Keeping Up with New Legal Titles[*]

Compiled by Susan Azyndar[**] and Susan David deMaine[***]

Contents

Cruz, Ted. *One Vote Away: How a Single Supreme Court Seat Can Change History*. Washington, DC: Regnery Publishing, 2020. 240p. $28.99.

Reviewed by Tracy Eaton[*]

¶1 *One Vote Away*, written by Senator Ted Cruz (R-TX), is part autobiography and part legal scholarship, but wholly partisan. Senator Cruz writes in a readable style, and he presents an engaging examination of his history with the U.S. Supreme Court, several notable opinions decided by a one-vote majority (primarily selected because of his involvement in the cases as well as their subject matter), and his vision of ideal nominees for the Court.

¶2 The autobiographical parts of the book bring context and interest to the discussion of constitutional issues and case summaries. The introduction begins during Cruz's presidential campaign in 2016, when he learned of the unexpected death of Justice Scalia. It describes Cruz's strong conviction that the vacant seat on the Court should not be filled in an election year. When he wrote this introduction, Cruz may not have anticipated its irony, as he pushed for the confirmation of Amy Coney Barrett to fill Justice Ruth Bader Ginsburg's vacant seat mere weeks before the 2020 presidential election. After this now-hypocritical beginning, Cruz provides a brief personal history, including his clerkship for Chief Justice Rehnquist; subsequent legal practice; candidacy for President; and solicitations from President Trump not once, but twice, to consider being nominated as a Supreme Court Justice himself.

¶3 A discussion of eight cases decided by a 5-4 majority comprises the largest part of the book, as Cruz strives to demonstrate the importance of filling each seat on the

Court with conservative justices who believe, like Scalia did, in a strict construction of the U.S. Constitution. The cases address religious liberty, school choice, gun control, U.S. sovereignty, free speech, the death penalty, and election law. Each is presented primarily from a personal and partisan perspective, but Cruz gives interesting background and context from related cases and legislation. Unfortunately, the book lacks scholarly gravitas in that it omits citations for any of the statements that Cruz presents as fact to support policy arguments. Most of the cases are ones Cruz took part in, whether by having a hand in the litigation of the case or legislation related to the case. Sprinkled throughout the case discussions are anecdotes about Supreme Court Justices, Cruz, and the various other legal representatives involved. These anecdotes definitely make the book more interesting and readable, and also contribute to its autobiographical nature.

¶4 Cruz spends the greatest number of pages on his discussion of *Bush v. Gore*,[1] a case with which he was extensively involved after working on the Bush campaign in 2000. The description of the legal battle regarding the Florida recounts in that election is primarily autobiographical, particularly as he weaves in stories about his courtship of and marriage proposal to his wife, Heidi. However, a look at the case from the perspective of the Bush legal team is a fascinating read and, again, particularly so in light of the timing of the book's publication amid legal battles with respect to vote counting in another presidential election.

¶5 The book wraps up by reviewing past U.S. Supreme Court appointments by both Democratic and Republican presidents. It concludes that Republicans have not been nearly as successful at appointing Justices who stay true to the policy initiatives of their respective party, leading to a roadmap for proper selection of nominees going forward. Cruz details all of the nominations by Republican presidents as far back as Eisenhower, noting where mistakes were made, including the two Justices nominated by President Trump before publication of the book. Somewhat disrespectfully, Cruz asserts that too many of these past Republican-nominated Justices have abandoned their conservative ideologies in favor of good press and invitations to Washington, DC, cocktail parties. He posits a litmus test for a "good" Supreme Court Justice as someone who, prior to nomination, has faced multiple controversial constitutional issues and has taken, and maintained, a conservative position despite vilification by the public or press for doing so. Only with this type of track record can there be confidence that a potential Supreme Court Justice will maintain a conservative position when presented with these issues on the high court, Cruz argues.

¶6 *One Vote Away* feels a bit unfinished as it addresses topics that Cruz could not have been sure would be raised again so shortly after publication. It is not an objective, complete, or scholarly look at U.S. Supreme Court cases decided by a slim majority. However, as a partial autobiography and an opinion piece on what Cruz thinks qualifies one as a Supreme Court Justice, it is an interesting book that would be a good addition to any library.

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1. 531 U.S. 98 (2000).

Ebers, Martin, and Susana Navas, eds. *Algorithms and Law*. Cambridge: Cambridge University Press, 2021. 297p. $110.

Reviewed by Aamir S. Abdullah[*]

¶7 *Algorithms and Law* is a collected volume of topics dealing with the intersection of law and algorithms, artificial intelligence (AI), machine learning, and robotics. Although it reads as a cohesive work, each chapter is written to stand alone. Overall, the book gives the impression of a Wikipedia spiral down a rabbit hole—and this reviewer means that in the best way. Interwoven through each chapter is the notion that the law must adapt to our world's rapidly advancing technology. These chapters provide insight, depth, direction, and thought-provoking analyses.

¶8 Algorithms comprise all software, and these algorithms base decisions on inferences that ultimately and merely determine correlations. These algorithms are then used to presumably make life easier, but to achieve this comfort, people must give up their personal data. As algorithms continue to advance in the realm of AI and machine learning, multiple issues arise in a wide range of legal areas: ethics, security, liability, privacy, regulation, and even ownership. Thankfully, *Algorithms and Law* addresses all these concerns.

¶9 This dense book is divided into 10 chapters, with each chapter written by one to three authors and covering a separate topic. Topics range from liability for harms done by AI systems to the commercialization of digital data. Because of the dense material and sheer volume of information, readers may find it burdensome to read the book as a single narrative, which is not a shortcoming; the book should be enjoyed piecemeal. That is to say, each chapter should be savored and parsed with a fine-toothed comb. Readers should not simply expect to read a chapter the whole way through without being ready to highlight and take notes along the way. Fortunately, the book was released in both analog and digital formats, making this an easier task regardless of one's preferences.

¶10 Every chapter of *Algorithms and Law* provides a plethora of footnotes, adding to the value of the content. These footnotes are, in this reviewer's opinion, the best feature of *Algorithms and Law*. The chapters themselves are comprehensive and written for a wide audience, but the footnoted citations continue the reader's journey.

¶11 Robots (both physical instances and digital AI) are now found almost everywhere: "The spectrum of applications using AI is already enormous, ranging from virtual assistants, automatic news aggregation, image and speech recognition, translation software, automated financial trading, and legal eDiscovery to self-driving cars and automated weapon systems" (p.41). The prevalence of algorithms points up the importance of this book.

¶12 *Algorithms and Law* focuses on Western society, particularly the United States and Europe. One author argues that "[t]he European Union is a pioneer in the regula-

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tion of automated (algorithmic) decision-making" (pp.xviii–xix). Readers should be aware that the U.S.-Europe focus overlooks work being done in other parts of the world.

¶13 A more minor shortcoming: readers will find some typos and a formatting issue in certain chapters. However, these minor flaws should not detract from the overall gravitas of the material presented. If these minor issues bother a reader, it will be the only issues a reader complains about.

¶14 This book invites readers to address a plethora of technology issues and discusses applicable regulations and laws. Overall, this book is recommended for any institution that values engaging in the conversation about technology's impact on the law.

Goldfarb, Ronald. *The Price of Justice: Money, Morals, and Ethical Reform in the Law*. Nashville: Turner Publishing, 2020. 210p. $27.99.

Reviewed by Phebe E. Huderson-Poydras[*]

¶15 Ronald Goldfarb's *The Price of Justice: Money, Morals, and Ethical Reform in the Law* lays out a compelling argument for justice reform. Goldfarb methodically examines the legal system, comparing what the legal profession aspires to be with what it has become. He similarly assesses legal education, demonstrating inherent shortcomings that may contribute to our legal system's problems. Part and parcel of this analysis, Goldfarb further casts light on how those with money often have an unfair advantage over those without, which significantly impacts lawyer ethics, morality, and the fair administration of justice in our legal system. He poignantly proves that our justice system is problematic and requires change, presenting a very timely read.

¶16 Throughout *The Price of Justice*, Goldfarb juxtaposes the representation given to indigent defendants to that given the wealthy, examining this comparison through the lenses of money, morality, and ethics. Goldfarb thoroughly assesses the justice system, both criminal and civil. Using case law and the writings of legal professionals, he further establishes the need for reform.

¶17 A well-organized work, *The Price of Justice* includes a foreword written by Senator Bernie Sanders, an introduction, five chapters, and an index. In the introduction, Goldfarb applauds diversity (racial and gender) and technological advances in the law. However, he laments changes that have caused law practice to become a business. This business model makes it more likely that wealthy clients will receive better access to justice than those who are not.

¶18 Goldfarb's argument for justice reform begins by exploring two myths that underlie the legal profession. The first is that lawyers do what they do because they are bound to their clients—in essence, zealously representing their clients because they have no other choice. The second is that lawyers do what they do because of the wisdom embedded in the adversarial system's operation. Goldfarb provides thorough examples

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that unmask these illusions about lawyers and illustrate that the overall ideology of neutrality and impartiality is often not present in the legal system.

¶19 Goldfarb thoroughly analyzes all aspects of the criminal justice system, with notable discussions concerning prosecutorial misconduct, policing, scientific evidence, the bail system, and economics. This analysis supports his assertion that those without money are not provided the same standards of justice as those with. To cure the criminal justice system's inequities, Goldfarb argues, we must eliminate the financial disparities in access to legal representation.

¶20 He also provides an in-depth assessment of the civil justice system. Here, too, money significantly impacts access. Many poor and middle-class people lack representation altogether or are underrepresented because they are unable to pay attorneys' fees. Attorneys' personal choices contribute to this problem because where attorneys work plays a pivotal role in the availability of equitable services. Goldfarb also advocates for the role public interest attorneys play in support of justice.

¶21 In conclusion, Goldfarb believes all components of the legal profession should participate in reform. Law schools should embrace ethics more widely across the curriculum and add instruction on law practice to make sure students graduate with the tools necessary to adequately represent clients. Goldfarb advocates formulating a new career model to help students find, and encourage them to pursue, employment in public interest law and social justice. To change the process, all must participate in reform.

¶22 Academic law libraries should add this title to their collections, especially as law schools begin attending more deeply to access to justice. It could also serve as recommended reading for a professional responsibility class.

Gow, Erin. *Hate Crimes: A Legal Research Guide*. Legal Research Guides, Vol. 81. Getzville, N.Y.: William S. Hein & Co. 2020. 57p. $89.

Reviewed by Alyssa Thurston[*]

¶23 The lamentable truth is that hate crimes, which "target an individual due to an immutable characteristic that marks them as part of a particular group," have steadily increased both in the United States and around the world (p.3). In November 2020, in fact, the Associated Press reported that hate crimes in the United States have risen to their highest level in more than a decade.[2] *Hate Crimes: A Legal Research Guide*, therefore, practically embodies the definition of timely.

¶24 As author Erin Gow concisely notes, researching hate crimes is hardly a straightforward task. Materials on the topic are often marked by "imprecise and varied language," and hate crime laws, definitions, and penalties are inconsistent across juris-

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2.   Michael Balsamo, *Hate Crimes in US Reach Highest Level in More than a Decade*, AP News (Nov. 16, 2020), https://apnews.com/article/hate-crimes-rise-fbi-data-ebbcadca8458aba96575da905650120d [https://perma.cc/V85N-ZW3C].

dictions (p.4). The subject also implicates multiple areas of law, including criminal law, gender issues, and human rights, and it often becomes entangled with related but separate concepts such as hate speech. Gow has clearly kept these considerations in mind in all aspects of her guide, from the selection and annotation of resources to the background information and commentary presented. In particular, she has judiciously curated her selections to be representative rather than exhaustive, an approach that makes researching this complex area of law more focused and accessible for all levels of researcher.

¶25 Annotated materials are divided among three chapters. Gow first introduces U.S. primary law, noting that legislation "[is] the backbone of hate crime law," which is then "fleshed out" by court challenges (p.8). In an early indication of her sensitivity to researchers' variable areas of interest under the hate crimes umbrella, discussion of relevant federal legislation not only provides detailed descriptions of the few existing federal hate crime laws, but also directs readers to related federal laws on topics such as domestic violence and disability. The subsection on state-specific legislation selects several representative state hate crime laws for detailed annotation while helpfully directing the reader to topical multistate surveys for further research. Selections of federal and state case law and numerous resources for hate crime statistics round out this chapter.

¶26 Gow observes that secondary source research, the focus of the next chapter, is essential for placing hate crime laws in historical, political, and sociocultural context and for tracking developments in the field. Selected materials start with relevant sections of various legal encyclopedias and progress to books, law review articles (encompassing annotated choices and a more extensive unannotated list), news sources and blogs, organization and advocacy websites, Congressional Research Service reports, and guidance documents. The resources included here aim at a variety of intended audiences and cover a range of subjects within the broader hate crimes category, and Gow takes care in many annotations to explain just for whom and why a particular resource would be useful. She also devotes some space to suggested nonlegal research sources and strategies for the interdisciplinary researcher.

¶27 The final chapter introduces resources on foreign and international hate crime laws, limiting its scope to resources written in English. The United Nations, the Council of Europe, the European Union, Germany, the United Kingdom, and Canada receive the most attention, with Australia, Ireland, New Zealand, Singapore, and South Africa also making showings.

¶28 Gow describes her book as "appropriate for a variety of researchers, from the novice through the expert" (p.1). This title is not only "appropriate" but, indeed, could be considered indispensable for nearly anyone researching hate crimes law, from law students and academics to practicing attorneys and community activists. Highly recommended for all academic libraries and for court and firm libraries whose caseloads include hate crimes.

Jones, Emma, and Fiona Cownie, eds. *Key Directions in Legal Education: National and International Perspectives*. New York: Routledge, 2020. 237p. $128.

Reviewed by Sue Silverman[*]

¶29 On what basis should we evaluate the success of a law school? This question propels *Key Directions in Legal Education*, a collection of essays that explores contemporary debates in legal education from the perspectives of scholars around the world. Each of the six parts contains two short chapters providing a comparative discourse covering a range of issues affecting law schools today, including pressures from external stakeholders, the influence of technology on law and legal practice, and pedagogical approaches to producing practice-ready graduates. This format proved enlightening, as each perspective expands on the other's ideas and helps the reader gain a fuller understanding of the issues. Each chapter draws heavily on previous research as reflected in extensive reference lists that readers are likely to find valuable.

¶30 Should law school success be measured by rates of employment, intellectual or pecuniary gains to the university or profession, or the graduation of practice-ready attorneys? In other words, what should be the core objectives of a legal education? The shift from professional self-regulation to regulation by market forces complicates this question. Chapter 1 discusses how the growing concern with economic value has led to a focus on employability, which in the United Kingdom has spurred changes in how solicitors will qualify beginning in 2021: aspiring solicitors will have to pass the Solicitors' Qualifying Exam (SQE), and they may hold any degree, not necessarily a law degree. These changes present an opportunity for law schools to redesign degree programs outside the previous qualifying law degree requirements. Law schools might consider whether to define their programs primarily as a liberal arts education, preparation for practice, or some combination of the two. This debate underlies much of the book's discussion.

¶31 Several authors note the historic challenges in producing practice-ready graduates. Seán Arthurs summarizes the criticisms waged against U.S. law schools that ultimately resulted in the ABA's adoption of experiential learning requirements. But what makes a law student "practice-ready"? A curriculum focused on passage of an exam does not necessarily contribute to a fuller understanding of the law's place in larger societal contexts. In part 2, the authors argue that today's challenges call for an interdisciplinary approach to studying law, one that emphasizes how the law functions within different contexts, such as economics or climate change studies. This approach encourages students to think creatively, solve problems, work with other disciplines, and view the law as a vehicle for change. As Mandy Burton and Dawn Watkins note, "[a]n academic education is supposed to challenge the status quo, not simply teach students to leech off it" (p.41). To illustrate what an interdisciplinary course might look like, Ubaldus de Vries highlights several intriguing programs in the Netherlands. For example, an environmental law course on energy transition and its technical challenges

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at Utrecht University, open to both geography and law students, examines the interrelationship of geographical, technical, and legal questions.

¶32 Moreover, focusing primarily on "employability" may contribute to negative outcomes in student well-being. Part 5 examines student well-being and how to improve learning success. Caroline Strevens remarks on the importance of intrinsic motivation—a choice to do something for the joy of experiencing the activity as an end in itself. Yet, consistent messaging that students should engage in activities to enhance their CVs diminishes students' intrinsic motivation and replaces it with extrinsic—e.g., a potential employer's—values, which can negatively affect well-being.

¶33 Clinical legal education is frequently promoted as an effective approach to preparing students for practice. In part 4, Richard Grimes and Seán Arthurs scrutinize the benefits and challenges of incorporating clinical legal education into law school curricula. They then describe helpful models of how a clinical legal education course might be structured to maximize learning objectives. As described in part 3, clinical legal education can also expose students to developing legal technologies and understanding how technology can facilitate access to justice.

¶34 *Key Directions in Legal Education* touches on several questions currently dominating conversations in legal academia across jurisdictions. While primarily focused on international law schools, the themes and discussions apply to debates on the direction and objectives of U.S. legal education. Furthermore, these essays offer several ideas and perspectives that may inspire and inform American legal educators in developing their courses and curricula. This volume would be a welcome addition to any academic law library collection.

Lageson, Sarah Esther. *Digital Punishment: Privacy, Stigma, and the Harms of Data-Driven Criminal Justice*. Oxford: Oxford University Press, 2020. 242p. $34.95.

Reviewed by Rena K. Seidler[*]

¶35 Sarah Esther Lageson begins *Digital Punishment* with an electrifying, true example of a man in the 21st century who is denied a job and a home rental because a criminal record found on the Internet identifies a crime he allegedly committed in 1901, decades before his birth. In addition to listing his only one actual arrest in 1982, his digital criminal records include several erroneous aggravated assaults and other convictions. In short, he is being punished today for wildly inaccurate digital records of his alleged criminal history. This example propels a cogent, enlightening analysis of the impact of digital criminal records.

¶36 Through seven chapters and a compelling conclusion, Lageson seamlessly paints a picture of the potential lifetime impact of a criminal digital footprint, the criminal record or mugshot, and the best next steps in addressing this unrelenting punishment. Imagine being unable to escape a criminal past, accurate or not, because the information is available at the fingertips of anyone with a computer and Internet access.

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Lageson does a remarkable job of bringing attention to how, in her words, "[the] intersection between the criminal justice system and technology reproduces social inequality at the speed of the internet" (p.11). The social inequality of technology literacy that produces and drives this criminal data becomes quickly apparent, and Lageson addresses in her analysis the perspectives of those being harmed, the police networks where the information is originally created, the private data companies that purchase the information, and the many locations where data can hide in the digital world.

¶37 *Digital Punishment* is an easy read, well written, engaging, and thought provoking. It thoroughly addresses the many potential harms of releasing criminal records and mugshots without regard to their accuracy, as well as their digital dissemination to private data companies, which then use or disseminate them without any consistent regulation or oversight. Through interviews with people who sell public records, Lageson brings to light the myriad problems in putting criminal records into the hands of profit-driven businesses, including incorrectly uploaded information and information piecemealed in such a way as to present an inaccurate picture of an individual's criminal history.

¶38 Later parts of the book discuss activist resistance to continued public accessibility to some forms of criminal data. Lageson specifically addresses reform against accessibility and unethical or possibly illegal uses of mugshots, as well as the current legal and policy responses to the many forms of ongoing digital punishment. Lageson's conclusion that privacy rights far outweigh any gains realized from putting criminal history data on the Internet for all to see is unsurprising, and she adds a reminder that even if some criminal, digital footprints cannot be recalled, then perhaps such past crimes can be forgiven.

¶39 *Digital Punishment* is a good choice for anyone interested in data privacy, public access to criminal records, or digital punishment. Containing more than 50 pages of notes and citations, this book is also an excellent tool for finding additional resources on this fascinating subject. Recommended for all library types.

McTighe, Jay, and Judy Willis. *Upgrade Your Teaching: Understanding by Design Meets Neuroscience.* Alexandria, Va.: ACSD, 2019. 187p. $31.95.

Reviewed by AJ Blechner[*]

¶40 Why do students retain some lessons and forget others? How can teachers focus our efforts in the classroom to maximize student learning? What makes the educational strategies that we rely on tick? *Upgrade Your Teaching* seeks to answer these questions and more, offering a straightforward teachers' manual on the brain. Jay McTighe and Judy Willis reinforce the framework laid out in *Understanding by Design* (UbD), a 2005 work by McTighe and Grant Wiggins, with new developments in neuroscience research while also providing practical guidance for educators on how to implement concrete strategies in the classroom. *Upgrade Your Teaching* focuses on K–12 educa-

tion, but there is no shortage of takeaways for those interested in teaching adults, and law librarians who teach should give this title a chance.

¶41 The book begins with an introduction to the brain's structure, reticular activating system, bias toward pattern recognition, dopamine incentive, neuroplasticity, and memory construction. The authors then briefly review the UbD framework. In each subsequent chapter, McTighe, a lifelong educator, and Willis, a neuroscientist with more than 10 years of teaching experience, weave long-held educational strategies with the neuroscientific underpinnings supporting their use. Their interdisciplinary exploration covers goal setting for students, assessment techniques, and instructional planning in the form of AMT (Acquisition-Meaning-Transfer) and the WHERETO model (an instructional planning tool used to assess one's pedagogical practices).

¶42 This book is both valuable for veterans of the UbD model and approachable for newcomers. *Upgrade Your Teaching*, like *Understanding by Design*, does not require the reader to come to the text with scientific background knowledge. Rather, the authors present dense material in plain language, clear diagrams, and relatable examples. McTighe and Willis provide the foundation necessary to equip teachers with actionable, short-term, high-yield classroom improvements.

¶43 Many of the strategies outlined in the book are consistent with the needs of adult learners and, in fact, already form core components of legal research and writing instruction. For example, adult learners need to understand the reasons for learning new material and must be able to connect the material to relevant, real-world problems. McTighe and Willis explain this need in the context of the "dopamine reward response" (p.10), and they promote a "performance-based learning" (p.131) model that may include strategies such as the case method or projects that simulate realistic challenges, such as researching a legal brief or memo based on a hypothetical fact set. This book proposes that experiential learning and simulation are powerful tools for maximizing student learning, which may particularly interest those who followed the 2015 addition of the six-credit experiential learning requirement to the ABA Standards.

¶44 Two additional subjects likely to interest law librarians are how stress affects learning and how understanding the appeal of video games can improve teaching and learning. The authors write extensively on the neurological reasons students become less effective learners when experiencing high levels of stress. Stress and mental health impacts on law students are well documented, and while individual instructors do not have total control of their students' experiences, McTighe and Willis's chapter on creating a brain-friendly classroom is a worthwhile reminder. To foster a positive learning experience, the authors urge instructors to consider both the physical and psychosocial elements of the classroom climate.

¶45 Simple techniques teachers might implement in their own classrooms include syn-naps, "planned shifts in a learning activity that serve to return the amygdala from overdrive into the optimal state for successful flow of information" (p.143). An example of a syn-nap might be a "four corners" (p.144) exercise in which students visit each of the four corners of the classroom to perform a learning activity about a different type of secondary source material.

¶46 Second, the book explores what makes video games effective at captivating students. It then discusses how instructors might deploy those same elements in their classrooms. An ever-increasing number of law students grew up with video games as a ubiquitous and integral part of their lives. McTighe and Willis's guidance strikes a practical balance between identifying valuable insights and maintaining the integrity and gravity of the classroom. These strategies include clearly defining relevant, agreed-upon goals; remaining within the "zone of proximal development" (p.18); providing frequent, prompt, and specific feedback; and acknowledging "incremental progress" (p.18). These features, which serve as core components of recreation students already engage in, can be introduced into the classroom to maximize student learning, without necessarily fully gamifying the classroom.

¶47 The insights gleaned from *Upgrade Your Teaching* are likely to improve more than only our teaching strategies. Familiarity with the theory behind our practices and a common vocabulary around the rationale for our teaching techniques can help us to more effectively communicate with stakeholders regarding our instructional design choices. For teachers and instructional designers, this addition to the UbD canon revitalizes a classic teaching philosophy. Highly recommended for academic law libraries.

Monopoli, Paula A. *Constitutional Orphan: Gender Equality and the Nineteenth Amendment*. New York: Oxford University Press, 2020. 237p. $39.95.

Reviewed by Nancy B. Talley[*]

¶48 Imagine gender equality has been realized in the United States, and the Nineteenth Amendment of the U.S. Constitution, which enfranchised women voters, played a pivotal role in this great achievement. In *Constitutional Orphan: Gender Equality and the Nineteenth Amendment*, Paula A. Monopoli argues this scenario is possible when we better understand the political and legal landscape between 1920 and 1930, the years immediately following ratification, and reimagine how we could have capitalized on the Nineteenth Amendment to achieve this important goal.

¶49 Monopoli discusses the circumstances surrounding the ratification of the Nineteenth Amendment and explains why it failed to expand women's rights beyond suffrage. She addresses how suffragist organizations, state court decisions, a lack of federal enforcement legislation, and limited federal court involvement shaped what she calls the "thin" conception of the Nineteenth Amendment. Monopoli argues that this "thin" conception has thus far limited the scope of the Nineteenth Amendment to voting rather than as a mechanism to advance women's rights more broadly.

¶50 *Constitutional Orphan* is divided into an introduction and eight chapters, each covering a distinct yet connected reason the Nineteenth Amendment has historically been considered merely a prohibition on voting discrimination based on sex. In the book's introduction and first chapter, Monopoli provides essential background information on the ratification of the Nineteenth Amendment. She then explains how the

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priorities of the national suffrage organizations shifted away from the litigation that followed ratification toward other interests, including the Equal Rights Amendment and minimum wage and maximum hour laws. Monopoli argues that this shift, along with a lack of enforcement legislation at the federal level, prevented a fuller conception of the Nineteenth Amendment. In addition, she explains that without a federal presence in terms of enforcement legislation and with a lack of lobbying by suffrage organizations, state courts were left to flesh out important issues closely related to voting, such as jury service and holding public office. Without a cohesive approach to this litigation, a complex patchwork of judicial decisions limited the impact of the Nineteenth Amendment.

¶51 Finally, Monopoli argues it is not too late for the Nineteenth Amendment to support a broader approach to women's rights in areas such as pregnancy discrimination, contraception, and gender-based violence. In this final section of the book, she supports her arguments by citing to other scholars, showing that these topics are not entirely new. Nevertheless, Monopoli presents a persuasive argument that the Nineteenth Amendment still has the potential to play a significant role in the future of women's rights.

¶52 In *Constitutional Orphan*, Monopoli weaves how race, gender, and class in America during the early 20th century limited the scope of the Nineteenth Amendment to merely an amendment related to voting. This intersectionality makes this book a must-read for legal scholars interested in how race, gender, and class impact the American legal tradition. Monopoli's arguments are well reasoned and supported by authority. Her highly readable writing style retains an academic tone, with extensive footnotes to important primary sources and a comprehensive index. I highly recommend *Constitutional Orphan: Gender Equality and the Nineteenth Amendment* for all academic law library collections.

Robin, Corey. *The Enigma of Clarence Thomas*. New York: Metropolitan Books, 2020. 301p. $30.

Reviewed by Stephen Parks[*]

¶53 Enigma, something "hard to understand or explain; an inscrutable or mysterious person,"[3] is an apt description of the man author Corey Robin analyzes in *The Enigma of Clarence Thomas*. Two things are commonly known about the most senior Associate Justice on the U.S. Supreme Court: first, his confirmation hearing and the Anita Hill allegations and, second, his taciturn presence on the bench. Many people have preconceived opinions of this Justice based in large part on these two facts and on their own political leanings. As a result, many readers might not even consider this

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3. *Enigma*, MERRIAM-WEBSTER DICTIONARY, https://www.merriam-webster.com/dictionary/enigma [https://perma.cc/4KM3-X4FK].

book, thereby overlooking a complex, engaging exploration of an important figure in American jurisprudence.

¶54 Robin's thesis is provocative but worthy of consideration: Justice Clarence Thomas is a hard-core Black nationalist. Some might even say that Thomas is a Black separatist. Underlying the Justice's opinions and speeches of the last 30 years is a sense that race is a permanent and inescapable feature of our republic. Further, nothing that the political realm or the State can hope to accomplish will ever reach fruition, as both are utterly unable to deal with the social disrepair that flows from the fact of race. Many people, perhaps even Thomas's own critics, can identify with such a pessimistic outlook, especially as they look out over the Black Lives Matter movement over the last few years. Robin opines that perhaps this pessimism is a reason the Justice, while more vocal in the era of COVID-virtual oral arguments, is so quiet on the bench. Why would he choose to speak when his underlying vision—the permanence of race and the inability to overcome it—is so widely voiced by many, even by Thomas's loudest critics?

¶55 How does Robin reach this conclusion? With a fine-toothed comb, he sifts through Thomas's written opinions, speeches, biography, and background. Robin has left no page unturned. Sixty-one pages of copious notes are provided to counter each moment when readers question Robin's argument.

¶56 Robin presents well-researched, well-reasoned analysis divided into three sections, focusing on race, capitalism, and the Constitution. Using speeches given by the Justice and reflections on the Justice's own upbringing, Robin endeavors to explain how Black nationalism has seeped into the Justice's opinions of the last 30 years. Justice Thomas is pro-capitalist because he sees the free market, not any laws or any goodwill that Whites may create, as being the best method of affording Blacks more opportunity. He thinks nothing of restricting the vote because he thinks Blacks should give up on any hope that positive change will come about by lock-step Black participation in the political realm. He favors an expansive Second Amendment because he thinks Blacks should be armed, as the State is never truly going to be interested in protecting them or their property. These are just a few examples Robin marshals.

¶57 Is Robin right? It is difficult to say, as his thesis is such a thought-provoking one; perhaps that is the point. We should be willing to reconsider the most enigmatic Justice on the Supreme Court, seeing beyond a man accused of sexual harassment who doesn't speak. He speaks, all right, if we just are willing to listen closely.

¶58 If your law library is similar to mine, it likely has a sizable collection of titles either by or about current and former Supreme Court Justices. *The Enigma* is a title you should consider adding to that collection. While quite a few books have been written about Justice Thomas, most are heavily focused on his confirmation hearing and the Hill allegations. *The Enigma* is a welcome title that can assist readers to better understand one of the most influential Black men in America.

Shapira, Roy. *Law and Reputation: How the Legal System Shapes Behavior by Producing Information*. Cambridge: Cambridge University Press, 2020. 250p. $39.99.

Reviewed by Melissa Strickland[*]

¶59 In *Law and Reputation*, Roy Shapira begins by refuting the common economic belief that business reputation and related market forces are more economically efficient drivers of "good" behavior than litigation. Shapira explicitly disagrees with the idea that the legal system and the nonlegal system (here, reputation, as demonstrated by market forces) are separable in their effects on stakeholder activity. Instead, Shapira argues, the strength of market forces that lead to changes in stakeholder activity is often a function of the existing legal system. To prove this, Shapira breaks his argument down into three parts. In part 1, he explains how reputation works as a market force, both the idealized theoretical version used by many economists and the way it actually works. Next, he explains how the law and the legal system interact with reputation, showing they are not independent entities. Finally, he discusses how to harness the interactions between reputation and the legal system to improve public policy.

¶60 Shapira's first section addresses the reality that information distribution is not perfectly efficient, as not all bad news is created equal: for example, bad behavior that might lead to the collapse of one company might cause only a small, temporary dip in share prices at another. Shapira posits that the process of reputational sanctions is systematically distorted due to issues with asymmetric information, judgment biases, and divergent incentives, and that the legal system helps correct for these distortions by making information publicly available. Reputational forces alone, without input from the legal system, may distort stakeholder behavior because of inefficiencies in information. Companies may select projects, for example, based on their reputational value and not on their "real" value. The legal system also produces information to allow stakeholders to better judge corporate reputations, information generally considered credible and relied upon by journalists. Forcibly disclosed information can lead to reputational consequences that otherwise might have been avoided.

¶61 Next, Shapira applies his particular views of law and reputation to real scenarios. He first focuses on the private litigation context, specifically shareholder suits in the Delaware courts. He discusses many different cases and shows why traditional models that wish to consider traditional market forces alone do not take into account the impact of reputational information produced by the legal system. Next, he addresses public enforcement actions, specifically SEC settlements. He argues that although SEC settlements produce information, they often underproduce reputation-relevant information. Then he investigates how corporate philanthropy interacts with reputational information to co-opt independent directors, influence politicians and regulators, and placate activist investors. Finally, he explores reputational concerns for regulators themselves, finding that the courts make regulators more accountable by forcing them to

publicize the reasoning behind their decisions, an action that may provide valuable reputational information about both the regulators and the regulated.

¶62 In the third section, Shapira uses his analysis to argue for several public policy changes that would allow for more efficient dissemination of reputational information obtained through the legal system. Because strong reputational forces are often a result of litigation and governmental enforcement actions, and because reputational information is so intertwined with the legal system, purely economic arguments against legal intervention are flawed and do not take the reality of the current system into account. Shapira makes a case for openness of court records and against confidential settlements and the sealing of records. He disfavors mandatory arbitration clauses in certain contexts since these clauses serve to pull reputational information out of the legal system and house it behind a wall of confidentiality, reducing the efficiency of the market.

¶63 Overall, Shapira's explanations are as clear as they can be for such a complex subject. He combines interviews, case studies, and meta-analysis of other studies in various fields that are related to law and reputation, such as consumer behavior and stock market analysis. Each chapter begins with an overview of the chapter's content and how it links to other parts of the book. Readers also benefit from extensive footnotes, with sources from a variety of fields. I recommend the book to any law library that collects in law and economics, business law, or products liability.

van der Voo, Lee. *As the World Burns: The New Generation of Activists and the Landmark Legal Fight Against Climate Change*. North Adams, Mass.: Timber Press, 2020. 284p. $27.95.

*Reviewed by Matt Timko**

¶64 Weaving personal experiences, political history, and legal strategy, Lee van der Voo details the long, enduring struggle of 21 young Americans trying to use the legal system to help make their futures more secure. *As the World Burns: The New Generation of Activists and the Landmark Legal Fight Against Climate Change* follows the story of *Juliana v. United States*,[4] a lawsuit brought by several young Americans and environmentally conscious organizations against the U.S. government to bar the continued support of the federal government for fossil fuel extraction and processing. The cause of action claimed that the escalation of greenhouse gases as a result of these policies, contributing to harmful and long-term climate change, infringed on the plaintiffs' constitutional rights. In recounting the path to the Ninth Circuit Court of Appeals (where the case still sits with an *en banc* hearing petition pending since January 2020), van der Voo masterfully interweaves the dry litigation and appeals process with the personal stories of the plaintiffs, young men and women who feel the daily pressures and impact of climate change.

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     * © Matt Timko, 2021. Academic Technologies and Outreach Services Librarian and Assistant Professor, Northern Illinois University College of Law, DeKalb, Illinois.
     4. 947 F.3d 1159 (9th Cir. 2020).

¶65 Although the book primarily focuses on the people involved in the litigation, it provides a wonderful example of the litigation process for those unfamiliar with it. In many ways, this book serves as a biography of a case, from the initial impact to the final decision (absent further appeal). However, the narrative does not end there. Rather, it provides a hopeful message about the will to improve the world, the advocacy of regular people, and the slow, steady work toward justice. Van der Voo never loses sight of the human beings at the heart of the case and strives to ensure that this story remains rooted in personal narrative, while also providing lay readers, including new law students, a terrific view behind the scenes of blockbuster litigation in the making.

¶66 Beyond the personal and litigation stories at the center of the book are two other underlying stories central to the book and to society more broadly. Fundamentally, and most obviously, this is a book about the everyday impacts of climate change and the micro- and macro-level forces needed to combat it. The hopeful narrative seen in the plaintiffs' actions exemplifies the challenges faced by "the little person" trying to affect the entrenched, systemic practices that seem unassailably at odds with the needs of those same "little" people.

¶67 Similarly, this book discusses the generational discord on the topic of climate change, further exacerbated by the inability of the petitioners to access any other political outlet. Since all of the 21 protagonists are under the age of 18, they are unable to vote and have no voice in the political discussion. Van der Voo makes this very clear: litigation is their only option.

¶68 *As the World Burns* is a terrific story, made more engrossing by the intertwined legal and political stories. While at times the legal discussions can stall the narrative pace, overall, the book is highly engaging. Beyond that, it is a valuable political reference book as it presents a case study in what happens when the will of the people is seemingly at odds with the political consensus of economics and government. Recommended for academic law libraries.

Witt, John F. *American Contagions: Epidemics and the Law from Smallpox to COVID-19.* New Haven, Conn.: Yale University Press, 2020. 184p. $20.00.

Reviewed by Courtney Segota[*]

¶69 *American Contagions* opens with a quotation from Cicero's *De Legibus*: "Salus populi suprema lex esto. (The health of the people is the supreme law.)" (p.1). The following chapters, however, demonstrate that this has not always been the case in the United States and, in many ways, is not today.

¶70 In this book, John F. Witt lays out how "[i]n the United States, the law of epidemics stems from the legal authority of the police power," the government's authority to enforce laws protecting its citizens (p.3). Since colonial times, the makers and enforcers of American law have exercised the police power in two general ways. *Quarantinism* is the state's authoritarian enforcement of control over the bodies of the people, via

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quarantine, compulsory vaccination, and even imprisonment, as in the cases of many immigrants and the sad story of "Typhoid Mary." Other extreme examples include forced medical procedures, such as sterilization of those deemed "mentally unsuitable" for parenthood, or the infamous Tuskegee syphilis experiments that the U.S. government carried out on unwitting Black subjects for decades. *Sanitationism*, on the other hand, is a more progressive approach emphasizing education and voluntary participation, working to improve the social conditions that contribute to contagious disease.

¶71 Witt describes how the United States has balanced these methods over time in its attempts to quell outbreaks, with mixed results. Some early methods included vaccination measures, mandatory quarantines and reporting of smallpox cases (especially on ships in U.S. harbors), movement of burial grounds from urban churchyards to large cemeteries outside of town, and removal of livestock and sewage from city streets. Throughout, the author quotes and explains watershed court cases on these topics, putting them in a solid historical context for lay readers and legal professionals alike.

¶72 An important thread running through Witt's narrative is how American jurisdictions have tended to apply more liberal sanitationist methods to those with political and economic clout, while applying authoritarian, quarantinist measures to everyone else. In some cases, *both* approaches have been applied to benefit the rich—for example, by selling the improvement of conditions in tenement housing to middle- and upper-class city dwellers as a measure to stop the diseases of the poor from spreading to their "betters" via goods manufactured by low-wage factory workers. From the abhorrent conditions described by Upton Sinclair in *The Jungle*, to the federal government's handling of the AIDS crisis in the 1980s, all the way to South Dakota Governor Kristi Noem's refusal to let Native Americans set up traffic checkpoints to slow the spread of COVID-19 to their reservations, the general historical trend toward sanitationism and civil rights in the United States has been set back by more authoritarian quarantinist measures against historically disadvantaged populations.

¶73 Another major issue in the United States' handling of disease outbreaks has been the lack of federal police power in public health matters, which have fallen to state and local governments. This allocation of authority was less of an issue in the early days of the republic, when it took much longer for germs (or anything else) to travel between towns. Diseases like COVID-19 have no particular respect for national and state boundaries, however, and today travel is incomprehensibly faster and cheaper than in the 18th century. Science and technology have also improved by leaps and bounds, of course, but the balance between civil liberties and safety is still difficult to achieve, especially as the spread of disinformation via social media thwarts the work of health professionals.

¶74 The book's organization by concepts rather than chronology can feel a bit repetitive; I found myself wondering, "Didn't we already talk about quarantining ships?" However, with a good mix of solid research—the index and endnotes take up nearly 40 percent of the book—and understandable, well-articulated connections

between history, law, science, and social science, *American Contagions* gives much-needed context to COVID-19. This book offers legal information to historians, historical and social science information to lawyers, and a solid understanding of the economic, racial, and other social justice factors that affect the handling and treatment of disease in the United States to any reader. Recommended for academic law libraries and for firm libraries with a significant health law practice.