Keeping Up with New Legal Titles*

Compiled by Benjamin J. Keele** and Nick Sexton***

Contents

* The works reviewed in this issue were published in 2014 and 2015. If you would like to review books for "Keeping Up with New Legal Titles," please send an e-mail to bkeele@indiana.edu and nsexton@email.unc.edu.

** Research and Instructional Services Librarian, Ruth Lilly Law Library, Indiana University Robert H. McKinney School of Law, Indianapolis, Indiana.

*** Clinical Assistant Professor of Law and Reference/Collection Development Librarian, Kathrine R. Everett Law Library, University of North Carolina School of Law, Chapel Hill, North Carolina.

Adelman, Elizabeth G., Theodora Belniak, Courtney L. Selby, and Brian T. Detweiler. *New York Legal Research,* Third Edition. Durham, N.C.: Carolina Academic Press, 2015. 243p. $32.99.

Reviewed by Kathleen Darvil[*]

¶1 Now in its third edition, *New York Legal Research* concisely describes the sources of New York State law and the process of conducting research using those sources. The latest edition places greater emphasis on online sources and the online research process than did earlier editions, and it comes complete with screenshots illustrating how to access and search the sources. The book's targeted audience is readers who are unfamiliar with New York law and legal research. The authors of the text are all academic law librarians in New York.

¶2 The first two chapters focus on the research process, legal analysis, and research techniques for print and online sources. These chapters examine how to effectively manipulate the platforms of Bloomberg Law, Westlaw, Lexis Advance, and Fastcase, as well as a few free platforms, such as Google Scholar and government websites. What I found most valuable in these introductory chapters was the description of how to access New York materials on Westlaw, Google Scholar, and government websites. For example, the book details how to access the "Practitioner Insights for New York" page on Westlaw and also highlights *Carmody-Wait*, an important multivolume treatise on New York law. When discussing research techniques on Bloomberg Law and Lexis Advance, however, opportunities are missed to describe how to access their New York legal sources. For example, when describing Bloomberg Law's docket database, the book discusses accessing federal dockets only and leaves out any description of New York state dockets. Also, the section about conducting research on Lexis Advance is a general discussion of how to browse sources by topic or jurisdiction; it does not focus on how to access New York material.

¶3 The next several chapters center on New York secondary and primary sources of law. These chapters highlight unique features of New York law and their

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sources. They provide a fairly comprehensive discussion of how to identify and use the sources of law to research an issue. For researchers unfamiliar with the New York legal system, it is important to understand New York's complex, multi-tiered court structure. The book concisely describes the different levels of New York's court system and illustrates the relationships between the different courts with a chart.

¶4 Another important aspect of New York law is the distinction between consolidated and unconsolidated laws. The book explains in detail the distinction and where to find the statutes, highlighting the main sources of New York's consolidated and unconsolidated laws: *McKinney's Consolidated Laws of New York Annotated*, *New York Consolidated Laws Service, McKinney's Unconsolidated Laws*, and *CLS Unconsolidated Laws*. Included in this discussion is a description of a unique and valuable New York statutory annotation, the Practice Commentaries. Practice Commentaries are written by experts and provide legal analysis of a particular section of New York code. This annotation follows the text of a code and is considered highly persuasive. The last chapters in this section discuss two subjects of particular interest to practitioners: researching New York City law and New York State ethics opinions. These pieces are very valuable because they alert researchers to sources that can be difficult to identify and locate.

¶5 The book's final chapter is devoted to research strategies and organization, and provides general suggestions on researching a problem. This chapter includes a brief discussion on cost-effective research. It also suggests how to organize research to aid legal analysis. Following the text of the book, the authors include two appendixes. Appendix A describes how to cite to authority in New York using the *New York Law Reports Style Manual*. This is helpful for practitioners in New York State courts because New York State court judges use this manual when writing opinions. Appendix B is a bibliography of sources for legal research and analysis. A helpful addition would have been an appendix of popular and frequently cited New York secondary sources, listed by subject. New York attorneys and law students are fortunate in that there is a wealth of secondary sources on a variety of New York legal topics, and an appendix organizing the leading texts and treatises by topic would be valuable.

¶6 *New York Legal Research* provides a solid examination of both the sources of New York law and the legal research process. A picture is worth a thousand words, and embedded within the chapters are screenshots and tables that illuminate the text. When comparing this book with other titles on the subject, *New York Legal Research* is the only title that focuses its discussion on connecting the sources of law in New York with the practice of conducting legal research. That makes *New York Legal Research* an essential addition to any law library that supports the study or practice of law in New York. The one weakness I saw in this book, as with the entire Carolina Academic Press state legal research series, is the discussion of federal legal research. While federal law can have implications for state law, the inclusion of federal legal research distracted from the focus on New York legal research and would be better left out of the state law research series.

Aiello, Thomas. *Jim Crow's Last Stand: Nonunanimous Criminal Jury Verdicts in Louisiana*. Baton Rouge: Louisiana State University Press, 2015. 169p. $40.

Reviewed by Francis X. Norton, Jr.[*]

¶7 Some authors, believing that bigger is better, include extraneous material and other padding to swell their tomes to "proper" scholarly proportions. Fortunately, Thomas Aiello does not. His little jewel is only 169 pages including the index. If you remove the wonderful footnotes and primary source documents, the text is just sixty-three pages long.

¶8 Aiello is an associate professor of history, but he is also a masterful storyteller. Where a law professor might begin a work concerning nonunanimous criminal jury verdicts in Louisiana by citing a statute or a constitutional article, Aiello instead chooses to humanize the topic from his first sentence: "It was a clear, sunny day on December 26, 1967" (p.1). He begins his story with Eugene Frischertz, who was driving a Coca-Cola Bottling Company delivery truck that day. Aiello describes an armed robbery of Frischertz and then shifts the story to Frank Thomas Johnson, who would be arrested for the robbery, tried, and then convicted by a jury of twelve, on a vote of nine to three. Aiello includes the *Johnson* decisions in an appendix.

¶9 In the next chapter, Aiello gives a brief account of Louisiana's legal history and early codes. Contrary to popular belief, nonunanimous criminal jury verdicts began during the end of Reconstruction and were not a remnant of Spanish or French law. This is important because the verdicts were used to make criminal convictions easier and to swell the numbers of Louisiana convicts sent off to work at Angola Plantation.

¶10 Aiello continues his story with a large cast of characters, colorful anecdotes, and primary source material. He shows how the Jim Crow forces took back power following the collapse of Reconstruction through the machinations of several constitutional conventions and aided by the reasoning of the judiciary, both state and federal. It is important to remember that nonunanimous criminal jury verdicts are still in use today, in Louisiana and Oregon. They began in Oregon during a time when outsiders and the poor were viewed as threats and in Louisiana when African Americans and the poor were viewed as threats. The examination of how criminal law can be used to control outsiders remains very pertinent today, as Americans wrestle with issues such as immigration, transgender rights, and other complex legalities that involve nonmajority groups.

¶11 I highly recommend this book. It is very well written, concise, and entertaining. Aiello shows how people and their desire for power and authority shaped the law to their own ends. A number of lawyers took the moral high ground, but not enough to stop the spread of Jim Crow segregation. The book seems to be written for the average layman, and yet it is full of the details of government, policy, and law. I am a law librarian who regularly conducts historical Louisiana legal research, and I still learned much from this book, including how Angola began as a private enterprise. It should be included in every law library, academic library, and large public library.

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* © Francis X. Norton, Jr., 2016. Research Lawyer Librarian, Law Library of Louisiana, New Orleans, Louisiana.

Algero, Mary Garvey, Spencer L. Simons, Suzanne E. Rowe, Scott Childs, and Sarah E. Ricks. *Federal Legal Research,* Second Edition. Durham, N.C.: Carolina Academic Press, 2015. 242p. $32.

Reviewed by Lisa A. Goodman[*]

¶12 This newly revised edition of *Federal Legal Research* again serves as the federal accompaniment to Carolina Academic Press's Legal Research Series, which consists of a number of state-specific legal research texts. Authored by five legal research professors from law schools throughout the country, *Federal Legal Research* provides a succinct, yet thorough, overview of the legal research process. Moreover, it breaks down the various sources of law and systematically describes how to go about finding them both in print and electronically. In addition, the text offers sufficient practice pointers throughout to make it a useful reference for legal researchers of all levels. For example, there are sections in chapter 2 ("Research Techniques") that discuss cost-effective research, when one might use print versus online resources, and the differences between and relative utilities of natural language versus Boolean searching.

¶13 In its first chapter, "Legal Authority and the Research Process," the text explains the sources of law and discusses the hierarchy of authority and the differences between primary and secondary authority. It goes on to include a very practical overview of the research process that would benefit law students and laypersons alike. For instance, table 1-1 breaks down the research process into six familiar, digestible steps, such as "1. Gather facts, decide which jurisdiction controls, and generate a list of search terms" (p.6). From there, individual chapters focus on various sources of law, discussing secondary sources, constitutional law, statutory law, legislative history, administrative law, case law, and others. Some of the highlights include an overview of compiling a federal legislative history (in the event that one is not already available for the subject of your research), using digests and headnotes to expand case law research, and an outline of administrative law research.

¶14 In addition to discussing the various sources of law using print resources and the prominent commercial databases Westlaw, Lexis Advance, and Bloomberg Law, the text also looks at using free and lower-cost resources like Google Scholar, Congress.gov, and state legislature and court websites. One of the book's strongest features is the liberal, though not overdone, inclusion of tables and figures to provide explanatory references and screenshots from the research databases and pictures of print documents. For instance, figure 8-1 contains a handy "Diagram of the Federal Court System." Additionally, some of the major changes in this revision include screenshots from the revamped Lexis Advance interface. Screenshots for the Westlaw system are exclusively from WestlawNext; there are none from Westlaw Classic, which has now been retired.

¶15 As a legal research instructor, I found another highlight of this text to be its treatment of citators and the procedure for updating legal authority. Albeit brief, chapter 10 is devoted to citators and gives a worthy explanation of their dual purpose and the particular symbols used by KeyCite, Shepard's, and BCite. This chap-

* © Lisa A. Goodman, 2016. Interim Assistant Dean for the Law Library and Information Technology Services, Paul M. Herbert Law Center, Louisiana State University, Baton Rouge, Louisiana.

ter is particularly skilled at explaining the critical step of updating in the research process, which often appears deceptively simple, yet is frequently challenging for novice researchers to master.

¶16 Overall, the text is logically arranged and an ideal fusion of detail and brevity. I highly recommend it for all libraries whose patrons seek assistance researching legal materials, including law libraries, public libraries, and academic libraries supporting law, legal studies, or paralegal programs. Given its process orientation along with its bibliographic overview of the sources of law, *Federal Legal Research* would serve as an extremely valuable teaching tool for legal research instructors and an appropriate textbook selection for legal research courses.

Barkan, Steven M., Barbara A. Bintliff, and Mary Whisner. *Fundamentals of Legal Research*, Tenth Edition. St. Paul, Minn.: Foundation Press, 2015. 774p. $114.

Barkan, Steven M., Barbara A. Bintliff, and Mary Whisner. *Legal Research Illustrated*, Tenth Edition. St. Paul, Minn.: Foundation Press, 2015. 557p. $96.

Reviewed by Janelle K. Beitz[*]

¶17 Although the cover and title page indicate this edition of *Fundamentals of Legal Research* is its tenth, the authors point out that this newest edition might more accurately be considered its fourteenth because "[t]he numbering of editions was reinitiated in 1977 with a change in authorship" (p.v n.1).[1] The first edition, written by Ervin H. Pollack and published in 1956, was 295 pages long and cost $5.[2] The current edition, obviously, is much longer and more expensive.

¶18 The text starts with a helpful glossary of legal research terms, followed by three thorough and useful preparatory chapters: an introduction to legal research and resources used, a chapter on the process of legal research, and a chapter on communicating research results through writing. The remaining text is arranged in what the authors call "a 'jurisprudential' approach to teaching legal research" (p.v), that is, primary sources of law described before secondary. In addition to the expected secondary sources (encyclopedias, periodicals, treatises, uniform laws, and model acts), both editions of the text contain chapters on topical services (looseleafs), practice materials, public international law, citators, and legal citation. Although most chapters include a discussion of online resources for the particular topic discussed therein, there is also a chapter on electronic legal research.

¶19 As a reference tool, the table of contents is excellent, as is the glossary at the beginning of the book and the appendix on legal research abbreviations. The index is not as complete as it could be (for instance, the entries on Westlaw and LexisNexis do not contain nearly as many listings as there are mentions of the two in the text, and some resources are missing altogether in the index); however, I suspect this is

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1. See also Steven M. Barkan, *On Describing Legal Research*, 80 Mich. L. Rev. 925 (1982), for a truly fascinating history on this and other legal research texts.

2. Gerhard O.W. Mueller, *Fundamentals of Legal Research*, 50 Law Libr. J. 49 (1957) (book review).

a criticism of an automatic indexing system, rather than the authors themselves. Although many chapters are written or revised by different authors, the text reads in a unified voice.

¶20 The *Illustrated* edition would more precisely be named an abridged edition, as both editions are illustrated with screenshots from electronic databases and scans of pages from print volumes. The *Illustrated* edition lacks the chapters on "Researching the Law of the United Kingdom," "Native American Tribal Law," and "Federal Tax Research," as well as the appendixes containing the "Table of Legal Abbreviations" (which is one of my favorite things about the unabridged edition) and "Legal Research in Territories of the United States." In all other respects, the two editions are identical, although the unabridged version costs $18 more (and seems considerably heavier). Therefore, if you are using the text for an advanced legal research class and are not including sections on legal research in the United Kingdom, Native American law, or tax, you can save your students' wallets and backs by assigning the abridged version. However, as a reference tool, I prefer the unabridged version, as I would very much miss the more specialized chapters and appendixes.

¶21 It should be noted that this textbook would work better in an advanced legal research class, as it is more comprehensive and dense than a typical first-year legal research text. As someone who taught legal research when she accepted the assignment to write this review, but who now works in a law firm, I also note that the coverage of the text is truly legal research and not business research, competitive intelligence, or other types of research that law firm librarians might be expected to do throughout the course of their jobs. Barkan describes the first edition of this work as filling "a need for a relatively brief text that would be understandable to new law students."[3] The current authors describe the text as continuing "a distinguished history as both a teaching tool and a guide to legal research" (p.v). While there is a thought-provoking debate regarding the need for a textbook to teach legal research,[4] for those legal research professors who *do* use textbooks in their classes, this edition seems likely to carry on its predecessors' history.

Bonneau, Chris W., and Damon M. Cann. *Voters' Verdicts: Citizens, Campaigns, and Institutions in State Supreme Court Elections.* Charlottesville: University of Virginia Press, 2015. 157p. $40.

Reviewed by Tina M. Brooks[*]

¶22 *Voters' Verdicts: Citizens, Campaigns, and Institutions in State Supreme Court Elections* reports the results of the authors' empirical studies on the effects of partisanship on state high court elections. They use survey data and controlled experiments to evaluate the influence of partisan and incumbent cues on voter ballots, and, while the results are complex, Chris W. Bonneau and Damon M. Cann

3. Barkan, *supra* note 1, at 932.

4. *See* Nancy P. Johnson, *Should You Use a Textbook to Teach Legal Research?*, 103 LAW LIBR. J. 415, 2011 LAW LIBR. J. 26.

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manage to both thoroughly explain and concisely summarize their work in this slim volume.

¶23 The authors begin their work by describing the several different types of judicial elections in which they tested their theories: partisan, where judicial candidates are nominated through party primaries and party is indicated on the ballot; nonpartisan, where the primaries are not affiliated with parties and partisanship is not indicated on the ballot; quasi-partisan, where political parties are involved in nominations but partisanship is not indicated on the ballot; and retention, where judicial candidates are appointed but elections may be held to determine whether the appointed judges retain their seats, and where party is not indicated on the ballot. They then walk the reader through each hypothesis that they tested and include detailed explanations of their statistical analysis, both of the survey data and their experimental results; the appendixes contain additional information about their experimental conditions and the survey from which they drew their data. The authors take care to detail the variations on each election type as well as the impact of those variations on their analysis.

¶24 The data reveals that even when controlling for a variety of other factors, partisanship strongly influences voters' choices, not only in elections where the candidates' parties are clearly noted on the ballot, but also in elections where their party is not indicated on the ballot. Even when partisanship ballot cues are absent, voters are apparently still able to determine through ideological campaigning which party each candidate belongs to, and they vote accordingly. In retention elections, where a judge has been appointed and the vote is a simple yes or no as to whether the judge will retain his or her position and where party is not indicated on the ballot, partisanship still has a modest impact on votes. The authors conclude that if legislatures are trying to encourage voters to base their choices on qualifications rather than party by establishing nonpartisan elections, their goal has not been achieved.

¶25 Bonneau and Cann also find that, contrary to prior studies, the status of a candidate as an incumbent was not a significant predictor of voter choice, even when the voter did not have information regarding the candidate's party affiliation. The electorate does not seem to be interpreting prior judicial experience as an indication of a better judicial candidate.

¶26 The authors conclude their work with recommendations regarding where future scholarship on election influences should focus. They suggest investigating the impact of state public campaign financing programs on elections, the effects of spending by independent interest groups and by types of interest groups, and the long-term impact of elections on the legitimacy of the court system.

¶27 Ultimately, this is a work of empirical political science rather than legal analysis. However, a scholar of election law may find its data and conclusions informative for legal analysis or policy recommendations. The authors do give a brief background of relevant U.S. Supreme Court rulings in the introduction, in addition to descriptions of the types of judicial elections, to set the stage for how their analysis was conducted. The introduction serves as a nice primer on the current state of judicial elections in the United States. Overall, the work is well organized, and each chapter is thoughtfully summarized before moving on to the next. The authors cite

other related studies extensively; this title would be an excellent bibliography for related political science scholarship. I recommend *Voters' Verdicts* to libraries with robust political science or election law collections.

Breyer, Stephen. *The Court and the World: American Law and the New Global Realities*. New York: Knopf, 2015. 382p. $27.95.

Reviewed by Clare Gaynor Willis[*]

¶28 It seems highly unlikely that a law library would decide not to collect a book by a U.S. Supreme Court Justice, especially one on a topic as important as the influence of foreign and international law on U.S. law. I hope, therefore, that I can convince my fellow librarians to read this book, share it with others, and start a dialogue about how the message of this book could affect our work. Justice Stephen Breyer's main message is that foreign and international law cannot be ignored in the United States. He argues that foreign and international law can help guide domestic law and, at the very least, is inescapable in an increasingly global and interconnected world. Finally, Justice Breyer argues that Americans must engage with foreign and international law because doing so will advance the rule of law abroad.

¶29 Breyer chooses strong examples and provides excellent introductions and summaries. By mentioning (although not actually naming) the popular vacation rental site Airbnb and discussing personal and domestic issues like child custody, he convinces readers that foreign and international law touches the lives of ordinary Americans. This keeps international law from seeming like the exclusive purview of diplomats. With the exception of a very lengthy discussion of the politics leading up to the *Steel Seizure* case,[5] his explanations of cases and legal concepts are concise and clear. Justice Breyer aims to reach a general audience. It was also refreshing and helpful to see him discuss both famous and lesser-known cases. By using this approach, he engages readers quickly by discussing famous cases like *Korematsu v. United States*[6] while offering them the opportunity to learn about lesser-known cases such as *United States v. Curtiss-Wright Export Corp.*[7] and *Ex parte Quirin*.[8] The approach keeps the topic of foreign and international law from seeming like something that only the most exceptional cases apply.

¶30 The one distraction in Breyer's otherwise very readable book is his decision to wait until page 236 to fully acknowledge and confront the arguments against considering foreign and international law. Although the introduction warns that he will wait until later in the book, and he alludes to the arguments several times, these references threaten to distract from his argument as readers wonder when he will address the argument head-on. When he finally does fully discuss and rebut the arguments against considering foreign and international law, Breyer explains his decision:

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5. Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579 (1952).

6. 323 U.S. 214 (1944) (upholding the constitutionality of President Roosevelt's executive order sending Japanese-Americans to internment camps).

7. 299 U.S. 304 (1936) (holding that the President has broad authority to conduct foreign affairs).

8. 317 U.S. 1 (1942) (holding that a U.S. military tribunal has jurisdiction in cases against unlawful combatants).

> [T]o put such anxieties [such as the concern that considering foreign law threatens American sovereignty] in perspective is largely my reason for not addressing them earlier. My hope is that the cases I've now discussed suggest that the critics' concerns about judicial references to foreign law are beside the point. Their fears don't much resonate when one understands the way in which foreign law and practices are actually considered (p.244).

I did not find this explanation effective after the fact.

¶31 Breyer does an admirable job of arguing for America's continued role as a standard bearer for the rule of law without ever edging into cultural chauvinism. For example, Breyer quotes Judge Henry Friendly in *IIT v. Cornfeld*, who opined that if "our anti-fraud laws are stricter than Luxembourg's, that country will surely not be offended by their application,"[9] and dismisses Judge Friendly's conclusion. Rather, Breyer argues that judges should give due consideration to the policies and goals behind foreign law instead of assuming that the American approach can do no harm. Later, in his section about the rule of law, he argues that the United States is a model for the rule of law not because the Supreme Court is always correct, but because even wrong or unpopular decisions do not lead to bloodshed.

¶32 Ultimately, Breyer leaves librarians with an interesting challenge. He very effectively argues that judges must understand foreign and international law. Then, when he discusses how they will learn about such law, Breyer suggests that amicus briefs and scholarship will guide judges. As a librarian who teaches law students how to research foreign and international law, I hoped that he would discuss more about what sources are the most helpful. In a time of limited budgets, it is difficult to spend money on expensive foreign sources. If our law students are expected to become the attorneys who write those briefs, then we must find a way to teach them how to research this law. Furthermore, the law professors who write the scholarship on which Breyer depends need a collection that supports their work and librarians who can help with foreign and international research.

¶33 Breyer also discusses the importance of interactions between American judges, lawyers, law professors, and law students and their foreign counterparts. Academic law librarians have an excellent opportunity to facilitate those interactions because law schools gather students and faculty from around the world.

¶34 I hope that librarians will do more than just collect this book because it is written by a Supreme Court Justice. I hope that Justice Breyer's book will inspire librarians to find creative ways to teach, research, and collect foreign and international law.

Bullock, III, Charles S., Scott E. Buchanan, and Ronald Keith Gaddie. *The Three Governors Controversy: Skullduggery, Machinations, and the Decline of Georgia's Progressive Politics*. Athens: University of Georgia Press, 2015. 292p. $32.95.

Reviewed by Gregory H. Stoner[*]

¶35 In late December 1946, the death of Georgia governor-elect Eugene Talmadge initiated a unique struggle for political power in which three men asserted a right to the office. In the days and months that followed, a contentious

9. 619 F.2d 909, 921 (2d Cir. 1980).

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battle between these men and their supporters thrust the state into turmoil and drew the attention of the entire nation. In *The Three Governors Controversy: Skullduggery, Machinations, and the Decline of Georgia's Progressive Politics*, Charles S. Bullock III, Scott E. Buchanan, and Ronald Keith Gaddie not only explore this fascinating episode but delve deep into the history of electoral politics in Georgia, the political career of Eugene Talmadge, and the burgeoning progressive movement. Examining and interpreting various primary sources, Bullock, Buchanan, and Gaddie provide readers with a comprehensive view of Jim Crow Georgia and illustrate how the events surrounding this election and its resolution effectively marginalized progressive politics in the state for years to come.

¶36 The biographies of four individuals, each of whom held a claim to the office of governor, are intertwined and largely serve as the core of this study: Eugene Talmadge, a three-time governor of Georgia and the 1946 governor-elect; Ellis Arnall, the sitting governor; Herman Talmadge, the son of Eugene and chosen successor of the Talmadge political machine; and Melvin Thompson, the first and sitting lieutenant governor. The first two chapters of the book explore Eugene Talmadge's rise to power, his influence in shaping state political factions, and the importance of the county unit system in state elections and the development of rural and urban forces. Successive chapters chronicle the 1946 Democratic primary and general election and examine how Talmadge won an election using an army of supporters, an array of political machinations, and a campaign platform largely focused on the maintenance of the white primary. Lastly, Bullock, Buchanan, and Gaddie explore the attempted legislative resolution to the controversy, the state supreme court ruling naming Thompson acting governor, and Herman Talmadge's subsequent rise to power on the state and national political scenes.

¶37 While many of the various issues and subjects discussed in this work have previously been the subject of independent scholarly examination, *The Three Governors Controversy* is an ambitious and successful effort seeking to provide a broader understanding and a more complete picture of these fascinating events. This narrative, examining the gubernatorial controversy, the preceding campaign, and the overall social and political picture in postwar Georgia, allows readers to better comprehend these interconnected developments and their impact on one another. Extensive notes illustrate the diverse scope of resources consulted, particularly firsthand accounts and sources such as newspaper articles. All three authors are professors and noteworthy scholars who have previously published other works focusing on Georgia and southern political history.

¶38 Touching on a number of subjects, this study will be of interest to a diverse audience, including historians of law, elections, politics, and social issues. *The Three Governors Controversy* would be a noteworthy addition to academic and law libraries throughout the country, particularly those with collections in political and social history.

Cogan, Neil H. *The Complete Bill of Rights: The Drafts, Debates, Sources, and Origins,* Second Edition. New York: Oxford University Press, 2015. 1364p. $195.

Reviewed by Danielle A. Becker[*]

¶39 At the Virginia State Convention, June 24, 1788, Patrick Henry asserted:

> A bill of rights may be summed up in a few words. What do they tell us?—That our rights are reserved. Why not say so? Is it because it will consume too much paper? Gentlemen's reasoning against a bill of rights does not satisfy me. Without saying which has the right side, it remains doubtful (p.348).

Neil H. Cogan's second edition of *The Complete Bill of Rights: The Drafts, Debates, Sources, and Origins* is a fascinating exploration of the words, debates, discussion, and source materials that later became the Bill of Rights.

¶40 The book begins with a preface that interprets the significance of the Bill of Rights, quoting James Madison, who said it represents "the great rights of mankind" (p.lxiii). Given how many interpretations are explored every year, at the federal, state, and local levels, Cogan sets out to offer "the most complete, accurate, and accessible set of texts available" (*id.*) to provide a backbone for these interpretations. Cogan also explains the methodology of the collection, which is limited to the materials that were produced by members of the First Congress and materials that would have been available to them or were commonplace. He also provides the researcher with a listing of the sources entitled "Abbreviations of Sources" after the preface. Citations and footnotes are incorporated throughout each chapter.

¶41 The organization of the chapters provides a road map to the material, making it easier for the researcher to find the information quickly in the chapter. Each chapter begins with the heading "Texts," which includes subheadings such as "Drafts in First Congress," "Proposals from State Conventions," and "State Constitutions and Laws; Colonial Charters and Laws." Those materials are straightforward and easily recognized by their succinct headings and simple formatting. Next comes the heading "Other Texts," which includes relevant texts such as excerpts from the English Bill of Rights (1689). Then the chapter delves into covering "Discussion of Drafts and Proposals" with subheadings including "The First Congress," "State Conventions," "Newspapers and Pamphlets," and "Letters and Diaries." A final "Discussion of Rights" section ends the chapter with "Treatises" and "Case Law."

¶42 The most interesting sections in each chapter are the transcriptions of the discussions had both at the State Conventions and in the First Congress, as well as the selections from "Newspapers and Pamphlets." One example is a discussion between Henry and Madison regarding Amendment III: Quartering of Soldiers' Clauses:

> Mr. Henry . . . .
>
> > One of our first complaints, under the former government, was the quartering of troops upon us. This was one of the principal reasons for dissolving the connection with Great Britain. Here we may have troops in time of peace. They may be billeted in any manner—to tyrannize, oppress, and crush us."

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> Mr. Madison . . . .
>
> > He says that one ground of complaint, at the beginning of the revolution, was, that a standing army was quartered upon us. This was not the whole complaint. We complained because it was done without the local authority of this country—without the consent of the people of America (p.322).

This exchange gives the researcher access to the discussions that accompanied the writing of the Bill of Rights and its clauses. The "Newspapers and Pamphlets" sections include contemporary articles that portray the opinions of the media and selections from the general public. These materials provide the researcher with valuable insight that can further enrich an understanding of this fundamental text.

¶43 Consider the immortal importance of the Bill of Rights with this quotation taken from a letter written by Thomas Jefferson to James Madison on December 20, 1787: "Let me add that a bill of rights is what the people are entitled to against every government on earth, general or particular, and what no just government should refuse, or rest on inference" (p.1063).

¶44 Ultimately, this book would fit nicely in academic law libraries (or other academic libraries) and public libraries. It is a repository (in one volume) of the basic texts that researchers need to interpret and critically analyze the Bill of Rights. It will satisfy both the serious researcher with its dense content and the casual reader with its ease of use and readability.

Edwards, Laura F. *A Legal History of the Civil War and Reconstruction: A Nation of Rights*. New York: Cambridge University Press, 2015. 212p. $80.

Reviewed by Jennifer L. Laws[*]

¶45 The "Nation of Rights" described by Laura F. Edwards in *A Legal History of the Civil War and Reconstruction: A Nation of Rights* is remarkable for its broad rhetoric about rights (perhaps best represented in Abraham Lincoln's description of the United States as "conceived in liberty and dedicated to the proposition that all men are created equal") and for its extraordinarily narrow legal interpretation and application of those rights. Edwards takes the reader from the halls of the U.S. Congress to Civil War battlefields and the postwar fields of Granville County, North Carolina, in an effort to shed light on what the U.S. Civil War and Reconstruction did to the relationship between Americans and the law, including their perceptions of their rights, their governing bodies, and the law as a whole.

¶46 Though the legal interpretation of rights after the Civil War continued for many decades along the granular, hyper-individual lines of earlier precedent, the war-changed popular perception of rights as tied to a broader and more generous definition of the public good could not be undone. The author's analysis of the dramatic legal changes that came about transcends the focus on federal policy typical of Civil War legal history and reaches for a kind of synthesis that is a welcome addition to the historical literature of the Civil War and Reconstruction. As Edwards states in her introduction, "This book argues that historians have tended to underestimate the extent of change because they have not brought legal history

[*] © Jennifer L. Laws, 2016. Scholarly Communications and E-Resources Coordinator, University of New Mexico School of Law Library, Albuquerque, New Mexico.

into dialogue with the scholarship of other historical fields"—fields that focus on class, race, and gender (p.7).

¶47 The book is organized roughly chronologically, with the first three chapters devoted to the Civil War and the second three devoted to Reconstruction. When Edwards examines legal change during the war years, she emphasizes how wartime policies in both the Union and the Confederacy increased federal power and altered the way Americans perceived and related to the law and legal institutions. Edwards demonstrates that the changes brought by Reconstruction "unsettled the nation's entire legal order" (p.13). Her analysis emphasizes that change flowed from both the top down and from the bottom up, in complicated ways. The real excitement of Edwards's analysis emerges in chapters 5 ("The Possibilities of Rights") and 6 ("The Power of Law and the Limits of Rights"). In these two final chapters, her synthesis of ideas from newer historical work and fields beyond legal history really shines.

¶48 As a reader I found the structure of the book challenging. Perhaps due to its origins in her essay on the same topic for *The Cambridge History of Law in America*, the structure is minimal, with only six chapters. Within the main text's relatively short length of 176 pages, Edwards demands much from the reader. New historical constructions abound, and legal analysis is enmeshed with discussions of social and economic changes. The reader must take time to process new information following each page or two. Proportionally huge quantities of useful information appear in this book, and it is not a title that most will read from cover to cover. Additional chapter or subchapter divisions could assist the student reader (in particular) to prioritize and pace his or her efforts.

¶49 Edwards provides students of legal history with excellent historiographical context for their research. Her introduction includes a five-page section placing her work in the context of the historiography of the Civil War and Reconstruction. By doing so, she makes her work accessible and understandable to new students of the legal history of the era. The author also includes a thirteen-page bibliographic essay following her conclusion. In it she provides a high level of detail about the sources she used in her work, placing them into the historiographical context provided in the introduction. These two sections, combined with her fourteen-page bibliography, provide a wealth of material for researchers to pursue specific areas in greater depth.

¶50 Edwards deftly incorporates historical information about the impacts of the legal changes of this era on many segments of the U.S. population. Moving beyond a traditional emphasis on the social categories of white and black, the author provides valuable context about the impacts of the era's legal changes on women in general (both black and white), workers in the expanding industrial sector, and Native Americans. Edwards also offers her readers an alternative to the dominant North-South "axis" of the historiography of Reconstruction. Traditionally the changes wrought by Reconstruction have been framed by a North-South structure, one limited to the eastern part of the United States and largely focused on the former Confederacy and the status of African Americans. Newer work has begun to incorporate the fuller picture of the Republican vision of the United States, including policies related to westward expansion in the dynamic of Reconstruction, recognizing them each as elements of a single vision of "national unity" (p.92). Examining national attitudes and laws about property rights and measures that might

have improved the economic status of recently freed slaves becomes far more complete when the denial of property rights of Native Americans in the West is considered at the same time.

¶51 The brevity of Edwards's book has at least one notable consequence: only a small number of case studies of individual Americans' or communities' participation with these dynamics of legal change appear in her book. The quotes from a petition from African American citizens of Lincoln County, Tennessee, in 1865 to the Freedman's Bureau, and the description of Bella Newton's 1869 litigation in defense of her family and a changed social order, tease the reader with the wealth of case studies that may exist in primary source documents. Linking individual or small community stories to the powerful currents of change described in Edwards's book would more powerfully connect the reader to her ideas.

¶52 Edwards's book leads the reader from the nineteenth century into the twentieth, tracing how the tension between war-changed perceptions of rights and the hyper-individual judicial interpretation of rights profoundly altered the law of the United States and Americans' perceptions of it. Stephen C. Neff's book *Justice in Blue and Gray: A Legal History of the Civil War* (2010) takes the reader on a journey from the legal warfare issues of the Civil War to the legal issues of the War on Terror. I am not surprised that Edwards makes no reference to Neff's work. *A Legal History of the Civil War and Reconstruction* stands on its own and merits inclusion in any collection that already contains Neff's book. Any library that collects in the areas of legal history, constitutional history, or civil rights would be well served by the addition of this title.

Magraw, Daniel Barstow, Andrea Martinez, and Roy E. Brownell II. *Magna Carta and the Rule of Law.* Chicago: American Bar Association, 2014. 476p. $69.95.

Reviewed by Andrew Dorchak[*]

¶53 The multiple authors of *Magna Carta and the Rule of Law* offer an erudite, historical overview of Magna Carta's influence throughout the world over eight centuries. The authors identify five common themes: the ability of a written document to bind everyone (including the sovereign) to the law of the land, the "dynamism and adaptability" of Magna Carta, the myth of Magna Carta, "resilience in the face of varying treatment," and the "enduring relevance and persuasiveness" of Magna Carta to the rule of law (pp.14–16). Several chapters note the role of Edward Coke (and William Blackstone), who worked to associate Magna Carta, rather more specifically than historical accuracy might dictate, to concepts such as habeas corpus and due process. In addition to such advocacy, the authors discuss alternative sources of legal concepts often attributed to Magna Carta, such as an 1199 reference to habeas corpus, the English Bill of Rights, and the Fourth Lateran Council's ban on trial by ordeal.

¶54 The multitude of cases cited in the book treat Magna Carta in various ways: reverential, inspirational, vague, dismissive, and irrelevant. Chapters 5 and 10 describe the "largely symbolic" role of Magna Carta in helping to inspire the Con-

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stitution and Bill of Rights in the United States and fifty of fifty-three Commonwealth countries. The U.S. Supreme Court cited Magna Carta seventy-one times from 1960 to 2000, reflecting its "expansive view of civil rights and liberties" (p.116). At least three U.S. Supreme Court cases since 2008 have mentioned Magna Carta.

¶55 Magna Carta's inspiration of due process and fundamental rights under the ancient law still resonates today in international law, with scholars advocating for important procedural rules to supplement the international legal regime that deals with modern issues such as drone strikes, atrocities, and refugees. Nicholas Vincent's 2012 book *Magna Carta: A Very Short Introduction* covers many of the same topics, for example, the lack of terms such as habeas corpus and due process in Magna Carta. Vincent's book might be an easier read for those with fewer specific rule of law concerns. Vincent notes that materials in libraries and archives offer the potential for novel scholarship on Magna Carta, in addition to the new historical information that scholars have produced of late. The authors here seem to take up that challenge in chapters 11 and 12.

¶56 Chapter 11 offers an in-depth and possibly novel analysis of the relationship of Magna Carta to *ius commune*, the body of civil law and canon law that existed in 1215. Magna Carta negotiators may have borrowed legal terminology from *ius commune* as a means of political posturing, trying to win favor with Pope Innocent III. Intriguingly, it seems unclear to which side (King John or the barons) belonged the primary posturers. Of course, King John had already performed the ultimate political posturing in 1213—giving homage and fealty to the pope and "acknowledging that he held England as a papal fief" (p.25). Not surprisingly, the pope would see fit to declare Magna Carta null and void on August 24, 1215, two months after the agreement had been reached. The modern reader might have trouble imagining the role of the church in thirteenth-century society.[10]

¶57 Chapter 12 covers the Charter of the Forest and the "several hundred separate acts" of Parliament that "embedded the Charter so deeply in the law of the land that its formalistic repeal in 1971 was anticlimactic" (p.312). The Charter of the Forest evolved over centuries from a way for the ruler to maximize revenue (with occasional pushback from his subjects) to a modern-day mixed-use approach, with input from a variety of stakeholders, including Parliament, conservation groups, recreational users, and even some international treaties.

¶58 Reading this book in its entirety may be a challenge for those unfamiliar with the subject. However, the chapters and reader aids, including thirteen appendixes, function quite well both as a cohesive whole and as individual starting points for researchers with a narrower focus. This book is highly recommended for academic law libraries and large academic libraries.

10. For an in-depth treatment of religion, rule of law, and Magna Carta, see Magna Carta, Religion, and the Rule of Law (Robin Griffith-Jones & Mark Hill eds., 2015).

McDowell, Jonathan D. *From Law School to Lawyer: Tools, Procedures, and Steps to Grow Your Practice*. Chicago: American Bar Association, 2015. 214p. $49.95.

Reviewed by Austin Martin Williams[*]

¶59 Jonathan D. McDowell wrote *From Law School to Lawyer: Tools, Procedures, and Steps to Grow Your Practice* hoping to provide aspiring attorneys with insights into developing their own law practices and navigating their first civil cases. In presenting his lessons and tips, McDowell focuses primarily on concepts and skills not covered in a typical law school curriculum.

¶60 McDowell organizes the book based on the path one would take from passing the bar exam to practicing law. The book begins with several chapters covering the nonlegal side of practicing law, such as the business aspects of starting a law firm, marketing the firm, and building a client base. The book follows these foundational chapters with several chapters on practice and procedure, covering topics such as pleadings, electronic filing, discovery, mediation, and appeals. McDowell then wraps up the book by discussing the personal toll practicing law can take on individuals, including frank discussions on alcoholism and depression. Constant themes throughout the book are the importance of having a desire to succeed, professionalism, and the fundamental skills of research and writing.

¶61 While the book is relatively short, McDowell maximizes every square inch of its 214 pages. He uses tables, figures, screenshots, and sample documents to help readers visualize and comprehend his strategies and techniques. He also effectively uses various bolded paragraphs to emphasize or provide examples of points addressed in the surrounding text. While the book is not heavily footnoted, McDowell does provide some references to additional books that elaborate on topics discussed in the text. He also does an excellent job of referring to the specific rules of the Federal Rules of Civil Procedure when discussing pretrial matters.

¶62 As a legal research instructor, I was delighted to see McDowell discuss the research methods and tools he uses, as well as the importance he places on legal writing. On several occasions he is able to take concepts discussed in research and writing classes and provide readers with concrete examples of how these concepts fit into the practice of law. For instance, McDowell discusses how researching jury instructions and statutory law can assist an attorney with preparing a well-rounded complaint. He also advocates for using "form interrogatory" books from the law library to help with drafting interrogatory and deposition questions. In addition, he encourages attorneys to always look up the rules of procedure and court rules, no matter their level of experience or familiarity with these sources. Furthermore, he encourages attorneys to finish court filings early to allow time to properly review their arguments and fix grammatical errors. While not meant to be a legal research and writing textbook, *From Law School to Lawyer* does illustrate how to employ some of the research and writing skills taught in law school.

¶63 Although I am quite fond of this book, I believe it falls just short of being truly first class. *From Law School to Lawyer* is very limited in its target audience. Only recent or soon-to-be graduates who want to both start their own firms and

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work as litigators will get the most out of reading this book. In addition, while McDowell discusses pretrial matters at length, he does not provide his strategies for trial, such as opening statements and cross examinations. Considering the excellent insights the author provides on pretrial matters, it would have been useful to hear his trial methods. Moreover, I would have liked for the book to have included information on handling the day-to-day operations of running a law firm, such as managing overhead costs, time keeping, computer software, staff, and the other nuts-and-bolts items not included in most law school curriculums.

¶64 Despite the book's limited audience and narrow scope, I recommend that academic law libraries add this book to their collections. The topics the author covers are well worth the price. While most beneficial for third-year students and recent graduates, I could also see clinical, trial practice, and advanced legal research and writing courses incorporating the chapters on pretrial matters into their course readings.

Mills, Jon L. *Privacy in the New Media Age*. Gainesville: University Press of Florida, 2015. 239p. $29.95.

Reviewed by Edward T. Hart[*]

¶65 On October 6, 2015, the European Court of Justice handed down its decision in the case of *Schrems v. Data Protection Commissioner*.[11] The court ruled that member states of the European Union could regulate the transfer of data about their citizens collected by Internet firms across national borders. The case was brought by Max Schrems, an Austrian graduate law student, who sought to have Facebook held accountable for the data that it not only retained about him but also moved from servers located in Austria to servers in the United States.

¶66 After growing concern about the relatively slack data protection offered under U.S. law, Schrems asked Facebook for a record of the data the company held about him. Schrems was sent a disc with 1200 pages of records about every transaction he carried out on his Facebook account since its establishment in 2008, including data he had deleted. He had deliberately deleted messages exchanged on Facebook with a friend about her illness, and those messages were no longer visible in his account. But they still existed in Facebook's servers in the United States. Facebook argued that it was protecting the freedom of speech by requiring all parties to any exchange on the site to delete those exchanges before the data would be scrubbed. No data could be deleted by just one party. This case highlights a primary difference in the approaches America and Europe take in the ongoing conflict between freedom of speech and the right of privacy. That topic is at the center of Jon Mills's book *Privacy in the New Media Age*.

¶67 Mills focuses his book on the inherent conflict between the rights of speech and privacy, and how this conflict is resolved depends much on the media in question and the jurisdiction. "[H]ow do these traditional issues apply with the advent

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11. Case C-362/14, Schrems v. Data Protection Comm'r, EUR-Lex 62014CJ0362 (Oct. 6, 2015).

of the Internet-based new media, and is the current law adequate to deal with the new realities" (p.93)? The well-established legal structures of the past developed ways to balance these rights in the age of print and broadcast media, but those ways are not making much progress on the slippery slope of the infinite Internet.

¶68 For example, an action for defamation for something published in a book was relatively easy to define because the medium was fixed and the jurisdictions were more or less identifiable by where the book was published, distributed, or sold. Expectations by all parties were limited, geographically speaking. Defamation posted on the Internet, on the other hand, can be harder to pin down. Something published on the Internet could be accessible anywhere in the world. While the author is subject to the jurisdiction where he or she resides or posted the content, the author is most likely beyond the reach of nearly every other jurisdiction in the world where the defamatory content might be viewed.

¶69 To evaluate any situation where speech and privacy are in conflict, Mills suggests eight questions that need to be answered to truly weigh the potential harm to either side: (1) Where did the intrusion occur? (2) Who owns or controls the information? (3) How did the media obtain the information? (4) Is the information true, false, or an opinion? (5) Is the published information private and intrusive in nature? (6) How was the information actually disclosed? (7) Who was the target of the disclosure? (8) What is the intent of the target and of the media? Mills carefully analyzes these questions. Historical situations involving each of these questions are discussed in light of the developed case law before taking the leap into what the courts are confronting today and will have to address in future cases.

¶70 *Privacy in the New Media Age*, while a slim volume, is packed with an in-depth discussion reviewing the history of freedom of speech and its interplay with privacy. The book presents the reader with questions to help respect and handle these two rights in the electronic age. While Mills does not provide direct answers, he offers us approaches that warrant further consideration. This book is recommended for any readers with the slightest concern about how their data is treated by Internet service providers. The book is also a great launching point for further research for those who seek to answer some of the questions Mills raises in his thoughtful volume.

Ohlin, Jens David. *The Assault on International Law.* New York: Oxford University Press, 2015. 289p. $29.95.

Reviewed by Jonathan Pratter[*]

¶71 The prima facie implausible thesis of this book is that a small group of conservative legal scholars including such figures as Eric Posner, Jack Goldsmith, Adrian Vermeule, and John Yoo has steered U.S. policy with respect to international law in a dangerous and destructive way that has done serious harm to the position of the United States in the international legal system. "Although many academic arguments have little to no impact on our daily lives, the new skepticism about international law has directly changed American foreign relations since 9/11" (p.8).

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One of the author's targets did, as a *government* lawyer, provide advice on the content of international law, authorizing conduct that probably violated both domestic and international law, and badly damaging the standing of the United States in the world community. That nasty episode in the history of U.S. practice in international law has been fully aired in both the press and the scholarly literature. This book adds nothing to it. The author fails to distinguish between that situation and the academic expression of views on controversial topics, which raises a big question: what else would the author do with academic views he condemns and considers dangerous, other than to counter them with arguments of his own?

¶72 The author is right to take his antagonists to task for their crude reductionism. They deploy rational choice theory and game theory to demonstrate, they think, that international law is incapable of regulating the conduct of states that instead is, and ought to be, the product of the calculation of their rational self-interest. In chapters 3 and 4, the author meets his opponents on their own ground in an effort to show that self-interest is consistent with acting according to international law. This work has already been done.[12] The other camp might well respond: "Always? In hard cases? If not, then self-interest should trump."

¶73 In chapter 5, the subject is the international law on the use of armed force. The conclusion is that the conduct of the United States has been fully congruent with that law, which is supposed to count against the skeptics. They could respond that the United States is quite prepared to observe the rules of international law when they suit its purpose. The views of the author's antagonists have been the subject of cogent critique for a decade.[13] Better analysis of their views that does not take part in distasteful ad hominem attacks is available elsewhere.

Pasquale, Frank. *The Black Box Society: The Secret Algorithms That Control Money and Information*. Cambridge, Mass.: Harvard University Press, 2015. 311p. $35.

Reviewed by Thomas Drueke[*]

¶74 In the introduction to the first *Whole Earth Catalog* in 1968, technologist and writer Stewart Brand declared that "[w]e are as gods and might as well get good at it,"[14] inviting readers to use technology and information as self-empowering personal tools to shape their localities, infrastructures, and societies in deliberate and direct ways. Nearly fifty years later, after staggering advancements in computing and network technology and vast changes in the economics of information, Brand's technolibertarian optimism remains alluring: reliable networks, ubiquitous computing power, robust programming paradigms, readily available swaths of data, and low overhead allow citizens to master and shape the world in unprecedented ways,

12. Andrew T. Guzman, How International Law Works: A Rational Choice Theory (2008).

13. *See, e.g.*, Paul Schiff Berman, *Seeing Beyond the Limits of International Law*, 84 Tex. L. Rev. 1265 (2006) (reviewing Jack L. Goldsmith & Eric A. Posner, The Limits of International Law (2005)).

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14. Stewart Brand, *We Are as Gods*, Whole Earth Catalog (Fall 1968), http://www.wholeearth.com/issue/1010/article/195/we.are.as.gods [https://perma.cc/EB97-QTJU].

from the trivial to the transformative. But Brand's hyperbolic call to cybernetic arms has gained a darkly prescient and, perhaps, more literal meaning. Along with do-it-yourself enthusiasts, progressive back-to-the-landers, and counterculture entrepreneurs, America's power elite took up (and co-opted, some believe) the Promethean mantle of technological empowerment.

¶75 According to Frank Pasquale's *The Black Box Society: The Secret Algorithms That Control Finance and Information*, these elite actors—corporations, government agencies, and their revolving door of personnel—have certainly gotten good at bringing their godlike computational power (and economies of planetary scale) to bear on the world. Titanic firms like Google, Apple, and Amazon; financial giants like Citigroup; and many government agencies deploy data, networks, and a phalanx of complex algorithms (in the name of profit and comparative advantage for the former two clubs, surveillance and control, and perhaps profit, for the latter) while simultaneously shaping the essential information infrastructure of our daily lives. Internet and data titans provide ordered access to information through search indexes and ranking algorithms; they quantify and analyze our every datum to provide targeted marketing and personalized search results. They profile us based on our digital footprints and sell (or lose) this potentially sensitive information to data brokers with questionable scruples.

¶76 The behemoths of finance engineer essential investment securities; they influence (read: game) crucial index rates and standards; they manipulate markets through high-frequency algorithmic trading. Their algorithms largely determine our online reputations, our abilities to obtain credit and successfully invest our income, and even the fundamental ways we organize and access information; they "control[] essential junctions of an emerging economic order" (p.90). And thanks to a combination of technological complexity, political and legal systems "colonized by the logic of secrecy" (p.2), and outright obfuscation, Pasquale argues, these powerful algorithms—as well as the data they use and the decisions, processes, and biases they encode—are opaque to the general public. They are unintelligible black boxes.

¶77 By carefully breaking down "the business practices of leading Internet and finance companies, focusing on their use of proprietary reputation, search, and finance technologies" (p.14), Pasquale pulls off an amazing feat of explanation, simultaneously and seamlessly explaining how and why black boxes exist, as well as what they can control and what happens when society entrusts black box technology with consequential decisions and hands immense power to the black box firms of Silicon Valley and Wall Street. Pasquale shows how the black boxes are created through the interaction of economic power, technological complexity, and scale; laws that promote commercial secrecy like trade secret protections, encryption, and obfuscation; and a weak, captured regulatory state with no real enforcement power. He also vividly depicts the social and economic consequences and risks of trusting inscrutable computer programs with consequential decisions that affect millions of people every day. Pasquale compiled stories of people claiming unfair treatment by black box companies, including instances of racial discrimination, financial fraud, and commercial malfeasance that were seemingly generated or facilitated by algorithms. However, these claims, Pasquale argues, are impossible to confidently assess without knowledge of the cloaked algorithms, the inputs (data

provenance and accuracy), the outputs (data and predictions), or the intermediate decisions used to reach those particular predictions.

¶78 Pasquale also convincingly demonstrates why the black boxes need to be inspected, showing how biases and inaccuracies can become embedded in algorithms. Pasquale's explanations give readers ample reason to be skeptical of decisions or factual assertions generated by proprietary algorithms. He importantly points out that data are not inherently neutral or objective; they can be based on biased sources. Data can also be corrupted, of unknown or untrustworthy provenance, or just impossible to meaningfully generalize. Scientific methodologies are commonly misapplied to social situations, producing predictions of dubious value. All of these factors can combine to create some potentially shoddy algorithmic outputs.

¶79 Pasquale's masterful explanation is evenhanded and never tendentious, but is coupled throughout with impassioned and well-reasoned arguments for opening the black boxes and making the algorithms intelligible in the name of corporate accountability. The closing chapters offer proposals for building a transparent and intelligible society: regulating important information and finance infrastructure like public utilities, individual data rights, data provenance standards, data use regulation, and hiring private-sector expertise to oversee complex regulatory compliance. He makes a strong case for a paradigm shift in our fundamental information economy, suggesting intriguing public alternatives to private information and finance infrastructures, and new ways for these important industries to better further the public good. *The Black Box Society* is a first-rate work of synthesis, combining ideas from law and economics, interpretive social science, science studies, and the philosophy of technology into an essential study of the political economy of information.

Peel, Jacqueline, and Hari M. Osofsky. *Climate Change Litigation: Regulatory Pathways to Cleaner Energy*. Cambridge: Cambridge University Press, 2015. 376p. $99.

Reviewed by Mark Popielarski[*]

¶80 Concerns regarding carbon emissions and their potential impact on global temperatures, the ecosystem, and the planet's continued habitability have spurred a significant increase in efforts by politicians, diplomats, business entities, and activists to tackle this issue through many different approaches, including treaties, statutes, regulations, and public education. *Climate Change Litigation: Regulatory Pathways to Cleaner Energy* explores how environmentalists may use a country's domestic court system to change existing laws or influence policy decisions. While this approach is not commonly used in most countries where other mechanisms provide more effective approaches for changing domestic climate-related laws, Jacqueline Peel and Hari M. Osofsky focus their research and discussion on two major fossil fuel and carbon-producing countries that have witnessed significant efforts to alter existing laws through litigation: the United States and Australia.

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¶81 Promoting their central thesis that climate-oriented litigation could be a powerful tool for reducing carbon emissions attributable to these two countries, the authors employ a case study approach in which they interview various environmental advocates, supply data and statistical information, and explore the legal history of such efforts to provide the necessary context for the current state of climate litigation and suggest a framework for newer, more effective approaches regarding legal actions brought by concerned citizens.

¶82 Beyond using litigation as a vehicle for direct pro-regulatory climate efforts, the authors explore the secondary impact that even unsuccessful court action may produce in changing corporate behavior to avoid the costs and bad publicity associated with such actions. The litigation may also alter public opinion and encourage government actors to adopt new legislative and regulatory solutions.

¶83 Peel and Osofsky do an excellent job of providing the necessary factual and legal information needed to understand the various aspects of this complex topic. Whether the reader possesses only a basic knowledge of the subject or is well versed, this book should provide considerable insight. While *Climate Change Litigation* provides information, theories, and strategies designed to assist those seeking to use the court system as a vehicle for reducing carbon emissions, attorneys, advocacy groups, and other stakeholders positioned on the opposite side of such efforts also will find this book to be a useful resource for generating legal strategies and preparing for potential future legal actions.

Regazzi, John J. *Scholarly Communications: A History from Content as King to Content as Kingmaker*. Lanham, Md.: Rowman & Littlefield, 2015. 275p. $75.

Reviewed by Amanda Zerangue[*]

¶84 One thing that scholars, publishing industry groups, and libraries can agree on is that scholarly communications are in flux. Some of the players, particularly the publishing industries, perceive clear threats to scholarly communications from institutional repositories, open access, and the Internet. In direct contrast, others view these very same things as opportunities. In *Scholarly Communications: A History from Content as King to Content as Kingmaker*, John Regazzi traces the development and evolution of scholarly communications, demonstrating that constant change has always been the norm in this field.

¶85 Regazzi is uniquely positioned to trace the development and evolution of scholarly communications. His career spans more than forty years in the electronic information services and scholarly publishing industries, with most years spent at Reed Elsevier, including many years as CEO of Elsevier, Inc. Regazzi now lectures and directs the Scholarly Communications and Information Innovation Lab at Long Island University.

¶86 Regazzi explores the current dynamic landscape of scholarly communications by addressing three overarching themes: how the fundamental value of scholarly content has evolved, how publishing industries and other businesses that gener-

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ate and distribute scholarly content must think differently about creating value and profits in the new digital age, and how researchers will benefit from new forms of scholarly content and communications. The book is divided into ten chapters, each of which addresses a separate component of scholarly communications—from a historical analysis of the first scientific journal to an exploration of open access principles and data sharing. While the book is cohesive when read in its entirety, each chapter can serve as a discrete standalone lesson in scholarly communications.

¶87 The beginning chapters set the stage for the examination of scholarly communications as both a flow of scholarship and a business. Regazzi provides straightforward and understandable explanations for very complex processes, including the scholarly research process, formal and informal communication, scholarly publishing, peer review, and the complexities associated with coupling traditional journal publishing with significant technological advances. By tracing the development of scholarly content and understanding the current state of affairs, this book creates a foundation for "evaluating the efficacy and impact of rapid technology open-source-based changes in scholarly communication as well as the development of the genre itself" (p.19).

¶88 The last half of the book is particularly interesting as it addresses how new and emerging technologies have become the major driver for change in academic publishing. Traditional scholarly publishing, dissemination, and access have permanently changed, and now open access publishing, institutional repositories, and big data research is at the forefront of scholarly communications discussions.

¶89 The book appears well researched; each chapter includes an extensive list of references, with the author relying primarily on scholarly articles. This book would be a helpful addition to an academic library or academic law library collection, as well as a teaching tool for faculty and students in a library and information science program. It is easy to read and understand; Regazzi does good job of providing interesting historical background information and avoids coming across as didactic. Regazzi is neither an advocate for nor opponent of open access, and his neutral and unbiased delivery makes this book a credible resource for anyone interested in learning about scholarly communications. Additionally, it provides a comprehensive theoretical and historical framework for understanding the current issues and trends in scholarly communications and how they apply to researchers, publishers, and librarians.

Robinson, Paul H., and Sarah M. Robinson. *Pirates, Prisoners, and Lepers: Lessons from Life Outside the Law*. Lincoln: University of Nebraska Press, 2015. 348p. $32.95.

Reviewed by Stephanie Ziegler[*]

¶90 Left to our own devices, without the restraints of law and government, are we humans basically self-interested or group-minded? Do we revert to a *Lord of the Flies* mentality when out from under the watchful eye of authority? Or are we inherently generous and selfless? Are we *just*?

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¶91 *Pirates, Prisoners, and Lepers: Lessons from Life Outside the Law* attempts to answer these age-old questions through historical examples, modern parallels, and social science experiments. The result is an exciting, fast-paced journey through history, following abandoned lepers and shipwrecked sailors (who lived without law by accident), and hippies and pirates (who lived without law on purpose). But the book does not just relate fascinating stories; it uses these stories to examine how we might create a more justice-oriented society and, in particular, improve our criminal justice system.

¶92 The book is extremely well structured. It opens with two real-life vignettes from very recent history, as ordinary American parents come to blows over such trivialities as a preschool graduation and a T-ball game. So is this the fate of humanity? Reverting to senseless violence at the slightest provocation? Or are we better than that? Perhaps we are, as the next chapter provides examples of people organizing and behaving selflessly, even rescuing themselves and others, under the most adverse circumstances. One example is quite well known in popular culture: the Andes airplane crash of 1972 (made even more famous by the movie *Alive*[15]) and one example perhaps less well-known: the exile of Hawaiian lepers to the island of Molokai in 1866.

¶93 In both cases, when presented with the choice to behave in a self-interested way or for the good of the group, people chose the latter, which ultimately led to the survival of that group as a whole. But just as the reader begins to feel warm and fuzzy, the authors come back with more examples of the darker side of human nature. Sometimes, despite a group acting with the best and noblest of intentions, one or more people manage to ruin a good plan or to make an already bad situation worse.

¶94 Humanity's selfishness and lack of group cohesiveness can lead to material losses (the failure of a hippie commune meant to be a "utopian community" of "voluntary cooperation" [p.33]) and the very literal loss of life (several cases of shipwrecked sailors who died due to the hubris and lack of organization of their leaders and fellows). One of the latter tales is especially interesting, a perfect experiment that played out accidentally in real life: two different ships wrecked on the same island several months apart, but neither knew of the existence of the other. One of the groups dwindled to three survivors, but the other group thrived and even managed to save themselves.

¶95 Yet few of these tales are treated in a simplistic, binary manner. As the book progresses, we revisit past stories again and again, depth and nuance added each time as ideas of the necessity of punishment, justice, and credible and trusted leadership are explored. Interspersed are the results of social science experiments involving children as young as three and four years old, who, as it turns out, have some very nuanced and sophisticated notions of justice and punishment, and have the ability to make distinctions between morals and conventions, and between purposeful acts and accidental ones.

¶96 As a more complex picture is painted of the need (and the human instinct) for justice, the book concludes with five proposals so that we might live in a more just society, suggestions gleaned from the historical lessons we just learned. *Pirates,*

15. ALIVE (Film Andes S.A. 1993).

Prisoners, and Lepers effectively makes the complexities of criminal justice ideals accessible through captivating stories and excellent research. (In fact, I have found myself recommending the book to family and friends in both legal and nonlegal fields!) I would highly recommend this entertaining and enlightening book for law, general academic, and public libraries.

Smith, David Chan. *Sir Edward Coke and the Reformation of the Laws: Religion, Politics and Jurisprudence, 1578–1616*. Cambridge: Cambridge University Press, 2014. 299p. $110.

Reviewed by Joel Fishman[*]

¶97 Edward Coke (1552–1634) was an important figure in English legal history. He served first as a barrister, then as speaker of the House of Commons, attorney general for Queen Elizabeth I, chief judge of King James I's Courts of Common Pleas (1606–1613) and the King's Bench (1613–1616), and later as an opponent of King Charles I in the Parliaments of 1626 and 1628. Coke's authorship of twelve volumes of *Reports* and his four volumes of the *Institutes of the Laws of England* created landmark publications to his contemporaries and later users.

¶98 In the introduction, David Chan Smith takes issue with many historians' views of Coke's position, arguing that Coke was "preoccupied with the abuse of legal power by private individuals" (p.7), and "reframes [his] early career and jurisprudence within contexts outside of the traditional battle between liberty and prerogative" (p.13). Smith follows Coke's career through the four decades of the 1580s to 1610s as litigation increased in the common law courts. Smith argues that Coke's role as attorney general was an important development in securing law reform and safeguarding priorities of the Elizabethan war-state. Coke strengthened the interpretation of the treason law that supported a strong monarch and royal authority. Later, as judge, he showed his concern for the delegation of royal authority to the commission of the sewers involving the use of drainage and eminent domain in the Fens in 1609. Coke's *Reports* were a reaction to poor court reporting and a method to provide "a framework of rules and principles to restrain his fellow lawyers" (p.57).

¶99 Seventeenth-century historiography concentrated on legal history of the common law and the ecclesiastical history of the English church's battle against the Roman Catholic papacy. Coke's history was a defense of the common law and its relationship to the monarch. Coke viewed William I's role in the Norman Conquest as carrying over Anglo-Saxon laws and introducing new laws. Coke identified with the statutory law that the English kings helped to develop. In addition, Coke attempted to counter popish arguments against the Elizabethan religious settlement. English writers tried to distinguish between spiritual and temporal jurisdiction, church jurisprudence, and resistance.

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¶100 In chapter 5, Smith deals with Coke's arguments on method and reason in the law to counter the contemporary view of the law's uncertainty. Coke supported written memory over oral memory. He argued that "artificial reason responded to the frailty of memory and human reason, and the hermeneutic challenge the lawyer faced" (p.154). Coke's writings in his *Reports* and *Institutes* were to establish the common law as "certain and sure." Coke's well-known comments in *Bonham's Case* (1610) did not mean that the common law courts would strike down a statute; "[r]ather, the judges would construe a statute's meaning and make it consistent with their ideas of reason" (p.174).

¶101 In chapter 6, Smith discusses Coke's role in fighting the King's Court of High Commission. Coke supported the monarch and did not want the king to serve as a judge by himself because of his ability to make mistakes for which there were no remedy. Coke also opposed church courts as alien to England and supportive of the papacy, which was a usurpation of the authority from the king and the law. Coke supported the High Commission, but wanted to limit its power to only religious-related prosecutions and was against its use of temporal punishments that fell outside of the statutory law.

¶102 Smith presents the judicial controversy between Coke and Lord Egerton over the common law versus chancery jurisdiction in the early seventeenth century that Smith sees as jurisdictions in a "judicial clash [that] involved two incompatible solutions to the challenges of a growing and interdependent legal system" (p.214). Smith describes the interdependency between both courts that Coke felt should show "the pre-eminence of the common law as the king's law," while Lord Egerton saw the "Chancery as the forum where the king's justice–giving might reach its fullest expression" (p.248).

¶103 In the final chapter, Smith discusses the principle of delegation of power: "God had delegated power to the king, who in turn assigned it to others in order to protect his people" (p.250). Following Henry of Bracton's view of the king's power that included a concept of moral kingship, Coke saw the king as the fountain of justice, who had to be protected against those who would misuse the legal power.

¶104 Smith's conclusion highlights the events of 1616, when James I dismissed Coke from his judgeship of the Court of King's Bench. The dismissal was based on the report of the archbishop of Canterbury's support of Chancery, the judges' failure to comply with the king's determination in the *Case of Commendams* (1616), and James's view that the "common law jurisprudence and its ideas of artificial reason [are] obscurities that contributed to the problem of uncertainty and served the judges' turn to extend their influence over the system" (p.284).

¶105 Smith has presented a highly influential volume on Edward Coke's jurisprudence up to the time of his dismissal by King James I from the Court of King's Bench. His knowledge of Coke's writings and jurisprudence, based on his use of both manuscript and published primary sources, will make this work a definitive study of Coke's early life. This book is recommended for all collections of English legal history.

Stolker, Carel. *Rethinking the Law School: Education, Research, Outreach and Governance*. Cambridge: Cambridge University Press, 2014. 454p. $125.

Reviewed by Ashley Ahlbrand[*]

¶106 Two-year versus three-year programs. Experiential learning versus lecture. Online versus hybrid versus face-to-face instruction. Keeping up with the developments and challenges facing U.S. law schools can be tough enough, but in *Rethinking the Law School: Education, Research, Outreach and Governance*, Carel Stolker, Rector Magnificus and President of Leiden University, takes on a much more daunting task: an examination of the state of legal education across the world.

¶107 The book begins generally, with initial overviews of legal education in specific regions of the world, the modern state of the university at large, and a discussion of whether and how law schools fit into the university's academic and research agenda. The author compares the research of legal scholars to research in other disciplines, both addressing criticisms that such scholarship is pseudo-law and praising legal scholarship for its natural predilection toward interdisciplinary study.

¶108 The book picks up steam in chapter 4, discussing the education of law students. Common problems are addressed, such as whether it is better to treat law as a profession or an academic discipline. Indeed, the author notes that the dissatisfaction constituents often feel toward legal education is circular; to prove this, the author includes excerpts from a 1931 Dutch publication that complains about the lack of practical education, the dearth of faculty-student interaction, and the tendency of students to seek the "easy A." On this particular topic, the author concludes that there is still a place for both practical and doctrinal education in law school and that the two must go hand-in-hand to graduate successful jurists. The author proposes that what we need is a true study of legal education. With Ph.D.s awarded in other disciplines of law, why have we yet to see a doctoral program in legal education?

¶109 Chapter 5 ventures into discussion of pedagogy, a timely read to supplement the ABA's new Standard 302 on learning outcomes.[16] As the author notes, professors tend to focus on the delivery end of teaching and learning rather than focusing on learning and the student. At this point, the author delves into a discussion of learning styles and methods of teaching, such as case dialogue, role play, and the like, concluding that law schools have for too long relied on one method of teaching to the exclusion of variety. This chapter emphasizes the need for teachers of law to make teaching a more significant focus. After all, "it looks as if the institutions of higher education prefer producing *dead* papers, read by almost nobody, over educating *living* students" (pp.184–85). (The author notes that this statement is somewhat exaggerated, and goes on to emphasize the equal importance of research in a later chapter.) For this shift to happen, however, the administration must give teaching equal emphasis, support, and encouragement.

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16. Am. Bar Ass'n, Standards and Rules of Procedure for Approval of Law Schools 2015–2016, at 302 (2015).

¶110 Lest I give the erroneous impression that Stolker would do away with legal scholarship in favor of total devotion to the teaching of law, the sixth chapter discusses the importance of legal scholarship, describing our need for its creativity and close monitoring and critique of developments in the law. The author divides legal scholarship into three perspectives: analytical, empirical, and normative; describes the pros and cons of each; and notes the trends in legal research throughout the world (e.g., while in the United States we are seeing a rise in empirical legal research, scholars in Europe tend toward doctrinal legal research). The discussion of legal research changes somewhat in chapter 7, focusing on how legal research is produced, comparing law journals to journals in other disciplines, and comparing the often confounding concept of the student-run law journal in U.S. law schools to the systems in other countries, which range from peer-reviewed to student-run with heavy scholarly oversight. Stolker notes and encourages the move toward open access to legal scholarship, stating that only through such a move can we hope to make law a truly global discipline. (This is the portion of the book where law librarians factor the most as well, with Stolker praising the work of academic law librarians in authoring the Durham Statement on Open Access to Legal Scholarship.[17]) The book concludes with a look at the governance of law schools and how to encourage and foster creativity in legal education and scholarship.

¶111 If you are looking to examine global trends in legal education, this book is a great asset, whether you seek to read it all or to focus on a specific chapter. Read as a whole, the book starts out a bit slow, concentrating on the place of the law school in the university and discussing challenges that face modern universities today. It really picks up speed once you get to chapter 4 and all subsequent chapters; it is at this point that Stolker begins to focus on individual aspects of law school and legal education, from pedagogy to scholarship to governance and fostering creativity. While none of the topics addressed are particularly new (greater importance placed on research than teaching, inflexibility of teaching styles, treating students as consumers or stakeholders), seeing these familiar topics discussed on a global scale, noting both our similarities and our differences, provides a unique and fascinating perspective. By comparing and contrasting legal education in nations around the world, and by understanding the values placed on legal education in legal systems other than our own, we may find ourselves better able to appreciate, embrace, and pass on the values of our own institutions to the students who will take these ideals into the world.

Wallach, Philip A. *To the Edge: Legality, Legitimacy, and the Responses to the 2008 Financial Crisis*. Washington, D.C.: Brookings Institution Press, 2015. 319p. $34.

Reviewed by Kristen M. Hallows[*]

¶112 Why can lawful actions be viewed as dubious while extralegal steps are heartily endorsed? This is precisely what Philip A. Wallach sets out to determine in his introduction to and survey of the divergence of law and legitimacy in times of crisis.

17. Durham Statement on Open Access to Legal Scholarship, https://cyber.law.harvard.edu/publications/durhamstatement (last updated Feb. 1, 2012) [https://perma.cc/JBD8-VHUY].

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¶113 Although the 2008 financial crisis wrapped its arms around the world, Wallach's subject is crisis response in the United States and, more specifically, the responders themselves: the Federal Reserve, the Department of the Treasury, and the Federal Deposit Insurance Corporation (FDIC). Schmitt's challenge[18] is plucked out of its national security framework and applied to financial crises in the second chapter. The third chapter begins a breathtaking chronological analysis punctuated by brief detours of historical or legal significance; the result is a nearly omnipresent view that only hindsight can bring, and Wallach executes it masterfully. Readers will encounter the missed opportunity, the preventable demise, and Cadmean victory: all the ingredients of a scintillating biography or memoir.

¶114 Throughout, Wallach signals actions that escaped scrutiny as well as those that were subjected to intense criticism, which is particularly helpful for readers whose chosen news sources may have presented a slanted or overly generalized view or who may have missed some of the events that fell below the radar, such as the use of the recondite Exchange Stabilization Fund to guarantee investments in money market mutual funds.

¶115 The fourth chapter is devoted to the notorious Troubled Asset Relief Program (TARP). Many readers will easily recall the two main criticisms of TARP, which were its ineffectiveness at mitigating the foreclosure crisis and the unknowability of recipient banks' uses of taxpayer money. Certain topics are reserved for later chapters, but these thirty-nine pages will take you deeper than you thought possible into an imbroglio of special purpose vehicles, fluid legal boundaries, and pure politics. Legal gymnastics that escaped protestation did so because they were largely successful, while those that were less fruitful found themselves eviscerated by incensed commentators of all backgrounds.

¶116 Special attention is paid to the Obama years in the fifth chapter, as impending doom was less of a possibility, yet trust had been deeply eroded. Legality *and* legitimacy posed a continuing challenge, especially as they pertained to governmental aid extended to Chrysler and General Motors. Wallach is quick to provide the benefit of the doubt and sorely needed perspective, but he is also swift to point out irregularities and partisanship. Notably, he uses the AIG bonuses to illustrate "both the limitations and the usefulness of the rule of law" (p.138). Wallach explores the difficult-to-define but largely feared concept of bank nationalization, and he delves into another area of great concern to the public: foreclosure relief. In short, the Treasury's efforts to assist homeowners were generally viewed as failures; perhaps most hair-raising is the government's likely diminished capacity to combat future crises.

¶117 An excellent example of constraint brought about by loss of legitimacy was the short career of the Public-Private Investment Program, an actual troubled-asset relief program devised in 2009 that aroused an apoplectic response. Wallach effectively exposes the crippling death spiral that can ensue when democratic legitimacy

18. Carl Schmitt, a twentieth century German jurist and legal theorist, argued that societies that adhere to the rule of law may be incapable not only of quelling a crisis but also of producing legitimacy in the aftermath. *See* Luca Siliquini-Cinelli & Béatrice Schütte, *Conceptualizing the Schmittian "Exception" in the European Union: From the "Opt-Out" Procedure(s) to Indirect Forms of Secessionism*, 15 Chi.-Kent J. Int'l & Comp. L. 1, 21–22 (2015).

is anything short of robust in the face of a financial meltdown (illegitimacy begets inefficacy, which creates more illegitimacy).

¶118 The sixth chapter begins by illuminating the legitimizing effect of honest accountability. Interestingly, TARP's most vocal critics—Neil Barofsky, Elizabeth Warren, and others—did not bring the scathing reproof that some may have expected. Wallach next investigates two major points of contention: the "backdoor bailouts" and the actual cost of the crisis responses. Once again, Wallach does not hesitate to identify illogical or imbalanced bombast, which is perhaps the most refreshing aspect of his book.

¶119 They say you never step in the same river twice, and the Dodd-Frank Wall Street Reform and Consumer Protection Act aimed to ensure this for the American public. Rather than evaluate the law itself, Wallach focuses on two distinct impacts: limitation of power and prevention of "too big to fail." In his analysis of the Orderly Liquidation Authority, meant to accomplish the latter objective, Wallach again summarizes the central dilemma, which I will paraphrase here: a rigid solution in line with the rule of law may inspire feelings of security during halcyon years, but it will be speedily sidestepped in times of crisis; on the other hand, a more flexible rule can appear vulnerable to caprice and consequently fail to summon anything but the appearance of illegitimacy.

¶120 *To the Edge: Legality, Legitimacy, and the Responses to the 2008 Financial Crisis* adds something new and valuable to the discussion of one of the most reverberating events in recent history. Wallach explores the evolution of his own thinking, and he suggests a number of approaches for maximizing legitimacy, including the enduring cultivation of public trust and the slightly Panglossian establishment of an emergency fund referred to as the "accountable slush fund." For a reader with an appropriate level of interest, this book would make fine airplane reading. Its accessibility does not threaten its authoritativeness; for this reason, it is also recommended for corporate, law, and public libraries.

Witt, Stephen. *How Music Got Free: The End of an Industry, the Turn of the Century, and the Patient Zero of Piracy*. New York: Viking, 2015. 296p. $27.95.

Reviewed by Wilhelmina Randtke[*]

¶121 In recent decades, copyright law has become a bigger issue because of real-world events. *How Music Got Free: The End of an Industry, the Turn of the Century, and the Patient Zero of Piracy* is not about law, but instead is about recent history that impacts copyright law, specifically, the birth and proliferation of online music sharing starting in the 1990s. Stephen Witt is a hedge fund manager turned journalist with no formal training in law who left finance to research and write a history of file sharing. The writing is in the new journalism style, with a focus on personalities. The book follows the lives of three main characters from 1995 to the present: a German sound engineer who developed the mp3 format, the CEO of Universal Music Group (UMG), and a factory worker at a plant where music CDs

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were pressed. Through these characters the book gives a history of music file sharing and how technology reshaped the commercial music industry.

¶122 In contrast to the enthusiasm and excitement with which music and the key characters are treated, the tone of the book is ambivalent toward copyright law. Copyright law is accepted as a fact of life. There is little mulling about injustice, nor advocating for change, nor even descriptions of what the law is.

¶123 Witt's financial background is apparent in drawing out the story of the mp3 format. In 1995, the international standards body that determined best formats declared a different format superior for sound compression. Politics and business deals had steered the decade-long competition more so than technical perfection. The mp3 format had consistently scored highest in sound tests. Funding would be discontinued in the next fiscal year, and the mp3 research team spent the remaining year releasing software for mp3 players and compressors to encourage industry adoption before the project was to be disbanded. In 1995, it became technologically possible to share music files online. The mp3 was adopted first by file sharers, then by industry in response to demand for portable mp3 players. Witt follows engineer Karlheinz Brandenburg, who drew revenues off patents on licensed mp3 players and ultimately became wealthy and politically savvy.

¶124 By interviewing file sharers and through intense primary research, Witt explores the culture of file sharing in the 1990s and particularly "The Scene" culture of top-level warez groups (these groups were secretive, with selective membership criteria and specific technological requirements for ripping files—that is, copying files from CDs to the hard drive of a computer). He located a secret database of text files accompanying Scene releases since 1982. By tracing the history of the file-sharing community, Witt discovered that, while a copy of a song might be downloaded from numerous places, the original file tended to have the same source in one of only a handful of top-level Scene groups.

¶125 In particular, Witt portrays Dell Glover as a driving force in the music industry, the "patient zero" of piracy. In 1995, Glover was a computer hobbyist with a high school education doing manual labor at a CD pressing plant, which was acquired by UMG, in rural North Carolina. He participated in file sharing and began a side business selling bootlegged DVDs of movies from the trunk of his car. Because of his job at the plant, he was contacted by a file-sharing group that specialized in sharing prerelease music. The group tracked release dates and schedules, and when CDs would likely be pressed. Glover got requests for specific prerelease CDs, smuggled the CDs home, then ripped mp3s for the group. In some cases, these prerelease leaks resulted in UMG changing release dates or even canceling an album release.

¶126 The story of record company CEO Doug Morris is a rehash of the better known history of file sharing. Morris managed UMG from 1995 until 2011, during a time when it was arguably the most successful music publisher in the United States. Through Morris's story, Witt glosses on the history of Napster, the music industry's lawsuits against file sharers, and the financial impact of file sharing on the industry. This material can be researched elsewhere. In this book it gives context to the technological and cultural history of file sharing.

¶127 Witt draws on extensive primary research. He read court documents in file-sharing prosecutions, researched news articles, and then went further. He interviewed the sound engineers who developed the mp3. He interviewed Morris and shadowed him in his current job at Sony as he previewed a new artist. He interviewed file sharers. He interviewed former workers at the North Carolina CD plant. He interviewed Glover, who had been prosecuted for file sharing and so could talk. Because of the nature of the research, sources may have required anonymity. Citations are often sketchy and may refer to examinations of privately held files or to interviews with file sharers in general.

¶128 *How Music Got Free* is a good addition to an academic law library collection. The material here cannot be found elsewhere, and it is relevant to research regarding why copyright became more prominent in the 1990s, the historical forces that shaped the law, and how the law is applied. It is a fast-paced read, and law libraries with popular or leisure reading collections will benefit from having a copy on the shelves.