSO OF NOTE

Stacey Abrams '99
While Justice Sleeps
Doubleday, 2021

Bill Barnett '63
American Variety
Self-Published, 2020

Kimberly Cheney '64
A Lawyer's Life to Live
Rootstock Publishing, 2021

Gregory Conti '80, translator
The Nation of Plants
Other Press, 2021

Carolyn Cox '74
**The Snatch Racket:
The Kidnapping Epidemic That
Terrorized 1930s America**
Potomac Books, 2021

Robert A. James '83
**Humanity and the Big Dipper:
A History of Our Species
in Relation to Seven Stars**
KDP, 2020

Kurt T. Lash '92, ed.
**The Reconstruction
Amendments: The Essential
Documents, Vol. 1**
University of Chicago Press,
2021

Richard S. Markovits '68
**Welfare Economics and
Second-Best Theory:
A Distortion-Analysis Protocol
for Economic-Efficiency
Prediction**
Springer, 2020

William Ian Miller '80
**Outrageous Fortune:
Gloomy Reflections
on Luck and Life**
Oxford University Press, 2020

Daniel J. Solove '97
The Eyemonger
Griffin Press, 2020



Elizabeth Hinton
**America on Fire:
The Untold History of
Police Violence
and Black Rebellion
Since the 1960s**
W.W. Norton, 2021

Rebellion Through a New Lens

A Historical Perspective on Protests



Local protests that began in Minneapolis in response to the murder of George Floyd in 2020 soon grew into a nationwide movement calling for the end of police brutality and systemic racism. In order to fully grasp the anti-racist marches and rallies that took place across the country, Professor of Law Elizabeth K. Hinton writes in her book *America on Fire: The Untold History of Police Violence and Black Rebellion Since the 1960s*, one must look to their precursors in the 20th century, when Black rebellion in the U.S. — often mislabeled as “riots” — emerged as a powerful response to racism, poverty, and exclusion.

In the book, Hinton corrects the notion of so-called urban rioting as part of a disease that could only be cured by more police, a view expressed by politicians in the 1960s, including President Lyndon Johnson and Senator Daniel Patrick Moynihan.

Despite civil rights reforms and programs like Johnson's War on Poverty, the rebellions showed the country that these efforts were not able to solve racial inequality. The War on Crime, launched a year after the War on Poverty, began as a short-term solution to expand law enforcement in communities of color through surveillance and increasingly militarized police. Such a system of American policing had its roots in the slave patrols of the South, Hinton writes. But it soon became a long-term reality.

In enacting new policing policies, federal policymakers neglected to listen to residents of communities affected by rebellions, as well as some of their own advisors like Sargent Shriver and the Johnson-appointed Kerner Commission. Both issued warnings and alternatives to increased policing like increased investment in poor Black communities.

U.S. cities became more self-reliant on their local police forces to handle unrest. Hinton writes that as a result, the rebellions of 1968–1972 have largely been overlooked beyond those in major metropolitan centers.

The second part of Hinton's book traces the legacies of what Hinton calls the “crucible years” of rebellions as seen in the major televised moments of mass political violence in the last four decades, including in Miami in 1980, Los Angeles in 1992, and Cincinnati in 2001. Hinton writes that rebellion had evolved to be a community's response only to exceptional acts of violence — a police killing like that of George Floyd. “There are no longer rebellions against everyday policing practices, a sign that the status quo has become accepted, however bitterly,” she writes.

Hinton reminds readers that “racial hierarchy, inequality, and violence are among the oldest American stories.”