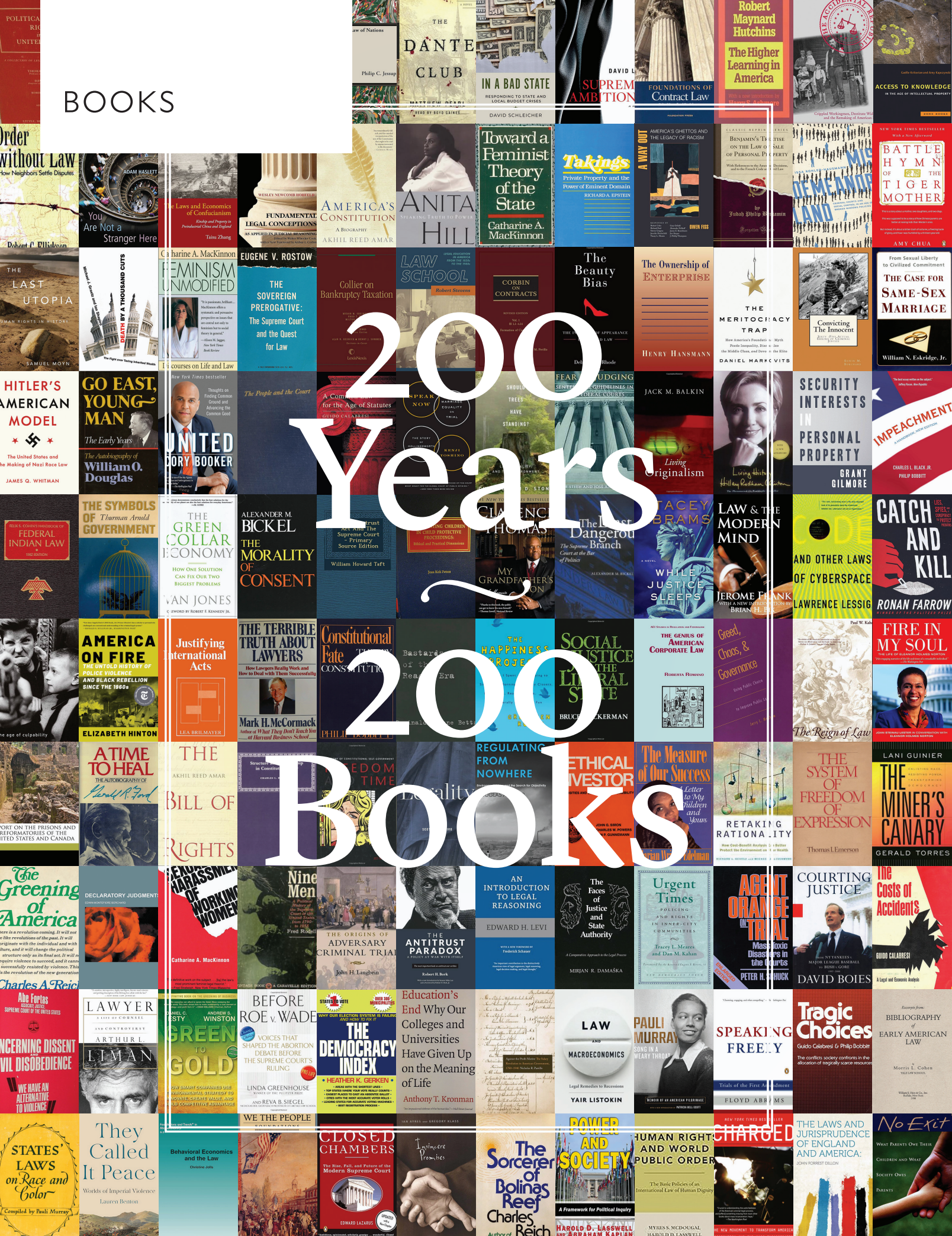


BOOKS

2000 Years Books



Yale Law School's contributions to publishing

On the occasion of Yale Law School's 200th anniversary, librarians Fred Shapiro and Nicholas Mignanelli have assembled an exhibit of 200 books authored or edited by faculty and alumni. This is not an exhibit of the "best" or "most important" books, but rather it is intended to be a selection illustrating the variety of published volumes by members of the Yale Law School community. Many of the works listed are scholarly monographs. Others are legal treatises. Still others are casebooks. It is difficult to give examples of these three genres, or of the "nonlegal" books, because so many of them transcend categories. In the hands of Yale Law School authors, scholarly monographs may be powerful arguments on public policy or brilliant tools for instruction. Treatises may be masterpieces of scholarship. Casebooks may define new fields. The nonlegal volumes may motivate lawyers in a multitude of ways.

Of course, the major role of books at Yale Law School has been to disseminate scholarship, teaching, and activism. A large portion of the legal ideas and reforms of the last century have sprung from books written by Yale Law School professors and alumni. The law and its ideas have been inspired, synthesized, and communicated by these volumes. In addition, the range and talent of the School's affiliates have spilled over into nonlegal works of public policy, social science, literature, and even popular culture.

Although categorization can be difficult, taking notice of some remarkable items is irresistible. Arthur Corbin's (Class of 1899) *Corbin on Contracts* has been called "the greatest law book ever written." Louis Loss's '37 *Securities Regulation* shaped the law of securities. Walter Lord's '46 *A Night to Remember* is the definitive account of the sinking of the Titanic. Michael Harrington's '50 *LAW The Other America* inspired Lyndon Johnson's "War on Poverty." Boris Bittker's '41 pioneering *The Case for Black Reparations* was edited by a young Random House editor named Toni Morrison. Catharine MacKinnon's '77 landmark *Sexual Harassment of Working Women* was based on a Law School student paper. Oliver Williamson's *The Economic Institutions of Capitalism* helped win its author the Nobel Prize in Economics. James Forman Jr.'s '92 *Locking Up Our Own* was awarded a Pulitzer Prize. Robert Post's '77 *The Taft Court* derived funding from Oliver Wendell Holmes Jr.'s bequest to the United States of America.

See the full list of books on the following pages.



200 YEARS, 200 BOOKS*

By Alumni and Former Faculty

Floyd Abrams 1959, *Speaking Freely*

Stacey Abrams 1999, *While Justice Sleeps*

Renata Adler 1979, *Reckless Disregard*

Thurman Arnold, *The Folklore of Capitalism*

Thurman Arnold, *The Symbols of Government*

Simeon Baldwin 1862 LAW, *The American Judiciary*

Aharon Barak, *The Judge in a Democracy*

Emily Bazelon 2000, *Charged*

Judah Benjamin 1827 LAW, *A Treatise on the Law of Sale of Personal Property*

Dwayne Betts 2016, *Bastards of the Reagan Era*

Alexander Bickel, *The Least Dangerous Branch*

Alexander Bickel, *The Morality of Consent*

Boris Bittker 1941, *The Case for Black Reparations*

Boris Bittker, *Federal Taxation of Income, Estates, and Gifts*

Charles Black 1943 and Philip Bobbitt 1975, *Impeachment*

Charles Black, *The People and the Court*

Charles Black, *Structure and Relationship in Constitutional Law*

Philip Bobbitt, *Constitutional Fate*

David Boies 1966, *Courting Justice*

Cory Booker 1997, *United*

Edwin Borchard, *Convicting the Innocent*

Edwin Borchard, *The Declaratory Judgment*

Robert Bork, *The Antitrust Paradox*

Robert Bork, *The Tempting of America*

Lea Brilmayer, *Justifying International Acts*

Alexandra Brodsky 2016, *Sexual Justice*

Tamiko Brown-Nagin 1997, *Courage to Dissent*

Guido Calabresi 1958, *A Common Law for the Age of Statutes*

Guido Calabresi, *The Costs of Accidents*

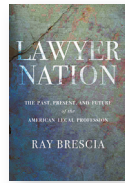
Guido Calabresi, *Tragic Choices*

Charles Clark 1913, *Handbook on the Law of Code Pleading*

Bill Clinton 1973, *My Life*

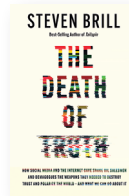
SURVEY OF BOOKS

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.



Ray Brescia
Lawyer Nation: The Past and Future of the American Legal Profession
New York University Press, 2024

Brescia '92 surveys how lawyers have shaped U.S. history while also considering what lies ahead for the profession. He discusses compounding crises — which include authoritarian threats, prohibitive barriers to legal services, and looming questions about artificial intelligence — that face the law today. Drawing on his career in public interest, Brescia urges lawyers to transform their field.



Steven Brill
The Death of Truth
Knopf, 2024

Brill '75 traces how profit-driven algorithms have shattered public faith in even the most indisputable facts. He argues that the rise of conspiracy theories, misinformation, and “alternative facts” all symptomize a systematic assault on truth. *The Death of Truth* chronicles boardroom decisions and backdoor deals that have exploited human psychology, promulgated lies, and fomented division. A co-founder of the news rating system NewsGuard, Brill draws from his experience to propose solutions.



Jennifer Chacón, Susan Bibler Coutin, and Stephen Lee
Legal Phantoms: Executive Action and the Haunting Failures of Immigration Law
Stanford University Press, 2024

Chacón '98, Coutin, and Lee chart how undocumented immigrants and their communities navigated the precarious decade that followed the creation of Deferred Action for Childhood Arrivals (DACA) in 2012. The co-authors draw from 135 interviews and focus group sessions conducted with immigrants, community organizers, lawyers, and policymakers.



When “Small” Wars Are a Prelude to Atrocities

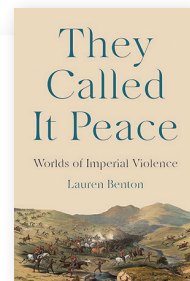
Legal history of conflict

In her new book *They Called It Peace*, Lauren Benton charts the history of so-called small wars in European empires. She describes a state of perpetual war in which fighting occurred in seemingly discrete conflicts between interludes of unstable peace. The book shows that “small” violence often served as a prelude to atrocities in empires.

Benton, the Barton M. Biggs Professor of History and Professor of Law, traces these patterns across five centuries. Early conquests featured cycles of raids, sieges, truces, and horrific acts of reprisal. In the 19th century, imperial armies and navies acted as enforcers of global order. They turned series of brief interventions into sustained campaigns of violence against Indigenous communities.

Benton describes her book as a legal history, not a study of military tactics. She approaches the evolution and application of the laws of war from the perspective of European and Indigenous participants in colonial conflicts. The result, Benton writes, is to treat law as “bigger than doctrine and less tidy than systems of rules and norms.”

Still, Benton is careful in describing what the book can teach about war and peace today. Histories of imperial violence, she suggests, mainly serve to warn us “to temper our expectations about humanity’s capacity to keep small wars small.” They also remind us that even seemingly minor conflicts make fertile ground for atrocities.



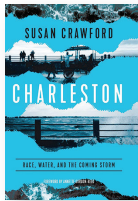
Lauren Benton
They Called It Peace: Worlds of Imperial Violence
Princeton University Press, 2024



Ignacio Cofone
The Privacy Fallacy:
Harm and Power in the
Information Economy

Cambridge University Press, 2023

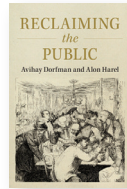
Cofone '16 LLM, '18 JSD examines why the existing framework of privacy law fails to prevent profit-driven actors from exploiting data and exposing people to grievous harm. Whereas privacy law today assumes the relationship between corporations and online users to be contractual, Cofone theorizes privacy through the lens of tort law. He defines the “privacy fallacy” as the tendency to prioritize privacy only when tangible consequences are at stake. Cofone urges the law to recognize privacy’s intrinsic value.



Susan Crawford
Charleston: Race, Water,
and the Coming Storm

Pegasus Books, 2024

Crawford '89 delves into the perils that face Charleston, South Carolina, in the era of climate change. She surveys how Charleston’s unrestrained embrace of development is failing its most vulnerable communities — and perpetuating racial injustices that have long shaped the Holy City. *Charleston* spans the genres of science and narrative history, centering on Black residents’ family stories. Crawford examines how race and climate intersect in a city central to the nation’s history of racial violence and freedom struggles.



Avihay Dorfman and Alon Harel
Reclaiming the Public

Cambridge University Press, 2024

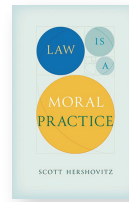
Dorfman '06 LLM, '08 JSD and Harel '89 LLM present a political theory of the public. The co-authors discuss the limits that characterize existing theories about the legitimacy of political authority and the nature of law. They argue that public institutions must reflect the perspectives of citizens, and that the public is responsible for the decisions made by such institutions. They also describe the goods that public institutions must provide. Finally, they contend that AI-generated decisions cannot qualify as public.



Richard Falk
and Hans von Sponeck
Liberating the United Nations:
Realism with Hope

Stanford University Press, 2024

Falk '55 and von Sponeck argue that the United Nations must be reformed to meet the moral imperatives of its mission. The co-authors discuss the organization’s history, recounting pivotal moments that precluded the U.N. from becoming more just and egalitarian. Falk and von Sponeck consider three case studies of intervention — in Palestine, Iraq, and Syria — to assess what role the U.N. has come to play in global politics. *Liberating the United Nations* draws from both authors’ experiences as high-level U.N. diplomats.



Scott Hershovitz
Law Is a Moral Practice

Harvard University Press, 2023

While law and morality are often thought to be separate, Hershovitz '04 argues that law fundamentally concerns moral questions. He investigates the moral principles that underpin the judicial system, explaining how courts assess the rights and responsibilities that one party owes to another. Hershovitz also traces the moral contours behind contemporary debates about how to interpret the Constitution and what obligation individuals have to follow the law. His account bridges the schools of positivism and natural law.



Michael Klausner and
Guhan Subramanian
Deals: The Economic Structure
of Business Transactions

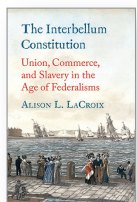
Harvard University Press, 2024

Klausner '81 and Subramanian explain the economic concepts that underpin successful business deals and develop a framework to grasp how such transactions work in practice. The co-authors discuss a range of real-world examples, which span from entertainment to software. They demonstrate how deals can fulfill their twofold objective: to maximize combined value and share that value across parties. The co-authors draw from their extensive experiences teaching and advising on business deals.

Hillary Rodham Clinton 1973, *Living History*
 Felix Cohen, *The Handbook of Federal Indian Law*
 Morris Cohen, *Bibliography of Early American Law*
 Jules Coleman 1976 MSL, *The Philosophy of Law*
 Walter Wheeler Cook, *The Logical and Legal Bases of the Conflict of Laws*
 Arthur Corbin 1899, *Corbin on Contracts*
 Vern Countryman 1949 LAW, *Debtors' and Creditors' Rights*
 Robert Cover, *Justice Accused*
 William Crosskey 1926, *Politics and the Constitution in the History of the United States*
 Harlon Dalton 1973, *Racial Healing*
 Mirjan Damaška, *The Faces of Justice and State Authority*
 Alan Dershowitz 1962, *Reversal of Fortune*
 John F. Dillon, *The Laws and Jurisprudence of England and America*
 William O. Douglas, *Go East, Young Man*
 Theodore Dwight 1842 LAW, A *Report on the Prisons and Reformatories of the United States and Canada*
 Marian Wright Edelman 1963, *The Measure of Our Success*
 Robert Ellickson 1966, *Order Without Law*
 John Hart Ely 1963, *Democracy and Distrust*
 Thomas Emerson 1931, *Political and Civil Rights in the United States*
 Thomas Emerson, *The System of Freedom of Expression*
 Richard Epstein 1968, *Takings*
 Ronan Farrow 2009, *Catch and Kill*
 Owen Fiss, *A Way Out*
 Gerald Ford 1941, *A Time to Heal*
 Abe Fortas 1933, *Concerning Dissent and Civil Disobedience*
 Jerome Frank, *Law and the Modern Mind*
 John P. Frank 1947 JSD, *Marble Palace*
 Grant Gilmore 1943, *The Ages of American Law*
 Grant Gilmore, *The Death of Contract*
 Grant Gilmore, *Security Interests in Personal Property*
 Jack Goldsmith 1989, *The Limits of International Law*
 Joseph Goldstein 1952, *Beyond the Best Interests of the Child*
 Michael Graetz, *Death by a Thousand Cuts*
 Leon Green, *Rationale of Proximate Cause*

Linda Greenhouse 1978 MSL, *Becoming Justice Blackmun*
 Lani Guinier 1974 and Gerald Torres 1977, *The Miner's Canary*
 Walton Hamilton, *Price and Price Policies*
 Henry Hansmann 1974, *The Ownership of Enterprise*
 Fowler Harper and Fleming James 1928, *The Law of Torts*
 Michael Harrington 1950 LAW, *The Other America*
 Jill Hasday 1997, *Intimate Lives and the Law*
 Adam Haslett 2003, *You Are Not a Stranger Here*
 John Heinz 1962, *Chicago Lawyers*
 Frederick Hicks, *Materials and Methods of Legal Research*
 A. Leon Higginbotham Jr. 1952, *In the Matter of Color*
 Anita Hill 1980, *Speaking Truth to Power*
 Wesley Hohfeld, *Fundamental Legal Conceptions as Applied to Judicial Reasoning and Other Legal Essays*
 Robert Hutchins 1925, *The Higher Learning in America*
 Philip Jessup 1924, *A Modern Law of Nations*
 Van Jones 1993, *The Green Collar Economy*
 Neal Katyal 1995, *Impeach*
 Jay Katz, *The Silent World of Doctor and Patient*
 Duncan Kennedy 1970, *Legal Education and the Reproduction of Hierarchy*
 Randall Kennedy 1982, *Interracial Intimacies*
 John Langbein, *The Origins of Adversary Criminal Trial*
 Harold Lasswell, *Power and Society*
 David Lat 1999, *Supreme Ambition*
 Edward Lazarus 1987, *Closed Chambers*
 Raphael Lemkin, *Axis Rule in Occupied Europe*
 Lawrence Lessig 1989, *Code and Other Laws of Cyberspace*
 Edward Levi 1938 JSD, *Introduction to Legal Reasoning*
 Arthur Liman 1957, *Lawyer*
 Karl Llewellyn 1918 LLM, 1920 JSD, *The Bramble Bush*
 Karl Llewellyn, *Cases and Materials on the Law of Sales*
 Karl Llewellyn, *The Common Law Tradition*
 Walter Lord 1946, *A Night to Remember*
 Louis Loss 1937, *Securities Regulation*
 Catharine MacKinnon 1977, *Feminism Unmodified*

SURVEY OF BOOKS



Alison L. LaCroix
**The Interbellum Constitution:
 Union, Commerce,
 and Slavery in the Age of
 Federalisms**

Yale University Press, 2024

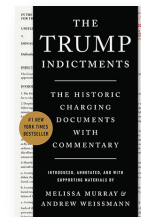
LaCroix '99 presents a new history of federalism in the early United States. She traces how conflicting visions of federal authority animated U.S. politics during the interbellum period, which followed the War of 1812 and preceded the Civil War. Contrary to conventional assumptions, LaCroix argues that a host of federalisms circulated in these decades. She examines how constituencies across the new nation contested the Constitution's meaning. Her account contextualizes and expands constitutional debates today.



Lawrence Lessig and
 Matthew Seligman
**How to Steal
 a Presidential Election**

Yale University Press, 2024

Lessig '89 and Seligman warn that the results of the next presidential election could be overturned, even in perfectly legal ways. The co-authors detail the vulnerabilities, which range from vice-presidential intervention to electoral decertification, that authoritarian forces could exploit to undo the people's will. Lessig and Seligman assess the plausibility of each, bearing in mind lessons from the Jan. 6, 2021, insurrection. They exhort lawmakers and the public to protect democracy while time remains.



Melissa Murray and
 Andrew Weissmann
**The Trump Indictments:
 The Historic Charging
 Documents with Commentary**

W. W. Norton & Company, 2024

Murray '02 and Weissmann annotate the four criminal indictments against former U.S. President Donald Trump. The co-authors give historical context and legal analysis for each of the cases, which concern the Jan. 6, 2021, insurrection; election interference; retention of classified documents; and the payment of "hush money." The co-authors also provide a comparative view of prosecution against former political leaders.

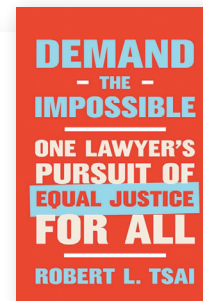
Defending the Condemned

Four capital punishment cases argued by Stephen Bright

In his book *Demand the Impossible: One Lawyer's Pursuit of Equal Justice for All*, Robert L. Tsai '97 chronicles how Yale Law School's Harvey L. Karp Visiting Lecturer in Law Stephen B. Bright has confronted staggering injustice in the criminal legal system. To trace his subject's remarkable career as a civil rights litigator, Tsai narrates the four capital punishment appeals that Bright has argued — and won — before the U.S. Supreme Court.

Tsai delves into the world of each case, recounting how Bright uncovered grievous miscarriages of justice against Black, disabled, and indigent defendants. In the first three appeals, Bright demonstrated that prosecutors had committed race discrimination in jury selection. In the fourth, Bright proved that the state had illegally denied his client an independent mental health expert during trial. Tsai examines the principles of equal justice that propelled each case — while also introducing readers to the death-sentenced clients whom Bright represented.

Demand the Impossible considers the lessons that Bright's distinctive ethos of legal advocacy holds for social change today. Bright and his allies, Tsai notes, faced strong crosswinds in each case, which spanned from 1988 to 2017. In an era when mass incarceration held sway across the political spectrum, Bright exposed the realities of systemic racism, prosecutorial misconduct, and indefensible barriers to legal representation. Bright's lifelong efforts to advance equal rights, Tsai argues, give reason for hope.



Robert L. Tsai
**Demand the Impossible:
 One Lawyer's Pursuit
 of Equal Justice for All**

W. W. Norton & Company,
 2024

FACULTY BOOK SPOTLIGHT

A Towering Figure

In long-awaited volume, Post tells story of the Taft Court in its own time

After 35 years and 1,608 pages, Sterling Professor of Law Robert C. Post '77 has written the definitive history of the U.S. Supreme Court under Chief Justice William Howard Taft.

The Taft Court: Making Law for a Divided Nation, 1921–1930 is the long-awaited 10th volume of the Oliver Wendell Holmes Devise History of the Supreme Court of the United States.

In 1920, voters elected Warren G. Harding president on a platform of returning the country to normalcy after the massive changes produced by the first World War.

“Jazz, flappers, radio, and cars burst onto the scene,” Post writes. “Yet so did Prohibition, fundamentalism, the KKK, and 100 percent Americanism.”

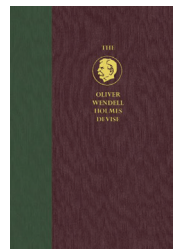
In the 1920s, Americans sought both to resurrect old pieties and vigorously to pursue brave new innovations.

Harding appointed four new justices in less than 18 months. He conceived of the Court as an instrument for returning the country to antebellum principles. Foremost among these were the restoration of the constitutional values of substantive due process and federalism. The federal government exercised more detailed economic control than ever before or since.

President Woodrow

Wilson’s wartime policies were considered both terrifying and necessary. They opened new possibilities that were attractive and yet profoundly disorienting. “The Taft Court was charged with the thankless task of constructing law for a society that was deeply confused about what it wanted,” Post writes. Thus, the Taft Court sustained the Transportation Act of 1920, which converted the ICC into the governor of virtually all railroads, both interstate and intrastate, and yet it struck down the Child Labor Tax Act.

In an effort to restore antebellum values, the Taft Court revived the doctrine of *Lochner v. New York*, which put the burden of justifying social and economic regulation squarely on the government. The Court’s doctrinal innovations were so severe that they would lead directly to the crisis of the New Deal during the next decade.



Robert C. Post
**The Taft Court:
Making Law for
a Divided Nation,
1921–1930**

Cambridge University
Press, 2023

Plights of the Postmodern Era

Political divisions in the internet age

“What should I make of my life?” “Who am I?”

“Does the earth move around the sun?” According to Sterling Professor of Law and Political Science Bruce Ackerman '67, finding answers to such existential questions requires looking at the virtual and physical realities that make up a modern-day life. In his latest book, *The Postmodern Predicament:*

Existential Challenges of the 21st

Century, Ackerman explores the

heightened complexities of existentialism brought forth by the technological era and the impact these have on political alienation today.

Broken into three parts, the

book studies the fragmented reality that has developed out of the internet age, where behaviors exhibited in an online forum don’t

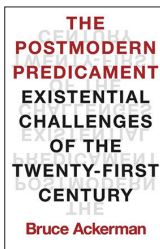
align with those presented in the physical world. The result, according to Ackerman, leads to increased political divisions.

The first part examines if a virtual reality can truly take the place of real-world experiences, while the second part asserts that it can’t, stating there are fundamental aspects of human experience that are threatened by our postmodern effort to escape the dilemmas of real-world existence by endlessly clicking into virtual reality.”

One concern Ackerman mentions is the influx of misinformation on the internet which, in some cases, stems from corrupt politicians and contributes to societal divisions.

Like the philosophers Simone de Beauvoir and Jean-Paul Sartre, Ackerman considers the fragmentation of modern life as a central source of contemporary anxieties, particularly as they pertain to politics. In the third and final part of the book, he proposes concrete reforms that could mobilize broad-based support for democracy against demagogic assaults on its very foundations.

Some of these include universal childcare, which Ackerman contends “reinvigorates democracy by demonstrating its capacity to respond decisively to an existential dilemma that almost every voter recognizes,” and “Deliberation Day,” a national holiday that would encourage citizens to discuss political issues ahead of an election, thus upholding their democratic responsibilities.



Bruce Ackerman
**The Postmodern
Predicament:
Existential
Challenges of
the 21st Century**

Yale University
Press, 2024

Catharine MacKinnon,
*Sexual Harassment of Working
Women*

Catharine MacKinnon, *Toward
a Feminist Theory of the State*

Jerry Mashaw, *Greed, Chaos,
and Governance*

Mark McCormack 1954, *The
Terrible Truth About Lawyers*

Myres McDougal 1931 JSD,
*Law and Minimum World
Public Order*

Myres McDougal and Harold
Lasswell, *Human Rights and
World Public Order*

Martha Minow 1979,
Making All the Difference

J. W. Moore 1935 JSD,
Collier on Bankruptcy

J. W. Moore,
Moore’s Federal Practice

Pauli Murray 1965 JSD,
Proud Shoes

Pauli Murray, *Song in
a Weary Throat*

Pauli Murray, *States’ Laws
on Race and Color*

Victor Navasky 1959,
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Eleanor Holmes Norton 1964,
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Matthew Pearl 2000,
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Jean Koh Peters, *Representing
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Charles Reich 1952,
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Charles Reich,
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W. Michael Reisman
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Law in Brief Encounters

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Carol Rose and Richard Brooks,
Saving the Neighborhood

Susan Rose-Ackerman,
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on Trial*

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Book of Quotations*

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- Robert Stevens 1958 LLM,
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- Christopher Stone 1962,
Should Trees Have Standing?
- William Howard Taft,
*The Anti-Trust Act and the
Supreme Court*
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My Grandfather's Son
- Mark Tushnet 1971,
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- J.D. Vance 2013, *Hillbilly Elegy*
- Oliver Williamson,
*The Economic Institutions
of Capitalism*
- Theodore D. Woolsey,
*Lectures on International Law
in Times of Peace*
- Theodore D. Woolsey,
*Introduction to the Study
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Federal Practice and Procedure
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The Law of Federal Courts
- Elizabeth Wurtzel 2008,
Prozac Nation
- Kenji Yoshino 1996, *Speak Now*
- Monica Youn 1998, *Blackacre*

By Current Faculty

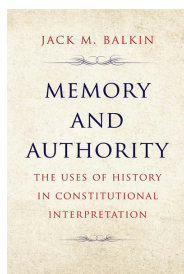
- Bruce Ackerman 1967, *Social
Justice in the Liberal State*
- Bruce Ackerman, *We the People*
- Anne Alstott 1987, *No Exit*
- Akhil Reed Amar 1984,
The Bill of Rights
- Akhil Reed Amar,
America's Constitution
- Ian Ayres 1986,
Insincere Promises
- Aslı Ü. Bâli 1999, *Federalism
and Decentralization in
the Contemporary Middle East
and North Africa*
- Jack Balkin, *Living Originalism*
- Lauren Benton, *They Called
It Peace*
- Stephen Carter 1979,
The Emperor of Ocean Park
- Amy Chua, *Battle Hymn of
the Tiger Mother*
- Justin Driver,
The Schoolhouse Gate
- William Eskridge Jr. 1978, *Cases
and Materials on Legislation*
- William Eskridge Jr., *The Case
for Same-Sex Marriage*
- Daniel Esty 1986, *Green to Gold*
- James Forman Jr. 1992,
Locking Up Our Own
- Heather Gerken,
The Democracy Index
- Abbe R. Gluck 2000 and
Ezekiel J. Emanuel,
The Trillion Dollar Revolution
- Oona Hathaway 1997 and
Scott Shapiro 1990,
The Internationalists

FACULTY BOOK SPOTLIGHT

The Constitution and Collective Memory

Balkin argues that history is shaped through the arguments law makes

In his book *Memory and Authority: The Uses of History in Constitutional Interpretation*, Jack M. Balkin argues that debates about constitutional interpretation are often debates about collective memory — the stories that members of a community tell each other about the meaning of their shared past. Lawyers and judges are memory entrepreneurs; they try to persuade people to remember things differently. Each of the familiar forms of constitutional argument produces



Jack M. Balkin
Memory and Authority: The Uses of History in Constitutional Interpretation
Yale University Press,
2024

constitutional memory, engaging in a mixture of remembering and forgetting. Lawyers and judges construct — and erase — memory to lend authority to their present-day views; they make the past speak their values so they can then claim to follow it. Balkin, the Knight Professor of Constitutional Law and the First Amendment, explains how the standard forms of legal argument shape how lawyers and judges employ history and what they look for in history. Lawyers and judges' use of history is rhetorical, aimed at persuading audiences. They invoke the past to establish

the authority of their positions and to undermine opposing ones. "There is no single modality of 'historical argument,'" Balkin writes. "Rather, history is useful for making many different kinds of constitutional arguments, and the way that people use history is shaped by the kind of argument they are making." By understanding how lawyers channel the past through standard forms of argument, historians can better join issue with lawyers about historical matters in constitutional interpretation.

Originalism and living constitutionalism seem to be opposed approaches to the past. But Balkin argues that they are actually mirror images of a single phenomenon — how lawyers use history to adapt an ancient constitution to a constantly changing world.

No New Taxes

How the antitax movement has increased inequality

In his book *The Power to Destroy: How the Antitax Movement Hijacked America*, Michael J. Graetz argues that resistance to taxes has corroded U.S. politics far more than is often assumed.

Graetz, the Justus S. Hotchkiss Professor Emeritus of Law, writes that the campaign to curtail taxation has, for nearly 50 years, secured success by trafficking in racist tropes, stoking cultural flashpoints, and promoting questionable economics. "Resistance to taxes in the United States," he writes, "has a long pedigree: it is as American as apple pie and fried catfish." *The Power to Destroy* takes its title from Chief Justice John Marshall's statement in *McCulloch v. Maryland*, a landmark 1819 Supreme Court case that addressed disputes over federal and state taxation, that the power to tax involves "the



Michael J. Graetz
The Power to Destroy: How the Antitax Movement Hijacked America
Princeton University Press, 2024

power to destroy." But while taxes have long been contested, Graetz argues that they only recently became a cudgel that would fracture the nation. To chronicle how the antitax movement amassed its influence, Graetz begins in 1978, the year that California voters amended the state's constitution to curb any increase in property taxes. Proposition 13, as the measure was known, proved to be a watershed, spurring political operatives nationwide to seize on taxation. In tandem with the Republican Party's infamous Southern strategy using racist rhetoric to increase political support, antitax activists argued that white taxpayers were being made to subsidize Black welfare recipients. From there, the notion that taxes threaten freedom went mainstream.

"Contrary to common views," he writes, "taxation is not solely about economics: cultural values are also at stake." Noting that more Americans pay taxes than vote in presidential elections, Graetz considers what tax policies reveal about the public's collective priorities and commitments. He argues that how the government levies taxes, and to what ends it uses them, are social and moral questions as much as economic and partisan ones.

The Importance of Voting

An analysis of U.S. Supreme Court cases on voting rights

It was the spring semester of 2020. Sterling Professor Emeritus of Law Owen M. Fiss was teaching his class A Community of Equals, engaging students in discussions on civil rights laws pertaining to various topics, including voting. Fiss, who helped implement civil and voting rights laws in the 1960s, left the classroom discussion inspired and resolved to write his newest book, *Why We Vote*.



Shortly after, Fiss found himself not only with an idea but a newfound abundance of time to write due to the COVID-19 pandemic. His work would prove to be timely, as the 2020 presidential election and Jan. 6, 2021, insurrection unfolded while penning the book.

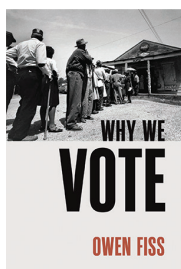
Fiss starts by outlining why the U.S. Supreme Court has a responsibility to uphold the democratic ideal of the Constitution, then delves into recent events that have threatened it.

In the introduction, Fiss stresses the importance of voting: “Unlike the mob that stormed the Capitol on Jan. 6, 2021, those who do not vote or refrain from voting do not threaten violence. Nor do they obstruct the functioning of a governmental institution. Yet through their inaction, they too impair the political freedom of America that arises from the democratic character of its government and thus violate their elemental duty of citizenship. We vote to preserve democracy and thus our own freedom.”

Each chapter in *Why We Vote* focuses on Supreme Court cases that sought to enlarge the freedom that democracy generates, pointing to rulings that allowed citizens to vote, facilitated the exercise of their right to vote, ensured the equality of votes, and provided feasible access to the ballot for independent candidates and new political parties.

In a concluding chapter, Fiss writes, “The right to vote is the means by which the ruled participate in the process of selecting their rulers and thus is essential for the fulfillment of the democratic purpose of the Constitution. It presumes that one person’s right to vote is as worthy as another’s.”

Fiss credits Cara Meyer ’22, one of the students from his A Community of Equals class, for her role in the discussion that led to *Why We Vote* and for serving as his editor and research assistant.



Owen M. Fiss
Why We Vote

Oxford University Press,
2024

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