

Keeping Up with New Legal Titles*

Compiled by Amy Atchison** and Laura Cadra***

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* © Amy Atchison and Laura Cadra, 2008. The books reviewed in this issue were published in 2005 and 2007. If you would like to review books for “Keeping Up with New Legal Titles,” please send an e-mail to atchison@law.ucla.edu or laura.cadra@lls.edu.

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*Answering the Call of the Court: How Justices and Litigants Set
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Baird, Vanessa A. *Answering the Call of the Court: How Justices and Litigants Set the Supreme Court Agenda*. Charlottesville: University of Virginia Press. 2007. 225p. \$45.

Reviewed by Jessica Wimer

¶1 With the enormous influence the Supreme Court wields on the everyday lives of United States citizens through its power to interpret the Constitution and invalidate legislation, it is no wonder that the Supreme Court's agenda is a hotly debated subject among legal scholars. One need only scan recent scholarly journal articles, books, and blogs to realize not only how many legal minds weigh in on this topic, but also, and perhaps most important, the many questions raised by the Supreme Court's agenda. For instance, how does the Court's agenda match or diverge from the agenda of the government as a whole? Does the Court intend the agenda to reflect its supremacy over the other branches of government? Or does the Court carefully select cases that will allow it to avoid ruling on severely divisive issues?

¶2 In *Answering the Call of the Court: How Justices and Litigants Set the Supreme Court Agenda*, author and University of Colorado political science professor Vanessa Baird answers these and other questions. Specifically, Baird focuses on the litigants' power to set the Court's agenda, and how the Court and the litigants work in tandem to get the "right" cases in front of the Court. She shows through empirical evidence the Court's policy priorities, and how these priorities directly correspond to the Court's future agenda.

¶3 Baird's thesis is as follows: in order for the Court to effectuate societal change, it must set its agenda long before cases appear on its docket. It does so by carefully sending out cues to attentive "extrajudicial actors," indicating the issues important to the majority of justices. These actors eventually respond by presenting the Court with cases—usually the strongest cases—on those issues. The relationship between Court and actors is key; without it, Baird asserts, the Court's chance for implementing real change is limited.

¶4 Baird begins by identifying the relevant actors in the Supreme Court's case selection process: the litigants and the justices themselves. Baird considers a litigant to be any entity that tries to influence the "direction and flow of political or legal change" (p.3). She then describes changes in policy issues brought before the Court over time, contending that previously decided cases inform legal entrepreneurs of the policy areas that currently interest the Court.

¶5 Cases, Baird contends, are presented to the Court in a cycle that can be tracked across time. She identifies four- to five-year periods, each beginning when the Court offers cues about a policy area that interests it and ending when a wealth of strong, representative cases on this same issue are brought before the Court.

¶6 Compelling case examples and empirical data covering a significant time period bolster Baird's position. She also highlights prevailing scholarship and

explains how it may deviate from her position. She devotes the final chapters to her conclusions and their implications for future research. In addition to a long, general reference list and good use of charts and graphs, each chapter includes extensive endnotes.

¶7 With its fresh perspective, good writing, and thorough research, *Answering the Call of the Court: How Justices and Litigants Set the Supreme Court Agenda* will be a valuable addition to any public, academic, or law library collection.

Bander, Edward J. *Legal Anecdotes, Wit, and Rejoinder*. Lake Mary, Fla.: Vandepias Publishing. 2007. 269p. \$39.95, paper.

Reviewed by Andrew G. Cannon

¶8 *Legal Anecdotes, Wit, and Rejoinder* is a collection of nearly eight hundred well-documented stories, aphorisms, and witticisms from lawyers about lawyers and the law. This impressive—and entertaining—achievement is, unfortunately, mired by awkward formatting and off-putting errors in copyediting. But, as with a really good yard sale, once one gets past the unpolished presentation, treasures may be found. As Adlai Stevenson said, “After such an introduction I can hardly wait to hear what I have to say” (p.135).

¶9 Describing the structure of *Legal Anecdotes, Wit, and Rejoinder* is difficult, because while all the pieces are there, they are not very friendly with each other. Anecdotes are arranged alphabetically by topic, with each story or quotation assigned a consecutive number; footnotes give detailed information on the source of each anecdote (sometimes without providing a clear indication of its originator); and the index is of questionable quality. In terms of format, topic headings blend with the rest of the text—a bold font would have easily cured this problem—and copyediting errors are frequent. For example, in one story about Justice Holmes, it is impossible without context to tell whether the quick-witted justice intended to say “ten” or “two” when he is quoted as saying “twn” (p.124). It felt, in the end, as if I had been handed an attractively bound draft, yet to be polished by the editors.

¶10 But what a draft it is. It has classic statements from such legendary figures as Edward Henry “Bull” Warren (“Sir, you are in very shallow water, but you are sinking fast” (p.166)) and Oliver Wendell Holmes (about the large son of a small father: “He is a block off[f] the old chip” (p.52)). It also has the type of jokes I would be embarrassed to tell, but might anyway (“Ibid: what you do on eBay” (p.53)), and statements I wish I had been the one to make (Mr. Wilson was informed that he ought to take it for granted that the Court knew some elementary law: “Your Honors, that was the mistake I made in the court below” (p.91)).

¶11 Even the footnotes are rich with content. One footnote shares with us the comment, derived from conventions regarding titles in federal courts, that “there is no justice in the Courts of Appeal and no judges on the Supreme Court” (p.223).

Footnotes sometimes provide alternate versions of stories, and occasionally add context that may be missing from the alphabetical arrangement of anecdotes.

¶12 *Legal Anecdotes, Wit, and Rejoinder* is clearly a labor of love by author Edward J. Bander, Law Librarian Emeritus at Suffolk University. It is rich with content, meticulously documented, and a quality resource for speakers or teachers. Though its presentation is rough, the anecdotes highlight what is funniest, most clever, and sometimes even noblest about the legal profession.

¶13 Let me finish by paraphrasing Chief Justice Hughes: I could go on for a few more paragraphs, “but I have a fear of continuing under the delusion of adequacy” (p.85).

Baum, Marsha L. *When Nature Strikes: Weather Disasters and the Law*. Westport, Conn.: Praeger. 2007. 227p. \$49.95.

Reviewed by Isa Lang

¶14 On a warm Friday morning in August 2007, a sixteen-year-old boy collapsed at football practice in Irvine, California, and died shortly thereafter.¹ Is his high school civilly liable for his death? At least two babies in the United States who were left in hot cars died during a four-week period between late July and late August 2007.² Should their parents be criminally liable for their deaths?

¶15 Heat-related deaths are among many weather-related disasters that raise legal issues. As a result of her meticulous research, author Marsha Baum, professor at University of New Mexico Law School and former Law Library Director, cites in *When Nature Strikes: Weather Disasters and the Law* incidents ranging from an icy slip-and-fall in Michigan to an air delivery delay in the Netherlands. Because weather touches every aspect of our lives, laws concerning the weather emanate from federal, state, local, and even international courts and government entities.

¶16 Weather forecasting may be humans’ most accurate attempt at predicting the future (crystal balls are proven flops). Our demand for forecasting and warning of impending dangers from weather events has been responded to by the federal government for over one hundred years. As a result of our need to prepare for weather-related events, the National Weather Service has become a sophisticated data collection, weather prediction, and disaster warning agency. Federal efforts to tame bad weather, such as cloud seeding, have, however, engendered lawsuits (although nobody has yet determined who owns the clouds!).

¶17 Government agencies have assumed a number of responsibilities for protecting citizens against dangers from bad weather, such as spreading snow-melting chemicals on icy roads. Governments generally do not have a duty to protect each individual citizen from weather hazards, and sovereign immunity normally bars

1. David Reyes, *Irvine Football Player Dies*, L.A. TIMES, Aug. 18, 2007, at B7.

2. Judi Villa, *Negligence or Accident, 2 Babies Died in Hot Cars, Only 1 Arrest*, ARIZ. REPUBLIC, Nov. 2, 2007, at 1.

recovery from injuries relating to weather disasters. The author cites a notable exception to the sovereign immunity defense: the Federal Aviation Administration has a duty to provide accurate and complete weather information to commercial airline pilots (p.43). Usually, though, the government is not liable for a faulty weather forecast.

¶18 The case may be different for private companies that are in the forecasting business. Failure to warn of severe winds in time for the city of Wilmington, Delaware, to secure cranes at the harbor resulted in a judgment in favor of the city (pp.78–79). Property and business owners may be liable for weather-related injuries on their premises, as when a ladder left against a building fell over in the wind and injured an elderly passerby who was trying to avoid it (p.82). The defense of “obvious danger” was dismissed in view of the high, uncontrollable winds in the area (p.82). In fact, movie theater owners may be liable for failure to warn moviegoers of severe weather events taking place *off* their premises when the guests leave the theater.

¶19 Baum emphasizes throughout her book that legal remedies are not available for all weather-related losses. Acts of God, well-established principles in personal injury and contract law, and governmental immunity can bar compensation for human suffering and property loss. Athletes and their families sign waivers expressly exempting schools and coaches from liability for sports-related injuries. Punishment of parents whose children die in hot cars is growing, but inconsistent. Baum does not discuss compensation policy, but her lengthy discussions of the athlete-on-the-field and baby-in-the-car situations send a clear message about rethinking compensation policies in these areas.

¶20 *When Nature Strikes: Weather Disasters and the Law* is appropriate for all adult readers and is recommended for any law library that has a comprehensive monograph collection. Almost half the book is notes, including primary and secondary legal sources as well as news articles and books. A Glossary of Weather Terms is a bonus for curious readers. While more time could have been spent on editing, as there are numerous occurrences of split words (e.g., “can not” for “cannot”) and unnecessary hyphenation (e.g., “wide-spread” for “widespread”), I would recommend the book to all readers who are interested in the weather—and who isn’t?

Dierenfield, Bruce J. *The Battle Over School Prayer: How Engel v. Vitale Changed America*. Lawrence, Kan.: University of Kansas Press. 2007. 240p. \$35.

Reviewed by Jenel Cotton

¶21 The role of religion in public life has been a controversial subject since the founding of our nation, and scholars have long tried to define the boundaries set between religion and the public sphere by the First Amendment. Professor Bruce J. Dierenfield, professor of history at Canisius College, in his book, *The Battle Over School Prayer: How Engel v. Vitale Changed America*, attempts

to address this murky issue by presenting an in-depth historical overview and analysis of *Engel v. Vitale*,³ a significant case that altered the law on prayer in public schools.

¶22 Dierenfield begins with a chronicled synopsis of religious thought in America. He highlights the religious philosophies of early settlers, scholars, and politicians in order to provide a framework for the religious undertones that shaped the nation's understanding and interpretation of the First Amendment. Not surprisingly, the changes in the nation's understanding of the First Amendment's religion clauses involved frequent clashes between Jews, Catholics, and Protestants. By tracing the evolution of religious thought, Dierenfield illustrates the impact of such thought on the history of religion in public education.

¶23 In chapter 3, Dierenfield concentrates on the *Everson* case,⁴ where the Supreme Court first applied the Establishment Clause to the states. In a narrow 5–4 decision, written by Justice Hugo Black, the Court erected the notorious “wall of separation between church and State” (p.18), but held that New Jersey had not violated the Establishment Clause by providing bussing reimbursements for parents of children in parochial schools. To assist readers with understanding this “schizophrenic” rationale (p.48), Dierenfield introduces details of the religious upbringing and influences of each Supreme Court Justice, eventually unveiling their struggles with the *Everson* decision. Unfortunately, as Dierenfield observes, *Everson* and its progeny brought more confusion than clarity to the role of religion in public schools. Beneath the surface, *Engel v. Vitale* “was an explosion waiting to happen” (p.66).

¶24 The rest of the book is dedicated to the documented events and private memoirs surrounding the *Engel* decision. In this 6–1 decision, the Supreme Court invalidated, as a violation of the Establishment Clause, a policy for an optional school prayer designed by the Board of Regents in New York. Dierenfield features the perspective of all the players, including the New York Board of Regents, the litigants and their families, the neighbors, the press, the lawyers, the judges, and community organizations. By focusing on how each of these actors became involved in the case, Dierenfield delivers an intimate portrayal of the circumstances surrounding the decision. The poignant aftermath of the decision is felt not only by the involved actors, but by the nation as a whole.

¶25 Overall, *The Battle Over School Prayer* is a great book for an academic law library. Its emphasis on the personal accounts surrounding the school prayer issue—something that would likely interest legal scholars and historical researchers—distinguishes this book from others on this issue. Dierenfield is also the only scholar to interview at least one member from each of the five petitioner families. This feat can never be replicated, as many members of the petitioning families are

3. 370 U.S. 421 (1962).

4. *Everson v. Board of Education*, 330 U.S. 1 (1947).

no longer alive (p.231). When possible, these narratives are supported by written documents.

¶26 In order to provide the detailed and anecdotal backdrop, Dierenfield relies on myriad resources. Because the issue is so controversial, Dierenfield wisely considers sources from both liberal and conservative perspectives. Evidence is drawn from sources ranging from the *New York Times* to the *National Review*. Additionally, he cites reports from organizations such as the American Civil Liberties Union, as well as from noted conservative religious organizations like the WallBuilders (www.wallbuilders.com). Finally, Dierenfield collects evidence from the voluminous academic scholarship on religion in America. Among the intellectual church-state heavyweights cited are Douglas Laycock,⁵ Philip Hamburger,⁶ Melvin Urofsky,⁷ and Paul Finkelman.⁸

¶27 As Dierenfield points out, there are no other full-length studies of the *Engel v. Vitale* decision (p.230).⁹ Undoubtedly, *The Battle Over School Prayer* will help remedy this gap in school prayer jurisprudence.

Gerrard, Michael B., ed. *Global Climate Change and U.S. Law*. Chicago: American Bar Association, Section of Environment, Energy and Resources. 2007. 754p. \$59.95.

Reviewed by Susan Lyons

¶28 One might imagine a book on United States law and climate change would be a very thin book indeed. Yet despite the United States' rejection of the Kyoto Protocol, climate change law, even in the United States, is a hot and growing field. States have taken the lead in passing laws addressing climate change, and many have entered into multi-state regional pacts to control greenhouse gas emissions. Climate change concerns are affecting business decisions in the areas of insurance, tax, corporate disclosure statements, and investments. The recent decision in *Massachusetts v. E.P.A.*¹⁰ shows us that laws long on the books, such as the Clean Air Act,¹¹ also have a role to play in addressing climate change.

¶29 This book provides an excellent survey of a rapidly growing field. Its nineteen chapters are written by twenty-five individual authors drawn from law firm, academic, environmental, and government backgrounds. Each chapter is a complete article on an aspect of climate change law and can stand on its own. Together

5. Professor of Law, University of Michigan.

6. Professor of Law, Columbia University.

7. Professor of Public Policy and Law, Virginia Commonwealth University.

8. Professor of Law and Public Policy, and Senior Fellow in the Government Law Center at Albany Law School.

9. A search of WorldCat (Title search: *Engel v. Vitale*) revealed that the only other adult level academic *Engel v. Vitale* book is: LYNDIA FENWICK, *SHOULD THE CHILDREN PRAY?* (1989). Everything else is either a juvenile book, a dissertation, or a congressional/PAC report.

10. 127 S. Ct. 1438 (2007).

11. 42 U.S.C. §§ 7401-7431 (2000).

they make for a comprehensive overview of the subject. Readers new to the field are eased into the subject with a five-page glossary and a three-page table of acronyms. A detailed table of contents and a solid index provide easy navigation. The first chapter and introduction offer a brief primer on the science of climate change, including graphs and images that will be familiar to anyone who has seen the film *An Inconvenient Truth*.¹²

¶30 The remaining eighteen chapters are divided into four sections. The first and largest section examines the framework of climate change law, in the United States and internationally. Included is a thorough description of the history and structure of the United Nations Framework Convention on Climate Change (UNFCCC),¹³ the treaty that underlies the Kyoto Protocol. A chapter on U.S. policy on climate change begins with a retelling of the U.S. role in negotiating UNFCCC and Kyoto. It then proceeds to discuss how existing laws can be used to regulate greenhouse gas emissions and examines bills pending in Congress that would limit emissions far beyond the requirements of Kyoto. This first section also makes a strong case for how U.S. businesses are impacted by Kyoto, especially those doing business overseas.

¶31 Moving beyond the impact of Kyoto, the first section concludes with an examination of civil remedies, clean air regulations, and the effect of climate change concerns on the permitting of new industrial plants. *Global Climate Change and U.S. Law* went to print just before the Supreme Court issued its decision in *Massachusetts v E.P.A.*, a case that held that greenhouse gas emissions can be regulated as pollutants under the Clean Air Act. The case is examined up through the granting of *certiorari*, and many other federal cases are discussed as well.

¶32 The second part of the book examines several regional initiatives on climate change. Perhaps the best known is the Northeast Regional Greenhouse Gas Initiative (RGGI),¹⁴ an initiative to lower emissions with a mandatory cap-and-trade program similar to what is required by the Kyoto Protocol. Currently ten states participate in the RGGI, and two Canadian provinces have observer status. This part of the book also covers planned and existing regional initiatives in the West, Southwest, and Midwest.

¶33 Librarians who love fifty-state surveys will be pleased to find one in chapter 11. The survey was compiled by students at the Pace Environmental Law Clinic, and it encompasses not only climate change law, but renewable energy laws, which can contribute to reduction of greenhouse gas emissions. Separate chapters cover additional state and local initiatives.

12. AN INCONVENIENT TRUTH (Paramount Classics & Participant Prod. 2006).

13. Kyoto Protocol to the United Nations Framework Convention on Climate Change, Dec. 10, 1997, 37 I.L.M. 32 (1998).

14. Regional Greenhouse Gas Initiative, <http://www.rggi.org> (last visited Oct. 15, 2007).

¶34 Is climate change law something corporate lawyers need to worry about? Part Three suggests that it is, with chapters on disclosure of climate change risks under securities law, insurance hazards, and the fiduciary duty of corporate officers and directors. However, climate change offers opportunities as well as worry. Another chapter in this section looks at tax incentives and subsidies available to companies that act to conserve energy and reduce their carbon footprints.

¶35 The final section examines programs to reduce carbon emissions, such as voluntary efforts to control greenhouse gas emissions through carbon offsetting and the establishment of voluntary registries. One chapter is devoted to the rather complicated business of emissions trading, and the concluding chapter examines the legal issues associated with carbon sequestration. This final section, the most hopeful part of the book, offers a view of climate change law as a tool for reducing emissions and working toward a solution to a critical global problem.

¶36 *Global Climate Change and U.S. Law* is highly recommended for inclusion in all law school libraries. It may also be useful as a textbook for a class or seminar on climate change law. Law firm libraries serving environmental and energy law practices will also find it a valuable addition to their collections.

Greenfield, Jeanette, *The Return of Cultural Treasures*. Cambridge [U.K.]; New York: Cambridge University Press. 3d ed. 2007. 520p. \$125.

Reviewed by Amy Tomaszewski

¶37 In August 2007, the J. Paul Getty Museum in Malibu, California, agreed to return forty objects from its collection—antiquities including statues, vases, and sculptures—to Italy.¹⁵ Why? According to the Italian government, these pieces had been acquired illegally, from unlawful excavations and then through disreputable dealers (p.246). In its civil suit filed against the Getty's curator in 2005, Italy argued that the artifacts had left Italy's soil without the government's permission and thus should be returned.¹⁶ In addition to legal action against the museum representative, Italy threatened a future embargo which would have crippled the Getty's ability to acquire other objects and perform further research.¹⁷ After two years of negotiation, Italy and the Getty board finally reached an agreement resulting in a huge loss for the museum.¹⁸

¶38 The Getty controversy is one of the latest in a long line of tugs-of-war driven by an illicit art trade. In the third edition of *The Return of Cultural Treasures*, author Jeanette Greenfield explores the legal thicket which simultaneously guides and frustrates the individuals, museums, and countries that find themselves caught

15. Jason Felch & Ralph Frammolino, *The Return of Antiquities a Blow to the Getty: Forty Disputed Artworks That are Hallmarks of the Museum's Collection Will be Returned to Italy in End to a Long Legal Fight*, L.A. TIMES, Aug. 2, 2007, at A1.

16. *Id.*

17. *See Italy Issues Getty Ultimatum for Return of Works*, L.A. TIMES, July 11, 2007, at E4.

18. Felch & Frammolino, *supra* note 15.

up in the removal and return of treasured art objects. But while Greenfield discusses the legal procedures and ramifications implicated when the removal and return of these artifacts are at issue, *Cultural Treasures* is not a legal how-to. Instead, it is part history book and part legal treatise, illustrating the significance these objects have for both the original owner and the present proprietor, and the background behind the transfer of property.

¶39 Accompanied by black-and-white illustrations of the art objects, Greenfield chronicles historical examples in which war, wiles, natural disasters, and colonialism propelled the removal of great treasures from one culture to another, and the subsequent struggle to have the plunder restored to its rightful owner. She uses, for example, the tale of the Elgin Marbles—removed from one of the temples on the Greek Acropolis in 1801 by an English official—to illustrate the confusion that ensues when a return is sought (p.53). At the time, Greece was under Ottoman Turk rule (pp.51–53), and Lord Elgin, exploiting his status as ambassador, obtained permission from the Turkish government to strip the marble from the frieze of one of the principal buildings on the Acropolis, the Parthenon (p.53). Shipping the Marbles to England, Elgin eventually sold them to the British government in 1816 (p.59). Although Greece began seeking their return in 1832, when it gained independence from Turkey, and has repeated the request throughout the years, the Marbles remain today in the British Museum (p.41).

¶40 As with the Elgin Marbles, an entity attempting to retrieve lost objects from another generates a range of difficult questions, and the length of time between the removal and the demand for return can be a problem. To whose history or culture does the artifact belong? Should this ownership be defined narrowly, or broadly? What are the channels through which an entity can demand reparation? Like most legal controversies, the issues are muddied with cultural, ethical, historical, and aesthetic claims which often contradict one another.

¶41 Furthermore, since much of the criminal activity occurs across borders, jurisdictional questions frequently overwhelm the original demand for restitution or return. The problem of which country's legal system to use to determine entitlement is complicated by the unpredictable nature of sovereignty. Governments change, borders shift, and cultures morph and perhaps disappear.

¶42 Reassuringly, Greenfield does offer an example of a successful cultural treasure return in the saga of Icelandic medieval manuscripts, which originated in Iceland but were collected by a historian at the University of Copenhagen and shipped to Denmark in the early eighteenth century (pp.13,15). While Iceland never took any formal legal action against Denmark, a number of legal issues arose between 1945, when Iceland constitutionally separated from Denmark, and 1971, when the first of the manuscripts were finally returned to Icelandic soil. Through a flurry of diplomatic activity and political positioning, Danes and Icelanders alike wondered who had title to the manuscripts by law, who had the best resources to study and protect the items, and if no improper expropriation of the material could

be shown, was financial restitution to the losing party warranted and, if so, how might just compensation be determined? Ultimately the parties reached an agreement, but the uncertainty of legal remedies and the vast number of interrelated issues continue to complicate other matters of disputed art ownership.

¶43 Greenfield must have felt compelled to update *Cultural Treasures* a third time (the book was first published in 1989 and the second edition appeared in 1996) because, sadly, not only do open questions linger—such as the disposition of the Elgin Marbles—but new ones arise. In this new edition, she considers the travesty of the National Museum of Antiquities in Baghdad (p.263). Upon the 2003 launch of American troops into Iraq, the museum suffered immeasurable damage when looters took advantage of the general chaos and lackluster security provided by the invading forces. Because the inventory of the museum's contents was already unreliable, in part due to the first Gulf War, by the time the cultural sites were offered any sort of protection it was difficult to catalog the enormity of the loss.

¶44 War is not the only remaining threat to cultural treasures. The Internet now provides greater opportunities for illicit art sales. The disposition of ethnic art, such as that originating from Native American or Australian Aboriginal cultures, remains an ongoing debate. National, international, and inter-governmental authorities struggle daily to implement legal strategies both to stop the illegal trade in cultural treasures and deal with the aftermath of return. Greenfield provides examples of how these problems have been addressed in specific situations, in varying forums—the United Nations, national or state courts, or by agreements between non-governmental institutions, such as the museums themselves—but *Cultural Treasures* cannot furnish a definitive policy for legal action in every case. Thus, it is aimed not toward law practitioners but at legal scholars, historians, art buffs, and anyone who is interested in the international and cultural aspects of the art world. As one might guess, the historical dramas are far more interesting than the legal play-by-play.

Rydstrom, Jens, and Kati Mustola, eds. *Criminally Queer: Homosexuality and Criminal Law in Scandinavia 1842–1999*. Amsterdam: Aksant Academic Publishers. 2007. 312p. \$44.95, paper.

Reviewed by Amy Atchison

¶45 *Criminally Queer: Homosexuality and Criminal Law in Scandinavia 1842–1999* is the first book to track the history of the criminalization of homosexuality in the countries of Scandinavia by examining the legislation and court cases from this time period. The laws and cases examined are discussed in light of each country's cultural and social history. Written in English to reach the broadest audience, and thoroughly researched, it is an essential purchase for academic law libraries.

¶46 *Criminally Queer* begins with a general discussion of the history of “modern” homosexuality, the concept of which was first created in the late nineteenth

century, and of homophobia in Scandinavia. This history includes the penalization of homosexual acts, followed by a gradual movement toward emancipation in each region. The book includes statistics regarding the number of convictions over the last hundred years for same-sex sexual acts in Denmark, Norway, Iceland, Sweden, and Finland, which are discussed in light of the social history of this region as it relates to the treatment of gays and lesbians.

¶47 *Criminally Queer* also devotes substantial discussion to the drastically different treatment under the law of the sexual practices of men and women. The laws penalizing same-sex sexuality were almost exclusively applied to men, whereas lesbian sexual acts were virtually ignored by the courts. The first chapter addresses this issue, noting the dearth of court documents penalizing female same-sex sexuality, examining those documents that are available, and remarking on the different methods of controlling homosexual acts in men vs. women (overt repression through penalization for men and social denial for women) (p.56).

¶48 The subsequent chapters are devoted to each country in the region and examine that country in terms of the following historical pattern: when homosexuality became a concept within the region, the rise of homophobia and the eventual penalization of homosexual acts (often the laws deal with “unnatural acts” which the courts interpreted to include same-sex sexual acts), followed by the beginnings of emancipation, with sexual orientation at best becoming both a legally and socially protected class.

¶49 According to the book, the treatment of sexual behavior varies across the countries, with liberal Denmark eventually offering the most inclusive and accepting view of alternative lifestyles, and the more conservative regions, such as Greenland and the Faroe Islands, following a slower evolution toward acceptance of same-sex lifestyles. The authors note that gay and lesbian migration to the more liberal countries in this region is a frequent reaction to discrimination in the more conservative Scandinavian countries. A common practice for gay men in the more conservative regions of the Faroe Islands and Greenland is to travel to the more liberal regions such as Denmark to be with other gay men and then return to their country of origin.

¶50 Scandinavian countries are quite small relative to the United States population, so analysis of a particular region yields quite a few specific and sometimes entertaining anecdotes in addition to statistical information. The chapter on the Faroe Islands (pop. 48,000) (p.145) devotes several pages to the life of a gay Faroese hairdresser who for many years was the only openly gay man in this region and, according the chapter’s author, “single-handedly managed to uphold the gay revolution in the Faroes for more than two decades” (p.156).

¶51 The authors of *Criminally Queer: Homosexuality and Criminal Law in Scandinavia 1842–1999*, sociologists and historians, jokingly state in the preface that they were not criminologists when they embarked on this book, but became ones after their extensive research into the court records and legal history of their

respective countries. They are to be commended for producing a well-written, cohesive analysis of the history and laws of this region. In addition, an appendix, entitled “Nordic Laws Relevant to Same-Sex Sexuality 1683–1999,” reprints in English the laws from each country that were used by the courts to criminalize same-sex acts during this time period.

Sarat, Austin. *Mercy on Trial: What it Means to Stop an Execution*. Princeton, N.J.: Princeton University Press. 2005. 325p. \$29.95, hardcover. \$19.95, paper.

Reviewed by Jocelyn Kennedy

¶52 *Mercy on Trial: What it Means to Stop an Execution* is an academic discussion of executive clemency and an examination of the role mercy plays in clemency decisions. Touted by the “back of the book reviewers” as a must-read for the average citizen, a contribution to the scholarly debate, and an exploration of Governor George Ryan’s final-hour grants of clemency to Illinois’ death row inmates, I was intrigued and eager to read this work.

¶53 Author Austin Sarat begins with an examination of Governor Ryan’s decision in 2003 to pardon four inmates on death row and to commute the sentences of 167 other death row inmates. This was the single largest act of mercy ever granted to death row inmates and it was this act, Sarat asserts, that “put mercy on trial, forcing us to consider anew when and to whom [mercy] should be accorded” (p.2). Interestingly, Governor Ryan was a death penalty adherent for most of his career; it was not until the exoneration by the Illinois courts of three men on death row that he began to change his point of view and reconsider the use of the death penalty as a just sentence.

¶54 Sarat seeks to use the “Illinois Story” as the cornerstone of an examination of clemency that invokes history, philosophy, and jurisprudence. The successive chapters provide a selective review of gubernatorial acts of clemency in the twentieth century. Chapter 2 highlights three twentieth-century governors who used morality to reason their way toward commutation of death row sentences. An exploration of the judiciary’s point of view on the finality of clemency acts follows in chapter 3. Chapter 4 discusses clemency as it relates to rehabilitative and retributive models of criminal sentencing. The book ends with an examination of Ryan’s mass commutation in light of the prior discussion.

¶55 *Mercy on Trial: What it Means to Stop an Execution* stems from two law review articles, and the attempt to cobble together a cohesive book-length treatment of the subject is by and large unsuccessful. Sarat approaches his subject from an array of disciplines, producing a text that often lacks focus. He moves quickly from one intellectual argument to another, which left me dizzy with conflicting points of view and undeveloped discussion. While weighing in at 325 pages, half of the book is dedicated to endnotes, appendixes, and the index. I wish Sarat had

allocated more space to developing his background information and provided more analysis of the issues. He tries to do too much in too little space.

¶56 *Mercy on Trial: What it Means to Stop an Execution* is best suited to an academic environment. Claims that this is a must-read for the average person are ill placed. Sarat walks on high intellectual ground, dropping names and quotes often only vaguely familiar to the average reader. His endnotes are not consistently descriptive enough to clear the haze. He did, however, recapture my attention in his compelling conclusion, arguing with passion that the lack of mercy in the law and in our society is the reason that clemency is such a contentious and underutilized mechanism.

¶57 I found the appendixes to be of great value. Sarat presents in tabular form both the number of capital commutations by state and the commutations by governor from 1900 to 2004, including the names of those whose sentences were commuted. The appendixes are amazing resources for anyone researching in the death penalty arena, and provide a graphically descriptive view of the people to whom “mercy” was shown.