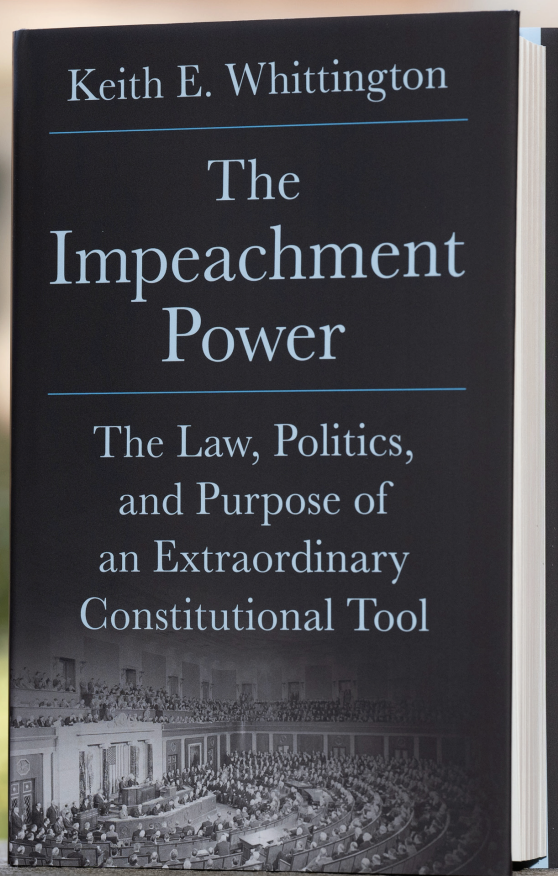
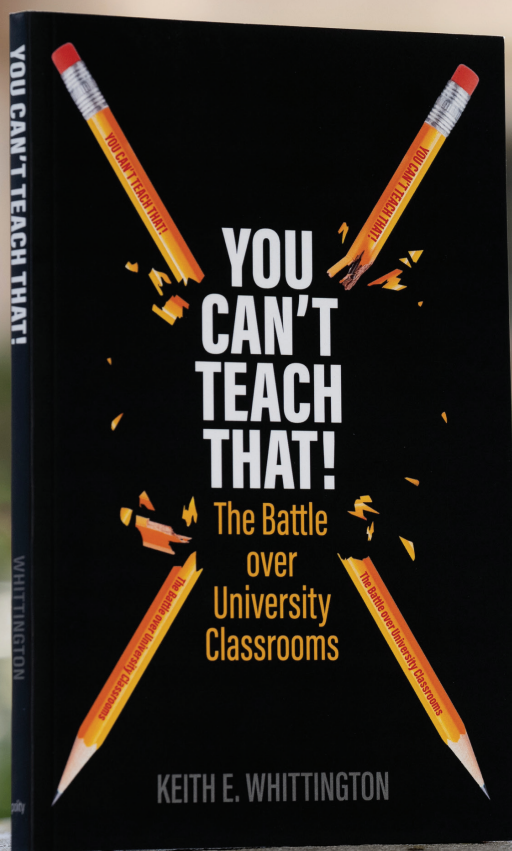


## BOOKS



# Constitutional Protections

Examining use of political power in modern times

Keith E. Whittington  
**You Can't Teach That:  
The Battle over  
University Classrooms**

*Polity, 2024*

**The Impeachment Power:  
The Law, Politics, and Purpose  
of an Extraordinary  
Constitutional Tool**

*Princeton University Press, 2024*



**The scope of federal sovereignty** is a concern for many facets of today's political landscape. Keith E. Whittington; the David Boies Professor of Law, Director of Yale Law School's new Center for Academic Freedom and Free Speech, and a scholar of American constitutional theory and history; is examining two constitutional protections — academic free speech and impeachment — and offers his views on how they should be upheld in his newly published works: "You Can't Teach That!: The Battle over University Classrooms" and "The Impeachment Power: The Law, Politics, and Purpose of an Extraordinary Constitutional Tool."

In "You Can't Teach That!," Whittington outlines a cultural shift in attitude towards academia, one in which the government is aiding in the suppression of academic freedom in order to appease conservative opposition. He refers to this conflict as "the new culture war."

"We are at the beginning of a potentially far-reaching reconsideration of the role of universities in American life and of the authority of politicians to take action against controversial ideas being taught and discussed on college campuses," he writes. "These efforts will

*“Potentially at stake is whether American universities will continue to be some of the preeminent institutions of scholarly research and of higher education in the world.”*

test the willingness of courts to defend professors and universities from political interventions and challenge our understanding of how the First Amendment applies to university classrooms. Potentially at stake is whether American universities will continue to be some of the preeminent institutions of scholarly research and of higher education in the world.”

In “The Impeachment Power,” Whittington gives an overview of how impeachment works, how it came about, and how it should be used, noting its British and American origins and the dangers that arise when it’s exercised too often.

Similar to “You Can’t Teach That!,” Whittington uses the book to express his concern for oligarchic tendencies, stressing the importance of political leaders using the impeachment tool with discernment as misuse could lead to an imbalance of power in the branches of government.

“When legislators reach for the impeachment power, they should know what they hope to accomplish and have some idea of how the impeachment power might be used to reach that goal,” Whittington writes. “Exercising the impeachment power involves choices — choices about how politics is to be conducted, how misbehavior is best remedied, and how we can best secure our highest constitutional ideals.”

In addition to giving a historical framework for academic free speech and impeachment, both books offer a way forward. In “You Can’t Teach That!,” Whittington shows how the doctrinal framework and considerations for protecting academic free speech are not well developed in the Supreme Court’s current jurisprudence and thus provides a roadmap for navigating these challenges. In “The Impeachment Power,” he aims to instill readers with a deepened understanding of what can reasonably be accomplished through impeachment to optimize its use in the future.

“I hope to illuminate the constitutional nature, purpose, and history of the federal impeachment power not from the perspective of how it might help or hurt a particular government official but from the perspective of how we have thought and should think about it over the long run,” Whittington writes.

## Advocates Offer Blueprints for Ending Mass Incarceration

Short-term strategies and long-term vision for changing the carceral system



“**Mass incarceration** was built bit by bit, law by law, choice by choice, over generations, across our 50 states; Washington, D.C.; the territories; and over 3,000 counties. It will have to be dismantled the same way,” write James Forman Jr. ’92, Premal Dharja, and Maria Hawilo in the introduction to their book, “Dismantling Mass Incarceration: A Handbook for Change.”

That the system of mass incarceration in the U.S. requires dismantling is the undisputed premise of this new reader, which

comprises essays, interviews, campaign notes, and other materials from contributors with experience across the spectrum of the carceral system.

Three questions drive “Dismantling Mass Incarceration”: How can we make our approaches to crime and safety more humane? How can agencies become more just? And how can ordinary people help in this effort?

The book is divided into sections meant to trace a common path to incarceration: “Police,” “Prosecutors,” “Public defenders,” “Judges,” “Prisons,” and “Aftermath.” Each section includes an introduction by the authors followed by contributions by experts in the field, including orga-

nizers, legal scholars, and people involved in the carceral system, from judges to formerly incarcerated people. Contributors include political activist Angela Y. Davis, writer and poet Clint Smith, and lawyer Larry Krasner.

Several Yale Law School voices are included. There’s a Twitter thread rejecting the word “cage” for “prison cell” by Freedom Reads Director Dwayne Betts ’16, an excerpt from Lecturer in Law Emily Bazelon’s ’00 “Charged: The New Movement to Transform American Prosecution and End Mass Incarceration” (Random House, 2019), and an essay on crisis response co-written by Professor of Law Monica C. Bell ’09.

“On any path to change, we believe, incremental steps are necessary,” the authors write in their conclusion, noting a few examples outlined in the book: “Efforts to reduce the police footprint in traffic stops, create alternate first responders for mental health calls, change sentencing practices to shrink the number of people entering prison, and pass second-look sentencing laws that allow judges to release people who have spent many years behind bars.”

A combination of short-term strategies and long-term vision will be necessary to create durable change, they argue. But there’s reason to hope: “The ground is shifting,” they write. “Those who resist the rising demand for change fear its efficacy. In response, we must continue to organize, intervene, disrupt, pressure, and strategize.”



James Forman Jr. ’92,  
Premal Dharja,  
and Maria Hawilo, eds.  
**Dismantling Mass  
Incarceration:  
A Handbook for Change**  
FSG, 2024

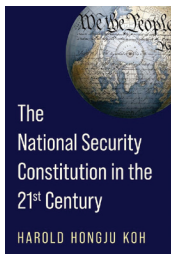
## Do Checks and Balances Still Apply in Foreign Affairs?



National security in international law

In “**The National Security Constitution in the 21st Century**,” Professor Harold Hongju Koh returns to the questions that he has wrestled with throughout his career. Koh argues that the United States has veered from the constitutional checks and balances that must guide national security policy. To bring his argument into the present, Koh draws upon nearly five decades of experience both studying and shaping national security law as a law professor and as a government official in presidential administrations of both parties.

The “National Security Constitution” is itself a concept that Koh first developed in a 1988 *Yale Law Journal* article.



Harold Hongju Koh  
**The National Security Constitution in the 21st Century**

*Yale University Press, 2024*

The term describes a set of constitutional and subconstitutional norms that establish foreign affairs as a power shared between the presidency, Congress, and the judiciary. “In foreign as well as domestic affairs,” Koh writes, “the Constitution requires that we be governed by separated institutions sharing foreign-policy powers.”

While the National Security Constitution forbids unilateral control by any single government branch, Koh traces how presidents have claimed foreign affairs as their own to decide. He argues that all too often, the other two branches of government have complied, acquiescing in a concerted and expanding pattern of executive unilateralism.

Koh’s new volume deepens and updates arguments he first raised when “The National Security Constitution: Sharing Power after the Iran-Contra Affair” was published in 1990. Over time, Koh argues, we have come from seeing the president as our main protector from national security threats to seeing the president as a national security threat.

Koh argues that the constitutional problem is lingering and structural, and will not be corrected just by voting out any particular administration. It would take only one more national election for the problem of extreme unilateralism to recur. The National Security Constitution, Koh argues, urgently needs to be restored for the 21st century. He reimagines the interlocking incentives that have long discouraged the White House, Congress, and the courts from curbing presidential power.

“To prevent recurrence,” Koh concludes, “we must look for structural solutions aimed at promoting regularized inter-branch communication, encouraging executive accountability, and revitalizing Congress and the courts as institutional counterweights to the president.”

## 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](mailto:lawreport@yale.edu).

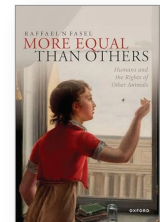


Jonathan M. Barnett  
**The Big Steal: Ideology, Interest, and the Undoing of Intellectual Property**

*Oxford University Press, 2024*

Barnett ’99 questions the popular narrative that intellectual property law has been liberalized to the benefit of innovators and innovation markets. Through careful excavation of legal, economic, and political analyses, Barnett argues that deeper ideological and business interests have purposefully championed digital platforms — at the expense of impairing the copyrights of content creators and artists.

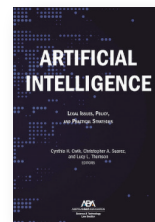
this intersection to advice for practitioners navigating this rapidly evolving space. The book contains contributions from more than 40 AI and legal experts across in-house legal departments, private practice, academia, government, and the judiciary. Included is “Paths to Responsible AI: Reflections from the Classroom,” by Professor William Eskridge Jr. ’78, Theodore Rostow ’17, and Jeffrey Chivers. They discuss the design and ethos behind a YLS course they co-taught in spring 2023, titled “Artificial Intelligence, the Legal Profession, and Procedure.”



Raffael N. Fasel  
**More Equal Than Others: Humans and the Rights of Other Animals**

*Oxford University Press, 2024*

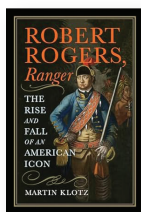
Fasel ’15 LLM tackles an emerging question of legal theory: the apparent dilemma of expanding animal rights at the cost of infringing upon human rights. He retraces the roots of legal rights thought from the Enlightenment, as well as the previous discourse around differentiating status based upon aristocratic and meritocratic means. Fasel unearths grounds for a framework of rights based on species rather than capability, one that can advance the legal status of animals without imperiling the existing rights of humankind.



Cynthia Cwik,  
Christopher Suarez, and  
Lucy Thomson, eds.  
**Artificial Intelligence: Legal Issues, Policy, and Practical Strategies**

*ABA Book Publishing, 2024*

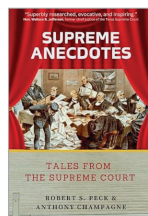
Editors Cwik ’87, Suarez ’11, and Thomson have constructed an overarching volume on AI and the law, from a primer on key concepts and issues at



Martin Klotz  
**Robert Rogers, Ranger:  
The Rise and Fall  
of an American Icon**

*Westholme Publishing, 2024*

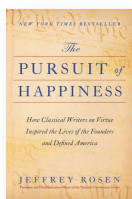
Klotz '81 examines the life of Robert Rogers, one of the most famous colonial military American figures to emerge from the French and Indian War. Rogers was plagued by alcoholism, gambling, and debt, as well as an insubordination that curtailed his time in the military. Klotz traces out the events that befell Rogers after the war, from returning to military service as a British Loyalist during the Revolutionary War to his destitute demise in London in 1795.



Robert S. Peck and  
Anthony Champagne  
**Supreme Anecdotes:  
Tales from the Supreme Court**

*Rand-Smith, 2024*

Peck '90 LLM and Champagne unveil the personalities behind the robes in this fresh approach to understanding the history of the Supreme Court and its justices. The authors juggle humor, intrigue, and scandal in their exposé of the inner lives of judges — from John Jay to the current iteration of the court. In highlighting the unvarnished, private lives of these public figures, the book harkens to the humanity of the judges who have monumentally influenced their country.

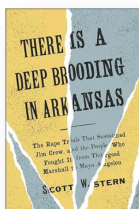


Jeffrey Rosen

**The Pursuit of Happiness:  
How Classical Writers on  
Virtue Inspired the Lives of the  
Founders and Defined America**

*Simon & Schuster, 2024*

Rosen '91 considers the “pursuit of happiness” identified in the Declaration of Independence, and what this inalienable right meant exactly to Franklin, Washington, Adams, Jefferson, Madison, and Hamilton. Rosen analyzes the influence of classical moral philosophers on the Founding Fathers and aims to better understand the democratic project they created.

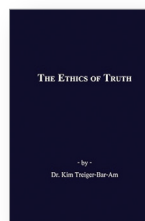


Scott W. Stern

**There Is a Deep Brooding  
in Arkansas: The Rape Trials  
that Sustained Jim Crow,  
and the People who Fought It,  
from Thurgood Marshall  
to Maya Angelou**

*Yale University Press, 2025*

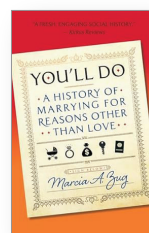
Stern '20 dives deeply into Mississippi County, Arkansas, in the early years of the 20th century to demonstrate how the insidious prosecution of racialized rape cases upheld racial, gender, and economic hierarchies in the Jim Crow South. Stern weaves together two rape trials where race — rather than guilt — became determining factors; the story of a young Thurgood Marshall on assignment from the NAACP; and Maya Angelou's reflections on her own childhood sexual assault, which would sear the world of antirape activism.



Kim Treiger-Bar-Am  
**The Ethics of Truth**

*Targum, 2023*

Treiger-Bar-Am '89 tackles the pressing question: What is truth? More importantly, can claims to objective truth be trusted? She refers back to the role of truth — *emet* in Biblical Hebrew — in the Jewish tradition in order to make a legal and philosophical argument for its enduring value in modern times.



Marcia A. Zug

**You'll Do:  
A History of Marrying for  
Reasons Other Than Love**

*Steerforth, 2024*

Zug '04 questions the historical uses and social impact of marriage — often depicted as a traditional, prized institution in America. The book addresses motives for marriage at the kaleidoscopic intersection of immigration and citizenship, legalized racism, suffrage, welfare policy, sexual harassment and gender discrimination, and other issues from American social history.

## ALSO OF NOTE

PJ Badenhorst '86 LLM  
**Rights to Minerals and  
Petroleum in South Africa:  
An Introduction**

*Juta and Company, 2022*

PJ Badenhorst '86 LLM  
**Mineral Law of South Africa:  
Text, Cases and Commentary**

*Juta and Company, 2022*

William Eskridge Jr. '78,  
Abbe R. Gluck '00,  
and Victoria F. Nourse, eds.,  
2nd edition  
**Statutes, Regulations, and  
Interpretation: Legislation  
and Administration in  
the Republic of Statutes**

*West, 2024*

Joanne Fedler '93 LLM  
**The Whale's Last Song**

*Harper Collins, 2024*

Jeffrey Edward Green  
**Bob Dylan:  
Prophet Without God**

*Oxford University Press, 2024*

Christi Harlan '95 MSL  
**Mr. President, the Class  
Is Yours: Jimmy Carter's  
Sunday School Lessons  
in Washington, D.C.**

*Christi Harlan Media LLC, 2024*

Peter Rose '57  
**The Good War of Consul Reeves**

*Blacksmith Books, 2024*

Susan Rose-Ackerman, ed.  
**Public Sector Performance**

*Routledge, 2024*

Susan Rose-Ackerman, ed.  
**Corruption and State Capture  
in a Globalized World**

*Routledge, 2024*

Tracy L. Thompson '97  
**Out Like a Lion**

*Staten House, 2024*