

## Keeping Up with New Legal Titles\*

Compiled by Creighton J. Miller, Jr.\*\* and Annmarie Zell\*\*\*

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\* © Creighton J. Miller, Jr. and Annmarie Zell, 2008. The books reviewed in this issue were published in 2007 and 2008. If you would like to review books for “Keeping Up with New Legal Titles,” please send an e-mail to creighton.miller@washburn.edu and annmarie.zell@nyu.edu.

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Ashford, Nicholas A., and Charles C. Caldart. *Environmental Law, Policy, and Economics: Reclaiming the Environmental Agenda*. Cambridge, Mass.: MIT Press, 2008. 1088p. \$90.

*Reviewed by Marie Rehmar*

¶1 *Environmental Law, Policy, and Economics: Reclaiming the Environmental Agenda*, a product of more than fifty years of combined university teaching experience, is designed primarily as a textbook to support graduate or undergraduate courses in “law, business, . . . public policy[,] public health[,] urban studies, civil and environmental engineering, environmental sciences, chemical engineering, chemistry, [or] economics” (p.xxxiv–xxxv). As its subtitle indicates, however, this is also a volume for any who want to prepare themselves to address the critical environmental challenges of our time. For a wide variety of users, the book provides a solid foundation both for examining environmental laws, regulations, and policies and for understanding the “environment” in which such mechanisms operate, an environment often dominated by economic forces and technological innovations.

¶2 The book’s authors are accomplished teachers and policy experts whose knowledge extends beyond the law. Nicholas A. Ashford (J.D., Ph.D. [Chemistry], University of Chicago) is the Director of the Technology and Law Program and Professor of Technology and Policy at the Massachusetts Institute of Technology. He has served as Chair of the National Advisory Committee on Occupational Safety and Health, as an advisor to the U.N. Environment Programme, and as a member of numerous E.P.A. and state advisory committees, boards, and panels. Charles C. Caldart (J.D., University of Washington; M.P.H., Harvard University) is the Director of Litigation at the National Environmental Law Center, which he helped found, and has taught environmental law courses at MIT since 1983. The two are also the authors of *Technology, Law, and the Working Environment*<sup>1</sup> and numerous articles and reports, especially in the areas of environmental and occupational regulation and policy.

¶3 In *Environmental Law, Policy, and Economics*, Ashford and Caldart have produced a comprehensive and readable alternative to the traditional casebook. The book’s format works well. It consists primarily of text supported with excerpts from cases, government reports, and articles from scientific journals and law reviews. Most excerpts are followed by notes that extend the reader’s thinking, elucidate content, provide resources for further research, or present questions to stimulate discussion. Although a few state and international initiatives are discussed, U.S. federal law and regulation form the primary focus throughout the text. Traditional legal sources, however, make up only a portion of the material presented in the book. Indeed, excerpts from court cases are kept to a minimum, which seems to be the way many environmental texts are heading. Instead, the book’s strength is a hopeful, yet realistic, multidisciplinary approach that provides context for specific issues and fresh analyses. While the importance of government regulation and the value of private litigation remain evident, the authors clearly stress important roles

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1. NICHOLAS A. ASHFORD & CHARLES C. CALDART, *TECHNOLOGY, LAW, AND THE WORKING ENVIRONMENT* (rev. ed. 1996).

for other strategies, like technological innovation and planning for pollution prevention.

¶4 The text is presented in a highly logical, carefully organized arrangement. It begins with a discussion of the nature, risk, and assessment of harm that also introduces key economic concepts. Such topics may seem new and unusual to the law student reader, as may the material in chapter 4, “Addressing Pollution Through the Tort System.” Beginning with chapter 5 on “Administrative Law,” however, the book moves into more traditional legal subject matter. Over the next four chapters, the work addresses various aspects of air, water, and hazardous waste legislation. The authors are very familiar with the development of the various laws and regulations, allowing them to provide succinct coverage of the relevant history. The book does not shy away from controversial matters; the authors readily point out instances when particular laws failed to achieve their potential and note opportunities for improvement. Further chapters cover mandatory disclosure of chemical risk information (a topic treated in more depth than in many environmental law titles) and the enforcement of environmental laws. The final chapters return to less traditional topics: “Alternative Forms of Government Intervention to Promote Pollution Reduction,” “Policies to Promote Pollution Prevention and Inherent Safety,” and an epilogue addressing sustainable development.

¶5 The book includes a number of useful features that add to its value. The table of contents serves as a comprehensive outline to the material covered in the title. Frequent references for further reading are included, generally within the text but also at the end of chapters 3, 12, and 13. An index of cases provides quick access to decisions referenced in the text, with excerpted cases listed in italics for ease of recognition. The book’s subject index is useful—one would not want fewer entries. Statutory text referenced in the book is available on a companion web site, thus saving pages and cost. The authors’ clear and concise writing style, their logical and detailed development of an inherently vital subject, and even the clean, varied page design all help to make this book covering multiple complex topics valuable for a wide range of users.

¶6 The more I considered this title’s potential uses, the more I came to appreciate it as an amazing book. The title can serve well as a text for a one- or even two-semester, upper-level law course, for a first-year perspectives course, or for a multidisciplinary class including students from various fields. Students, attorneys, or policymakers from other countries who turn to the work for a descriptive delineation of current U.S. environmental law and regulation may become encouraged, upon examining the economic and technological issues discussed in the book, to consider a different, more prevention-focused approach. The title is also an excellent continuing education source that can aid the attorney, scientist, policymaker, or involved citizen desiring a firm grasp of current environmental law issues and their implications. Thus, while academic law libraries and other libraries with multidisciplinary academic collections may be the most logical purchasers of *Environmental Law, Policy, and Economics*, it also deserves to be considered for acquisition by other law libraries serving environmental law practitioners, government policy experts, and the general public.

Goldman, Robert M. *One Man Out: Curt Flood Versus Baseball*. Lawrence, Kan.: University Press of Kansas, 2008. 158p. \$35.

*Reviewed by Holly Lakatos*

¶7 Baseball is often called “America’s pastime,” and many scholars, in their zeal to promote the pastime’s cultural status, gloss over other aspects of baseball, including its legal history. In *One Man Out: Curt Flood Versus Baseball*, however, author Robert Goldman attempts to portray one important part of this legal history. The book examines the context surrounding center fielder Curt Flood’s unsuccessful lawsuit challenging the major league reserve system through which teams bought and sold players and their contracts.

¶8 Beginning during the early days of baseball and continuing into the modern era, team owners exercised nearly complete control over the professional lives of individual players. League rules and the uniform player contract included several interdependent provisions (known as the “reserve clause” or “reserve system”) that gave team owners the right to trade or sell a player’s contract to another team for any reason, at any time. Under the conditions of this reserve system, a player must either accept the trade or retire from baseball. Although such practices might seem to raise antitrust concerns, Supreme Court precedent held that baseball was not covered by federal antitrust statutes.<sup>2</sup>

¶9 Nonetheless, when faced with such a trade from the St. Louis Cardinals to the Philadelphia Phillies in 1970, Curt Flood filed a lawsuit alleging, among other things, that the reserve system violated federal antitrust laws and represented a form of involuntary servitude prohibited by the Thirteenth Amendment. Ultimately, the Supreme Court again upheld baseball’s antitrust exemption.<sup>3</sup> This ruling, however, encouraged players to seek an end to the reserve system through the collective bargaining process.

¶10 Unlike other recent books that have examined this lawsuit,<sup>4</sup> *One Man Out* attempts to contextualize the outcome objectively by using details about the business of sports and the dynamics of race in America. The book nicely balances the author’s self-proclaimed passion for baseball with his academic interest in race relations as a history professor at Virginia Union University. Goldman describes each phase of the lawsuit, from the original complaint to the Supreme Court ruling, with just enough detail to elucidate the general arguments on both sides. The book supplements these descriptions with contemporaneous accounts of the events from newspapers as well as the papers of justices and others who were involved in the dispute.

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2. *Toolson v. N.Y. Yankees, Inc.*, 346 U.S. 356 (1953); *Fed. Base Ball Club of Baltimore, Inc. v. Nat’l League of Prof’l Base Ball Clubs*, 259 U.S. 200 (1922).

3. *Flood v. Kuhn*, 407 U.S. 258 (1972). The Supreme Court did not rule on the Thirteenth Amendment claim, but that claim was denied at both the trial and appellate level. *Flood v. Kuhn*, 443 F.2d 264, 268 (2d Cir. 1971), *aff’g* 316 F. Supp. 271, 280-82 (S.D.N.Y. 1970).

4. *See, e.g.*, ALEX BELTH, *STEPPING UP: THE STORY OF CURT FLOOD AND HIS FIGHT FOR BASEBALL PLAYERS’ RIGHTS* (2006); NEIL F. FLYNN & JAMES MORPHEW, *BASEBALL’S RESERVE SYSTEM: THE CASE AND TRIAL OF CURT FLOOD V. MAJOR LEAGUE BASEBALL* (2006); BRAD SNYDER, *A WELL-PAID SLAVE: CURT FLOOD’S FIGHT FOR FREE AGENCY IN PROFESSIONAL SPORTS* (2006).

¶11 The Supreme Court's opinion is closely examined in chapter 7, as are the personalities of the justices involved in the decision. Goldman explains that most members of the Court decided that Congress had explicitly acquiesced to baseball's antitrust exemption, but that many justices, including Chief Justice Warren Burger, also believed that *Toolson v. New York Yankees, Inc.*,<sup>5</sup> the 1953 Supreme Court decision upon which baseball's modern antitrust exemption rests, was probably wrong. Goldman nicely balances a variety of source material to create a highly readable narrative that explains both the decision reached and the impact that the decision had on baseball, including the evolution of the standard player's contract and the role of collective bargaining.

¶12 Throughout the book, Goldman portrays Curt Flood realistically, as a man with both amazing professional skills and personal demons. In the book's epilogue, Goldman describes Flood's life after the lawsuit. He depicts Flood as a "baseball outsider." After briefly returning to baseball in 1971 to play for the Washington Senators, Flood moved to the Mediterranean island of Majorca and ran a bar called the Rustic Inn, before eventually moving back to the United States in 1975. Although he won seven consecutive Golden Glove Awards, Flood has never been inducted into the Baseball Hall of Fame. In 1998, however, Congress recognized Flood by naming after him the legislation that finally removed baseball's antitrust exemption.<sup>6</sup>

¶13 Divided into eight chapters, *One Man Out* is an enjoyable and insightful account of a dark period in baseball history. As a popular work, documentation is reserved for the bibliographic essay at the end of the book. This method adds to the book's readability but may frustrate researchers interested in verifying specific facts. The index is adequate. A list of relevant cases and a helpful chronology round out the text.

¶14 Overall, this book is appropriate for the personal libraries of baseball fanatics and for academic libraries that support sports law programs or that maintain extensive collections of famous trials.

Healey, Paul D. *Professional Liability Issues for Librarians and Information Professionals*. New York: Neal-Schuman Publishers, Inc., 2008. 236p. \$85, paper.

*Reviewed by Elizabeth A. Greenfield*

¶15 Paul Healey's valuable new book on liability issues for the information professions, *Professional Liability Issues for Librarians and Information Professionals*, fills a void left in the library literature by the absence of a credible resource on this complicated subject. In his book, Healey considers questions and issues that apply to librarians in general, law and medical librarians specifically, information brokers, and archivists and curators. While members of the latter two groups are also among *Law Library Journal's* readers, this review will focus on the first two groups, with a heavy emphasis on the second.

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5. 346 U.S. 356 (1953).

6. Curt Flood Act of 1998, Pub. L. No. 105-297, 112 Stat. 2824.

¶16 For decades, librarians have raised questions about their potential liability for what some have called information malpractice: What happens if a library user relies on inaccurate information found in a book from my library? Or on out-of-date statistics in a database provided through library terminals? If I provide factual information to a patron, must I offer a disclaimer or provide additional advice on finding and using resources? If I'm an attorney as well as a law librarian, can I advise a *pro se* user on court procedures or how to handle her case? Who has final responsibility, and thus potential liability, for consequences arising from the use of either information or resources that I provide?

¶17 These are complicated questions, but Healey, a lawyer and law librarian, brings to the discussion the level of thought and analysis needed to understand and explain the issues. His reasoning is careful, and his analysis sound. His conclusions are reasonable and sensible in context. He makes excellent use of case studies and examples to illustrate his point—not long, drawn-out, complicated case studies, but straightforward fact patterns to which readers can relate.

¶18 The book's opening chapters introduce the concept of liability in the library setting, the elements of and defenses to a claim of liability, and other basic legal concepts and issues. These chapters provide background essential to understanding the discussions that follow. Chapter 4, "Information Professionals and Liability," addresses the first element of a claim for liability—the duty of care—and explores its contours in a library setting. Healey considers several scenarios in his examination of the issues, offering prudent, reasonable conclusions based on a review of the case law, case studies, and just plain common sense.

¶19 Chapter 7 focuses on liability for law and medical librarians. Healey points out that the *Model Rules of Professional Conduct*, adopted in some form by all fifty states, hold supervising attorneys ultimately responsible for (1) fulfilling the affirmative duty to conduct adequate research and (2) the actions of those who perform work on their behalf. As a result, a law librarian cannot be found liable for information provided to a lawyer. (How that law librarian's *job performance* will be judged is an entirely different matter, of course—one completely separate from any question of liability.) Liability, Healey points out, could arise nonetheless from interactions with *pro se* users. Throughout the book, however, Healey emphasizes that any professional liability for information professionals is improbable.

¶20 *Professional Liability Issues for Librarians and Information Professionals* provides an abundance of endnotes, bolstering the authority of Healey's discussion while satisfying the legal reader's need for properly supported statements and conclusions. The book is also very well indexed. Indexing may not seem an exciting topic to some readers, but there is nothing like accurate, thorough indexing to make a book truly useful. This book has it.

¶21 Who should buy this book? In spite of its rather high price—\$85 for a paperback—it belongs in every graduate library and information science program (perhaps the publisher will offer a lower-priced student edition). This text should be read by *every* information professional. It belongs on the shelves of all academic libraries and if not on the shelves of public law libraries, then on the desks of their staff. This is a valuable book that fills an important need.

Hoffer, Peter Charles, Williamjames Hull Hoffer, and N.E.H. Hull. *The Supreme Court: An Essential History*. Lawrence, Kan.: University of Kansas Press, 2007. 494p. \$34.95.

*Reviewed by Leslie Street*

¶22 From our twenty-first century perspective, the profound impact of the United States Supreme Court—not only on the development of American law, but equally on the lives of ordinary Americans—is no longer open to question. In *The Supreme Court: An Essential History*, authors Peter Charles Hoffer, Williamjames Hull Hoffer, and N.E.H. Hull provide historical context that helps to explain how the Court developed into the force that it is today. The authors, each an accomplished historian, give readers an historical and political lens through which to view the development of Supreme Court jurisprudence. At the same time, they illuminate the various ways in which this jurisprudence has shaped both the law and the larger history of the United States.

¶23 This title is hardly the first to offer insight into the history of the Supreme Court. However, its explication of Supreme Court history represents a unique approach that offers a new contribution to the literature. In contrast to those works focused on legal movements and characterizations of jurisprudential theory,<sup>7</sup> *An Essential History* is written by historians, and it bespeaks larger historical and political themes. While multiple books have examined the personalities and biographies of individual justices<sup>8</sup> and others have surveyed major cases decided by the Court,<sup>9</sup> this title combines the two approaches, characterizing each era of Supreme Court history in reference both to the personalities that made up the Court and to the decisions that defined the Court's jurisprudence. In addition to these methods of analysis, the authors carefully explain the key events and historical movements taking place in the country at large and affecting the evolution of the Court.

¶24 Most of *An Essential History* is dedicated to a portrayal of Supreme Court history through the end of the Rehnquist Court. This material is organized into three discrete sections, each defined by judicial themes that pervaded an historical era of the Court: "The Heroic Courts," "The Classical Courts," and "The Modern Courts." These sections are further subdivided into individual chapters corresponding to the various Chief Justices. Each chapter begins with a brief introduction to new justices appointed to the Court during the tenure of the applicable Chief Justice. The authors' historical perspective adds valuable insight into the politics surrounding these appointments. Next, each chapter proceeds to summarize the major decisions that highlight the era. These summaries place the cases within the larger context of the time, explaining the political movements of the day and other external pressures experienced by the Court.

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7. See, e.g., THE UNITED STATES SUPREME COURT: THE PURSUIT OF JUSTICE (Christopher Tomlins ed., 2005).

8. See, e.g., HENRY J. ABRAHAM, JUSTICES, PRESIDENTS, AND SENATORS: A HISTORY OF U.S. SUPREME COURT APPOINTMENTS FROM WASHINGTON TO BUSH II (5th ed. 2008); JEFFREY ROSEN, THE SUPREME COURT: THE PERSONALITIES AND RIVALRIES THAT DEFINED AMERICA (2006); THE SUPREME COURT AND ITS JUSTICES (Jesse H. Choper ed., 2d ed. 2001).

9. See, e.g., PETER H. IRONS, A PEOPLE'S HISTORY OF THE SUPREME COURT (1999).

¶25 *An Essential History* concludes with additional, prospective material and a detailed bibliographic essay. The book's final chapters look forward from the Supreme Court's history toward its future. The authors summarize the changes experienced over time by the Court and by its supporting institutions, and add a preliminary examination of the Roberts Court. The bibliographic essay introduces the reader to the wealth of information available on the Supreme Court. It also helps demonstrate how the authors pulled together materials from a vast array of sources to create their own unique and worthy contribution to Supreme Court scholarship.

¶26 As a librarian, I would recommend this book to patrons in two particular circumstances. For the law student or legal professional with some background in Supreme Court jurisprudence, the title provides a detailed exploration of the individual justices and larger historical currents that have influenced decision making on the Court. This treatment can help legal professionals expand their understanding of the Court and its jurisprudence beyond the myopic view provided by individual cases considered in isolation. Thus, academic law libraries may be particularly interested in including this book within their collections. For non-legal professionals, the book offers basic overviews of key Supreme Court cases written in easy-to-understand language that effectively defines fundamental legal concepts. Although not exhaustive in coverage, these basic treatments can help nonlawyers understand the role that the Supreme Court and its decisions have played in the development of American law and the history of the United States. Therefore, county, state, and court law libraries open to the public may find the title useful as well.

Houdek, Frank G. *The First Century: One Hundred Years of AALL History, 1906–2005*. Buffalo, N.Y.: William S. Hein & Co., 2008. 240p. \$95.

*Reviewed by Kristina L. Niedringhaus*

¶27 This expertly researched history of the American Association of Law Libraries (AALL) is an excellent resource for any member of the law librarian profession. For those newer to the profession, the book provides superb background on the development of the Association and the profession. For others, the book fills in pieces of history, provides supporting references, contains a wealth of reference material, and can serve as a jumping-off point for further research. The book notes events and reprints both photographs and significant documents from the formation of the Association in 1906 through the 2006 Annual Meeting of AALL in San Antonio.

¶28 Author Frank Houdek<sup>10</sup> explains in the introduction that this book is an outgrowth of research done for the Association's 100th anniversary celebration and outlines what the book does and does not attempt to cover. Houdek states, in part, "[t]his book represents the first attempt to provide, in a single source, not only

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10. Frank is well known to *Law Library Journal* readers and AALL members. He served as the Editor of LLJ from 1994 to 2007 and was President of AALL in 1996–97. He is currently the Associate Dean for Academic Affairs and Professor, Southern Illinois University School of Law, having until recently been the Law Library Director there.

descriptions of what happened during AALL's first hundred years, but also accurate information about the sources that document these events" (p.xiii). Houdek describes his history as being told in "snippets and brief descriptions rather than in an analytical narrative that critically examines the issues and events" (p.xiii). In the future, the book can provide the starting point from which Houdek or another researcher can delve into that critical analysis. He has succeeded admirably in providing accurate references to the documents that record the history of the first one hundred years of AALL.

¶29 Yearly Histories—chronological entries detailing the Association's significant events—make up the bulk of the book. These entries can be read in order or can serve as a reference resource for important events in a given year. The Yearly Histories report on a wide variety of events, including: publication of the first issue of *Index to Legal Periodicals and Law Library Journal* (December 1908, although it is dated January 1908); the daily rates for the hotel at the fifth Annual Meeting at Mackinac Island, Michigan (\$3.50 for a room with a bath); and the historic date when Carol Avery Nicholson became the first African American to serve as AALL president (July 24, 2002). Each of these events, big or small, is accompanied by a citation to a source or sources supporting its accuracy. The 570 footnotes to the Yearly Histories not only confirm the veracity of the entries but also provide further avenues of inquiry for researchers seeking more information.

¶30 Beyond the Yearly Histories, the book offers several other features that make it an invaluable reference for the history of AALL and law librarianship. Houdek provides more than thirty illustrations from the Association's history. Most of these illustrations are photographs, but copies of original documents, such as the first page of the AALL Certificate of Incorporation from 1935, are also included. There are three appendixes: a list of AALL presidents and of Annual Meeting dates and locations; a list of recipients of the Marian Gould Gallagher Distinguished Service Award and of the Joseph L. Andrews Bibliographical Award; and a selective bibliography on the history of AALL. Each appendix seems specifically designed to support the efforts of future researchers. Finally, Houdek has provided the reader with more than seventy pages of indexing. The length of the index is a testament to its thoroughness and is yet another feature adding value to this useful resource.

¶31 *The First Century* is an important addition to the literature of our profession. The book is an engaging read as well as an excellent reference tool for the Association's history. The thoroughness of the footnotes and index yield a readily accessible research resource providing documentation of the profession's history. This book is highly recommended for all law librarians interested in the development of the Association and the profession.

Macey, Jonathon R. *Corporate Governance: Promises Kept, Promises Broken*. Princeton, N.J.: Princeton University Press, 2008. 344p. \$35.

*Reviewed by Sara R. Paul*

¶32 *Corporate Governance: Promises Kept, Promises Broken* is an in-depth examination of the current condition of corporate governance in the United States. Author Jonathon R. Macey's central premise is that corporate governance—an

admittedly far-reaching term that includes “all of the devices, institutions, and mechanisms by which corporations are governed” (p.2)—is about promises. Promises are legitimate, investment-backed expectations. For Macey, a corporation’s success rests on keeping its promises. Conversely, managers who break promises to shareholders are deviant.

¶133 Macey, a corporate law expert who holds positions as Deputy Dean and Sam Harris Professor of Corporate Law, Corporate Finance and Securities Law at Yale Law School and as Professor in the Yale School of Management, explores his central premise over the course of fifteen chapters. The book begins with an analysis of three primary components of corporate governance: contracts, laws, and social norms. Later chapters proceed to examine institutional and similar mechanisms of corporate control, including accounting firms, credit rating agencies, stock exchanges, the SEC, and the market for corporate control. For each topic, Macey seamlessly interweaves seminal court decisions, recent economic studies, examples of corporate scandal, and similar forms of evidence. Though he addresses sophisticated subjects, Macey does an excellent job throughout the book of providing enough explanation and background to bring even the novice reader quickly up to speed.

¶134 To illuminate the ideas of corporate governance and promise, Macey probes the many ways in which shareholders lack enforceable rights. A corporation’s contract with its shareholders is its charter, or articles of incorporation, and such documents tend to be vague and cursory at best. Macey further asserts that the enforcement of laws and regulations dedicated to corporate control has been ineffectual. As a result, shareholders are left with no guarantees and can only *trust* that corporate managers will keep their promises.

¶135 *Corporate Governance* devotes substantial discussion to boards of directors as one mechanism intended to protect shareholder interests. An entire chapter is devoted to case studies of the boards of TransUnion, Disney, Equity Funding, and Enron. Macey argues that so-called “independent” directors are actually anything but. Directors are increasingly expected to play an integral role in day-to-day corporate decisions. They inevitably become “reputationally linked to management” (p.60) and benefit from the success of the corporation and its managers. Various academic theories outlined by Macey support the contention that cognitive biases and information channeling encourage board capture, or the loss of a board’s capacity to serve as an independent monitor of corporate management. Aggravating the problem, outside investors have no means to determine if a particular board remains objective or has been captured.

¶136 Macey finds regulatory oversight carried out by formal, external institutions to be equally ineffective. Though the SEC has seen increases to its regulatory powers and its budget over recent years, Macey deems these changes largely useless. He asserts that the most politically favored changes have been the most disappointing. *Corporate Governance* also takes to task credit-rating agencies for producing stale and inaccurate information about corporations. As even these agencies themselves will claim, “because their ratings are grounded on analysis of information generated by the companies themselves, [rating agencies] are not in the business of searching for and exposing fraud” (p.113–14). Finally, Macey explains that orga-

nized stock exchanges no longer act as stand-alone regulators. There are now so many forums for listing corporate stock that no single exchange can realistically enforce corporate governance rules.

¶37 Ultimately, Macey advocates market-based solutions whereby ineffective management decisions can be corrected through free market actions, such as trading or takeover. Macey demonstrates how useful, market-based mechanisms for corporate governance are actually being hindered by regulation. He maintains that “social and legal institutions are encouraging the least effective mechanisms and institutions of corporate governance and discouraging those that are most effective” (p.48–49). The book’s final chapters deal with those mechanisms that Macey believes to be useful sources of improved corporate governance: shareholder voting, hedge funds, and private equity funds.

¶38 *Corporate Governance: Promises Kept, Promises Broken* provides a cogent analysis of the various institutions and systems that are supposed to promote effective corporate governance. Meanwhile, Macey’s provocative theories and opinions present interesting fodder for all students of corporate organization. The book would be a valuable addition to any academic law library. Indeed, though the work is academic in tone, law firms or public law libraries with strong corporate collections may also be interested in this text.

Netanel, Neil Weinstock. *Copyright’s Paradox*. New York: Oxford University Press, 2008. 268p. \$34.95.

*Reviewed by Pamela Lucken*

¶39 I was excited to read *Copyright’s Paradox*. I was relieved when I finished it. What happened during those 268 pages? As succinctly described by the author, Professor Neil Netanel, the paradox is—don’t worry, I’m not giving away the plot—that copyright is both a benefit to and a burden on speech. The benefit provided by copyright is primarily economic—by granting authors and other creators exclusive rights to profit from their expression, copyright establishes a financial incentive to create and distribute new speech. The same laws that provide these financial rewards, however, also hamper the creative process. Creators often build new speech from the existing speech of others, Netanel claims, so the need to obtain permission from and pay license fees to current copyright holders often chills or burdens new speech.

¶40 To explore the tension between copyright and free speech, Netanel examines the history of copyright and investigates the changes that have occurred since the Constitution first empowered Congress to “promote the Progress of Science and useful Arts . . . .”<sup>11</sup> He considers the expanding rights of copyright holders and characterizes them, rather disparagingly, as “Blackstonian,” conjuring images of Blackstone’s famous description of property rights as the “sole and despotic dominion which one man claims and exercises over the external things of the world . . . .”<sup>12</sup> Netanel explains the interplay between the First Amendment and

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11. U.S. CONST. art. I, § 8, cl. 8.

12. WILLIAM BLACKSTONE, 2 COMMENTARIES \*2.

copyright laws, and he reveals the role that courts play in deterring new speech by frequently rejecting First Amendment defenses in copyright infringement cases. Best of all, Netanel proposes ideas for revising or remaking copyright laws to balance the competing benefits and burdens on speech.

¶41 While delving into these varied and complex issues, Netanel considers copyright's application to a broad array of media, such as books, television, movies, sound recordings, and the Internet. He compares the creation and dissemination of digital speech through the Internet with traditional speech and describes the incompatibility between current copyright laws and digital technology. He also discusses the shortcomings of the Digital Millennium Copyright Act,<sup>13</sup> questioning whether the Act can withstand First Amendment scrutiny.

¶42 Netanel illustrates his points using a range of examples. Early in the book, he details nine copyright scenarios—ranging from print translations to hip-hop music—that he uses as primary examples throughout the remainder of the text. To emphasize particular issues, however, Netanel incorporates additional examples, such as the use of Martin Luther King's "I Have a Dream" speech in a filmed documentary or the personal use of pop-culture images on MySpace pages. This generous use of examples not only brings copyright issues to life but also demonstrates the wide-reaching impact that copyright has on speech across various types of media.

¶43 Overall, this book is fascinating. The issues are challenging and thought-provoking, and Netanel's suggestions may well help stimulate and focus the dialogue about much-needed changes (in Netanel's opinion and mine) to the current copyright laws. So, why was I relieved to finish it? I found the book to be a very tough read, because my advanced-beginner's understanding of copyright was insufficient for the task. Consequently, I often found myself re-reading paragraphs in an attempt to grasp a concept. That said, however, the end notes are extensive, so I hope to expand my knowledge by working my way through the cited references. Perhaps then I will be able to engage in the copyright dialogue as effectively and proficiently as Netanel does.

¶44 *Copyright's Paradox* is recommended for academic law libraries and specifically for patrons with a scholarly interest in and a comprehensive understanding of copyright laws.

Rabushka, Alvin. *Taxation in Colonial America*. Princeton, N.J.: Princeton University Press, 2008. 869p. \$60.

*Reviewed by Stephanie Towery*

¶45 This work, a single, large volume printed on acid-free paper, is the first comprehensive study of taxation in colonial America and a fascinating, albeit difficult, read. Not quite a textbook, *Taxation in Colonial America* attempts to answer almost any question about taxation in the early American colonies. The author, Alvin Rabushka, assures us that no single, inclusive resource previously existed on the subject—the very reason he sought to compile from disparate sources the infor-

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13. Pub. L. No. 105-304, 112 Stat. 2860 (1998).

mation presented in this work and the detailed tax data that fills its tables and appendixes. Written for the average layperson without a detailed knowledge of history or taxation, the book is certain to become a standard in the field.

¶46 Rabushka organizes his subject matter chronologically and geographically, breaking down the colonial period into six smaller time periods and grouping the colonies into north, middle, and south. I found this organizational scheme confusing. Without constantly referring forward and back through the book, it was difficult to track the changes within any particular colony. In his attempt to provide such a comprehensive overview, Rabushka overwhelms the reader with a large amount of data tied loosely to a broader context.

¶47 Although the writing is at all times clear and understandable, the sheer length (and weight) of this work is intimidating. As a reference work, it is a difficult book to read from cover-to-cover, and the book as a whole does not flow well from one section to the next. No doubt the book works better as a reference guide and survey of existing scholarship than it does as escapist literature. The book might also have benefited from more illustrations, more analysis of the tabular material, and possibly a division into multiple volumes. In general, I found myself wanting more analysis rather than less.

¶48 Criticism aside, the book has many strong points. The footnotes in the work are compelling reading in themselves and prove the author has fastidious control over his source material. The bibliography and index invite further study. One of my favorite things about the book is Rabushka's decision to include summaries of other authors' work on various events and subjects tangential to his thesis. These three- and four-page summaries provide a context for the sea of tax data. While Rabushka is mainly focused on changes in tax trends across time and geographical units, these summaries anchor his analysis in a world that is familiar and interesting.

¶49 Despite some limitations, *Taxation in Colonial America* is sure to become an indispensable addition to every academic law library, and I heartily recommend it to all students of legal history. I recommend it as well to all practicing tax lawyers, though it will not be an appropriate addition to most law firm collections. Beyond its intellectual value, the cloth binding and pleasing book cover on this weighty volume should also make the proprietor of any shelf it sits on look a little more intelligent.

Tribe, Laurence H. *The Invisible Constitution*. New York: Oxford University Press, 2008. 278p. \$19.95.

*Reviewed by Shaun Esposito*

¶50 My initial thought upon selecting this title to review was that, even without examining the book itself, I could easily recommend it for purchase by all academic law libraries. A work on the United States Constitution written by noted constitutional scholar and Harvard law professor Laurence Tribe—how could any academic law library not own a copy? In the interests of full disclosure, let me state that I have admired Tribe's writing and his constitutional philosophy since I first read portions of his *American Constitutional Law* as a law student long ago (suffi-

ciently long ago that I was reading the first edition from 1978). My eager examination of this latest book has only confirmed my initial suspicion that every academic law library needs a copy. Many other law libraries will find the work valuable as well.

¶51 The title of the book, *The Invisible Constitution*, raises a number of questions, chief among which is: What is the invisible Constitution? Is it the unwritten Constitution? The hidden Constitution? The judicially interpreted Constitution? Tribe's answer, provided over the course of the book, seems to be that the invisible Constitution is not really any one of these things. He examines a multitude of constitutional issues, ranging from due process to equal protection to state sovereignty and federalism, and argues that many of the concepts thought to be at the core of our constitutional system—such as “one person, one vote,” or a “government of laws, not men”—can be found nowhere in the text of the Constitution itself. Ultimately, in a work that references such disparate topics as substantive due process, the dormant commerce clause, equal protection, Isaac Newton, Albert Einstein, textualism, originalism, Antonin Scalia, privacy, Barack Obama, Warren Burger, Godel's Incompleteness Theorem, dark matter, selective incorporation, and torture, Tribe attempts to develop methods or “modes of construction” that can make visible the underlying, invisible Constitution. He lists these modes as geometric, geodesic, global, geological, gravitational, and gyroscopic. Each mode of construction is discussed at length within the text, and Tribe includes fascinating hand-drawn diagrams that attempt to provide visual depictions of the methods.

¶52 This work will undoubtedly engender substantial debate, with those at various points on the philosophical-political-legal spectrum alternately accepting or rejecting Tribe's views. Indeed, Tribe hopes “that one consequence of this book might be to hasten, just by a little, the day when the argument over whether there is an invisible, unwritten Constitution gives way to the far more productive argument over what the invisible Constitution *contains*” (p.210). Beyond that, however, I will leave sophisticated analysis of Tribe's theories to constitutional scholars.

¶53 From a law librarian's bibliographic perspective, the book offers a number of fairly traditional features. An extensive table of contents allows the reader to find and review specific portions of the text. Each chapter includes detailed references to source materials, with citations both to relevant cases and to scholarly books and articles on constitutional theory and interpretation. Thus, the book is an excellent source for further readings on the various topics it covers. An extensive index provides easy access to discussions on specific subjects and individuals. For added convenience, the book includes a copy of the “visible,” written Constitution.

¶54 Academic law librarians will almost certainly purchase this work without regard to any recommendation from me, but what other types of law libraries might find it useful? Given the overarching importance of constitutional law across most areas of legal practice, the reasonable price of the work, and the stature of its author, any law library that serves patrons interested or involved, even tangentially, in constitutional litigation should purchase this work. Most public law libraries will find the work useful, as will firm libraries supporting attorneys who perform constitutional litigation. Even prison law libraries should consider the title, given its fresh perspectives on various constitutional issues important within the prison

context. I also hope that any librarian serving the members and staff of the Senate Judiciary Committee will ensure that plentiful copies of *The Invisible Constitution* are available for those patrons' review, a review that should go a long way to promoting thorough and thoughtful discussions with future judicial nominees.