

David N. Schleicher

**In a Bad State:
Responding to State and
Local Budget Crises**

Oxford University Press, 2023

I.O.U.s in U.S.A.

What states and cities can do about debt



In his book *In a Bad State: Responding to State and Local Budget Crises*, Professor David N. Schleicher gives federal policymakers “a practical guide” for when states and cities cannot pay their debts. Schleicher uses economics, political science, law, and history to explain what the federal government can — and cannot — do to provide for the general welfare during state and local defaults.

In a Bad State begins with what Schleicher calls a “trilemma.” No matter what the federal government does when a state or city faces a default crisis, he writes, it runs three risks: the economic turmoil that results from austerity measures; the moral hazard of state and local officials taking bailouts for granted; and the likelihood that lenders will not support municipal infrastructure if there is a default. “At best,” Schleicher concludes, “the federal government can prevent two of them. It has to pick its preferred poison.”

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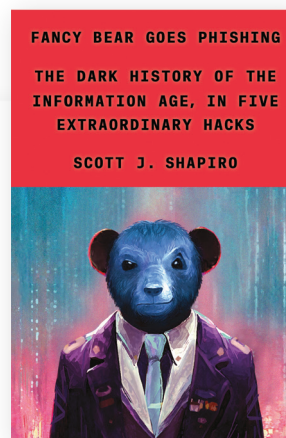
DAVID N. SCHLEICHER

Schleicher considers evidence from U.S. history, tracing why the federal government has pursued austerity, bailout, or default in the wake of state and city budget crises. Among other examples, Schleicher discusses the moral hazard that followed Alexander Hamilton’s famous plan to assume state debts and examines how the repudiation of Reconstruction-era debts by Southern states reduced infrastructure investment and growth. Schleicher extends his analysis to the present day, contextualizing contentious debates about the American Rescue Plan and other recent legislation.

While he does not sugarcoat the constraints that face federal policymakers, Schleicher argues that appointed and elected officials have a wider range of policy options available than is often presumed to address these crises or prevent them from happening in the first place. He formulates four principles — prudence, balance, spreading, and resilience — to guide their decisions, suggesting policies ranging from changing the tax exemption on municipal bonds interest to offering state governments the option of filing for municipal bankruptcy.

In a Bad State seeks to rectify long-standing shortcomings in the literature about budget crises at all levels of government. “Scholarship and elite discussion around these issues,” Schleicher writes, have ignored “many of the real concerns created by state and local fiscal distress.” Schleicher draws on his expertise in the field of local government to unravel the tradeoffs that shape state budgeting — and lead to its failure.

For Schleicher, *In a Bad State* comes at a propitious moment. Three years ago, the COVID-19 pandemic sparked widespread fears that state and city governments, which had suddenly lost much of their tax revenue, would have no choice but to default. Schleicher notes that the worst-case scenario did not come to pass, leaving the United States with a rare opportunity to prepare for future crises. He describes *In a Bad State* as “an effort to take advantage of this lull to develop some new ideas about how federal officials and voters alike should think about the problem of state and local fiscal stress.”



Scott J. Shapiro
**Fancy Bear Goes Phishing:
 The Dark History of the
 Information Age, in Five
 Extraordinary Hacks**

Farrar, Straus and Giroux, 2023

The Digital Realm

Scott J. Shapiro delves into the history and ethics of hacking

In his book, *Fancy Bear Goes Phishing: The Dark History of the Information Age, in Five Extraordinary Hacks*, Professor Scott J. Shapiro '90 traces the very human history behind hacking. Shapiro argues that psychological and social forces shape cyber-crime and cyberwarfare, threats that are much-feared but rarely, if ever, understood.

Fancy Bear Goes Phishing dispels common misconceptions about hacking, the act of breaching a computer system or otherwise exploiting its vulnerabilities. Hacking, Shapiro explains, is not only a matter of technical computation, or “downcode.” He uncovers how “upcode,” the norms that guide human behavior, and “metacode,” the philosophical principles that govern computation, determine what form hacking takes. Shapiro examines the interplay between upcode, downcode, and metacode in five historical examples — one of which concerns the titular Fancy Bear, a cyberintelligence unit within the Russian military.



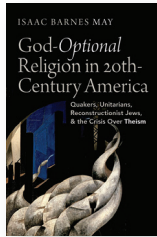
The idea to write about hacking came to Shapiro after he co-authored *The Internationalists: How a Radical Plan to Outlaw War Remade the World* (Simon & Schuster, 2017) with Oona Hathaway '97, the Gerard C. and Bernice Latrobe Smith Professor of International Law. Shapiro and Hathaway’s book examines the modern history of war and efforts to establish global peace. *The Internationalists* left Shapiro thinking about cyberwar, which is often said to be how wars of the future will be waged.

To understand the technical dimensions of his subject, Shapiro taught himself how to hack. “Given my extensive technical background in computer science, I figured it wouldn’t take me long to get up to speed,” he writes. “But I was wrong. So wrong.” Shapiro’s research led him to memorize coding languages, audit a graduate-level seminar on operating systems, and frequent hacking conventions. In the process, he devised a cutting-edge course about lawyering in the information age.

Shapiro hopes to equip future lawyers and policymakers with the technical knowledge required to regulate the digital realm. While he does not minimize the harm done by hacking, Shapiro finds widespread alarmism to be unfounded. “Cybersecurity is not a primarily technological problem that requires a primarily engineering solution,” Shapiro concludes. “We need to pay attention to our upcode, determine where the vulnerabilities lie, and fix those rules so that we produce better downcode.”

SURVEY OF BOOKS

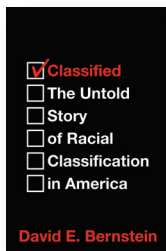
Here's a sampling of the many other books recently written or edited by our alumni, faculty, staff, and students. We welcome your submissions. Please contact us: lawreport@yale.edu.



Isaac Barnes May
**God-Optional Religion
in 20th-Century America:
Quakers, Unitarians,
Reconstructionist Jews,
and the Crisis over Theism**

Oxford University Press, 2022

Barnes May '24 explains how three American religious traditions — Liberal Quakerism, Unitarianism, and Reconstructionist Judaism — each came to accommodate divergent beliefs about God, including the view that there is no God at all. Barnes May devises the category of “God-optional religion” to describe how each community reconciled its faith with modern mores. Barnes May gives a historical account that frames the interplay of religion and secularism in the United States today.



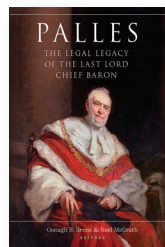
David E. Bernstein
Classified:

**The Untold Story of Racial
Classification in America**

Bombardier Books, 2022

Bernstein '91 argues that racial classifications employed by the U.S. government lack coherence

and should be abandoned. Bernstein contends that the racial categories in use — for example, in the U.S. census, university admissions, and government contracts — make arbitrary distinctions and fail to reflect the complex ways in which people identify. Bernstein suggests that the government adopt new designations, which may not be coterminous with race, to account for systemic disadvantage.

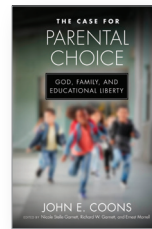


Oonagh Breen and
Noel McGrath, eds.
Palles:

**The Legal Legacy of
the Last Lord Chief Baron**

Four Courts Press, 2022

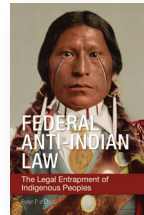
Breen '04 LLM, '06 JSD and McGrath bring together 11 essays, which trace how Christopher Palles, the last chief baron of the Irish Court of Exchequer, shaped Ireland's legal and social trajectory in the 19th century. The volume, which honors the centenary of Palles' death, surveys his expansive body of written judgments. Each chapter considers Palles' historical and contemporary influence within distinct facets of Irish law, which stretch from land ownership to contempt of court.



John E. Coons
Nicole Stelle Garnett, Richard
Garnett, and Ernest Morrell, eds.
**The Case for Parental Choice:
God, Family, and
Educational Liberty**

University of Notre Dame Press, 2023

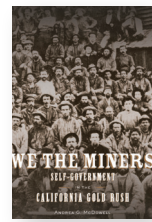
Stelle Garnett '95, Garnett '95, and Morrell curate a series of essays by Coons, a scholar of law and education policy, supporting school choice on the grounds of social justice. The volume contends that the law should empower marginalized and low-income parents to seek educational equity for their children, particularly by choosing schools.



Peter P. d'Errico
**Federal Anti-Indian Law:
The Legal Entrapment
of Indigenous Peoples**

Praeger, 2022

Drawing upon his decades of advocacy, d'Errico '68 argues that so-called “federal Indian law” suspends the rule of law and legitimates genocide against Indigenous peoples. d'Errico adopts a theoretical lens while also examining pivotal cases that have denied rights to Indigenous peoples. As he unravels the doctrine of Christian discovery, which liberal and conservative jurists alike have upheld, d'Errico seeks to recover Indigenous ways of knowing the world.



Andrea G. McDowell
**We the Miners:
Self-Government in the
California Gold Rush**

Harvard University Press, 2022

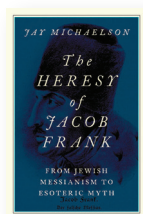
McDowell '98 examines how more than 100,000 gold miners constituted their own self-government in 19th-century California. McDowell demonstrates that miners established judicatory mechanisms in the absence of state authority. The author argues that the miners' system of collective control replicated the racist contours of U.S. democracy, particularly through genocide against Native American communities.



Viviane Meunier-Rubel
**Interstitial Law-Making in
Public International Law:
A Study of Environmental
Impact Assessments**

Brill, 2022

Meunier-Rubel '06 LLM, '18 JSD surveys the theory and practice of environmental impact assessments (EIA), a legal procedure that is widely used to seek environmental protection. Meunier-Rubel considers whether EIAs are well suited for public international law as well as how they affect international actors in practice. In addition to theoretical analysis, Meunier-Rubel discusses case studies from Asia and Europe. The book expands upon Meunier-Rubel's doctoral dissertation, which won Yale Law School's Ambrose Gherini Prize.

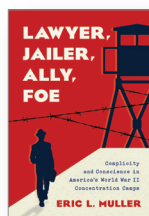


Jay Michaelson

The Heresy of Jacob Frank: From Jewish Messianism to Esoteric Myth

Oxford University Press, 2022

Michaelson '07 unearths the religious philosophy of Jacob Frank, an 18th-century Jewish mystical leader responsible for the largest mass apostasy in Jewish history. Michaelson contests predominant narratives about Frank, who is often portrayed as sexually and morally depraved. Michaelson reconstructs Frank's teachings with critical methodology, tracing how Frank both followed and resisted the disciplines of reason, magic, Kabbalah, and esotericism.

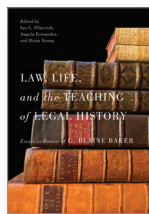


Eric L. Muller

Lawyer, Jailer, Ally, Foe: Complicity and Conscience in America's World War II Concentration Camps

University of North Carolina Press, 2023

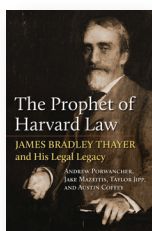
Muller '87 uncovers the stories of three white lawyers assigned to concentration camps that held Japanese Americans during World War II. He examines how the men grappled with the immorality of their job, which required that they uphold the camps' oppressive order even as they represented those who were interned. By sifting through his subjects' own legal work, Muller describes how the lawyers, despite their best intentions, came to perpetuate racial injustice.



Ian C. Pilarczyk, Angela Fernandez, and Brian Young, eds.
Law, Life, and the Teaching of Legal History: Essays in Honour of G. Blaine Baker

McGill-Queen's University Press, 2022

Co-editors Pilarczyk, Fernandez '02 LL.M., '07 J.S.D., and Young chart the sweep of Canadian legal history through the work of legal historian G. Blaine Baker. The volume harnesses Baker's scholarship to plumb the significance of his career. In addition to reflecting on Baker's personal life, contributors examine debates that have molded Canadian law. The volume employs the themes — such as legal education, gender and race, and nation-building — that Baker made central to his work.



Andrew Porwancher, Jake Mazeitis, Taylor Jipp, and Austin Coffey
The Prophet of Harvard Law: James Bradley Thayer and His Legal Legacy

University Press of Kansas, 2022

Porwancher, Mazeitis '23, Jipp, and Coffey document how James Bradley Thayer, a leading legal scholar in the 19th century, altered the course of American jurisprudence. The book contextualizes Thayer's philosophy of legal realism, recovering the historical moment in which Thayer lived, taught, and wrote. Mazeitis and co-authors meditate upon the role that mentorship plays in law.

SPOTLIGHT



What's Next for Policing?

Data-based recommendations for law enforcement



In a scholarly monograph, Tom Tyler and

Caroline Nobo of The Justice Collaboratory at Yale Law School propose legitimacy-based policing as a new model to combat crime and build trust between police and the communities they serve. In *Legitimacy-Based Policing and the Promotion of Community Vitality*,

Tyler and Nobo demonstrate how police can

move beyond the "coercive model of crime control" that has predominated in the United States for decades.

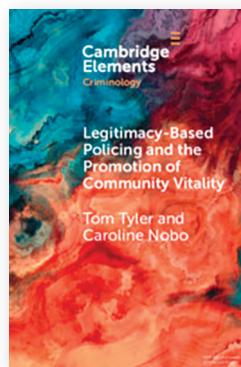
The authors begin by critiquing the national landscape of law enforcement. They note that crime rates across the country have fallen drastically since the 1980s, bringing the coercive model's dependence upon force into scrutiny.

The monograph contends that legitimacy, rather than use of force, determines whether members of a given community will comply and cooperate with police. Drawing upon earlier work done by Tyler, a leading scholar at the intersection of law and social psychology, the authors employ legitimacy

as a theoretical lens to understand individual relationships to authority.

Tyler and Nobo name procedural justice, which assesses how fairly authority is exercised, as a crucial factor in determining whether communities accept police as a legitimate source of authority. In the absence of clear Constitutional standards to govern police-community interactions, they describe legitimacy as a goal that police departments should adopt and procedural justice as a strategy to help realize that goal.

The authors argue that legitimacy confers another significant benefit: fostering economic development and communal vitality.



Tom Tyler and Caroline Nobo

Legitimacy-Based Policing and the Promotion of Community Vitality

Cambridge University Press, 2023

"The reality of policing is that the police provide a variety of social services," they observe. If structures of authority are to meet the needs of communities, Tyler and Nobo conclude, policing must seek legitimacy from those it purports to serve.

The text aims to give policing a new and transformative premise. "Our goal is to avoid being caught up in the politics of the moment," the authors write. They introduce legitimacy-based policing as "a new theoretical framework that, if adopted, means that the totality of the system can be reimaged."

Preserving Democracy Close to Home

The importance of civic participation in small-town Connecticut

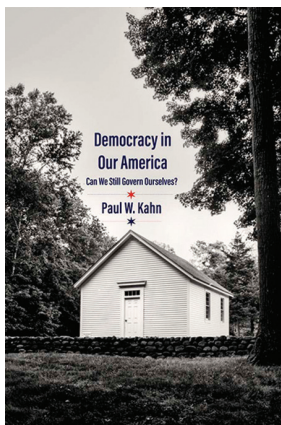
In his newest book, *Democracy in Our America: Can We Still Govern Ourselves?*, Professor Paul W. Kahn '80 argues that the key to understanding and preserving American democracy lies close at hand. To make his argument, Kahn turns to Killingworth, Connecticut, the town he has called home for the past 25 years.

Kahn, whose past work often focused on more abstract questions of political and legal theory, explains his turn to the local in the aftermath of the election of Donald Trump. "The lesson of 2016 to scholars was 'get real,'" Kahn writes. "I take that lesson to heart by staying close to the political practices and beliefs of the local community that I know best."

Kahn examines how changes in our national social, cultural, and political lives have affected the small town (population 6,400) about 25 miles east of New Haven. Kahn describes himself as a "participant-theorist." He draws on his many experiences in the town as well as on formal interviews with local residents. He brings another unique perspective to the subject — his wife, Catherine Iino, served as the town's First Selectwoman for 12 years.

Informed by his experience in Killingworth, Kahn formulates a political theory that puts volunteering, not voting, at the foundation of self-government. Civic participation, Kahn argues, makes self-governance possible. Kahn warns that volunteerism faces "existential threats" in Killingworth and across the nation. He examines how changes in civil society, family, and work life, as well as in forms of communication, have made it

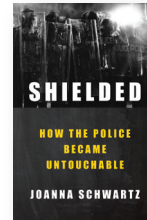
increasingly difficult for citizens to take part in their community's collective life. Under these circumstances, local politics is displaced by our national political polarization; we repeat locally what we hear nationally. Describing *Democracy in Our America* as "an interpretation of politics and a political intervention," Kahn considers some possibilities by which communities can try to restore an "ethos of public service."



Paul W. Kahn
**Democracy
in Our America:
Can We Still
Govern Ourselves?**

Yale University Press, 2023

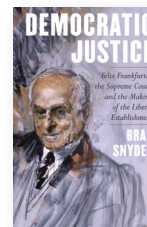
SURVEY OF BOOKS



Joanna Schwartz
**Shielded:
How the Police Became
Untouchable**

Viking, 2023

Schwartz '00 analyzes how the U.S. criminal legal system protects police officers from being held accountable for abuse. *Shielded* follows the rise of oppressive policing, linking police impunity to legal doctrines such as qualified immunity and no-knock warrants. Schwartz assesses how lawmakers and judges have vitiated civil rights legislation designed to counter police violence. She proposes a series of systemic reforms, which include requiring that police departments pay settlements against their officers.

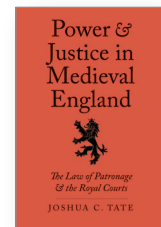


Brad Snyder
**Democratic Justice:
Felix Frankfurter, the Supreme
Court, and the Making of the
Liberal Establishment**

W. W. Norton & Company, 2022

Snyder '99 challenges the conventional narrative that Felix Frankfurter betrayed his liberal record once he joined the U.S. Supreme Court. *Democratic Justice* contends that Frankfurter shaped the country's liberal establishment from the bench. Snyder interprets the justice's most controversial rulings as consistent with his belief in judicial restraint. He chronicles

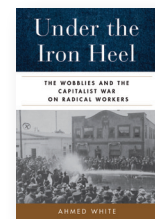
how Frankfurter's upbringing as the son of vulnerable Austrian-Jewish parents instilled his belief in democracy, which he would champion throughout his career.



Joshua C. Tate
**Power and Justice
in Medieval England:
The Law of Patronage and
the Royal Courts**

Yale University Press, 2022

Tate '02 studies the social forces that spurred the emergence of common law in medieval England. While many histories of common law trace its origin to land ownership, Tate considers the broader legal history of property. He documents how secular and church authorities competed over the right to fill vacant ecclesiastical positions, known as advowson. The dilemma, Tate posits, prompted the English court system to create legal doctrines that would eventually influence common law.

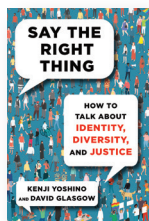


Ahmed White
**Under the Iron Heel:
The Wobblies and
the Capitalist War on
Radical Workers**

University of California Press, 2022

White '94 charts how a state-sponsored campaign of legal repression and vigilante violence quelled the International Workers of the World (IWW) in the 1920s.

White explains the threat that the IWW, a radical union founded in 1905, posed to class hierarchy in the United States. *Under the Iron Heel* examines the role that progressive and conservative policymakers played in subduing the union, raising questions about political tolerance for organized labor today.



Kenji Yoshino and David Glasgow
**Say the Right Thing:
How to Talk About Identity,
Diversity, and Justice**
Atria Books, 2023

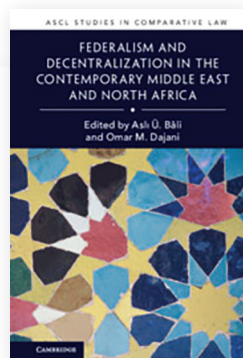
Yoshino '96 and Glasgow, co-founders of the Meltzer Center for Diversity, Inclusion, and Belonging at NYU Law School, offer a blueprint for engaging in critical conversations about identity, privilege, and bias. The co-authors draw upon examples, ranging from social media to the workplace, to demonstrate techniques that readers can study and use. They distill seven practical principles, which cover topics such as expressing disagreement respectfully, giving an authentic apology, and fostering resilience.

ALSO OF NOTE

Marie Boyd '07
Just a Worm
HarperCollins, 2023

Scott Burris '87, Micah L. Berman, Matthew Penn, and Tara Ramanathan Holiday
The New Public Health Law: A Transdisciplinary Approach to Practice and Advocacy, Second Edition
Oxford University Press, 2022

Anver M. Emon '04 LL.M. '09, JSD and Urfan Khaliq
Jurisdictional Exceptionalisms: Islamic Law, International Law, and Parental Child Abduction
Cambridge University Press, 2021



Aslı Ü. Bâli and Omar M. Dajani, eds.
Federalism and Decentralization in the Contemporary Middle East and North Africa
Cambridge University Press, 2023

Joseph C. Gioconda '97
Ben's Bones
Newtown IP Holdings, 2023

Norm Leventhal '68
Rene, el Tigre, and Me: Up Close and Personal — Spanish Television in America
RoseDog Books, 2021

Mary Marantz '06
Slow Growth Equals Strong Roots: Finding Grace, Freedom, and Purpose in an Overachieving World
Revell, 2022

Daniel W. Park '98
Sentinel: The Most Dangerous Enemy Isn't Always the Dragon
LexPrep Press, 2022

Debra M. Strauss '86
Behind the Bench: The Guide to Judicial Clerkships, Third Edition
West Academic Publishing, 2023

Deepa Varadarajan '03
Late Bloomers
Random House, 2023

Alexander C. Wagenaar and Scott C. Burris '87
Legal Epidemiology: Theory and Methods, Second Edition
Jossey-Bass, 2023

Comparative Analysis of the Dilemmas of Decentralization

Eleven case studies across the region

Co-edited by Professor of Law Aslı Ü. Bâli '99 and Omar M. Dajani '97, *Federalism and Decentralization in the Contemporary Middle East and North Africa* offers an in-depth look at the law and politics surrounding government reform in an area that has long struggled with identity conflict. What sets the volume apart from other literature of its kind is that it is the “first scholarly work entirely in the English language to address decentralization” in the region.

Decentralization can be broadly defined as the transfer of power from one central authority to several lower government entities. Through case studies and essays, Bâli and Dajani — a Professor of Law at the University of the Pacific's McGeorge School of Law — weave a textured portrait of decentralization

in an area undergoing sweeping transition that until now had been underexamined in the comparative law and comparative political literature.

The volume aims to appeal to academics and policymakers alike by including leading scholars and policy analysts who are experts in constitutional law, conflict resolution, comparative politics, comparative law, political theory, sociology, and urban planning.

