

Keeping Up with New Legal Titles*

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

Contents

<i>Outrageous Invasions: Celebrities' Private Lives, Media, and the Law</i>	637
<i>Uninhibited, Robust, and Wide-Open: A Free Press for a New Century.</i>	639
<i>Relationship-Centered Lawyering: Social Science Theory for Transforming Legal Practice</i>	640
<i>Welfare's Forgotten Past: A Socio-Legal History of the Poor Law</i>	644
<i>The EU Race Directive: Developing the Protection Against Racial Discrimination Within the EU</i>	645
<i>The Double Helix and the Law of Evidence</i>	647
<i>Capital Punishment on Trial: Furman v. Georgia and the Death Penalty in Modern America.</i>	649
<i>Property Outlaws: How Squatters, Pirates, and Protesters Improve the Law of Ownership</i>	650
<i>Before Eminent Domain: Toward a History of Expropriation of Land for the Common Good.</i>	651
<i>Law, Literature, and Therapeutic Jurisprudence.</i>	653
<i>Supreme Power: Franklin Roosevelt vs. the Supreme Court.</i>	655

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The Double Helix and the Law of Evidence 647

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 Improve the Law of Ownership* 650

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Outrageous Invasions: Celebrities' Private Lives, Media, and the Law 637

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Law, Literature, and Therapeutic Jurisprudence. 653

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 for a New Century*. 639

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 for Transforming Legal Practice* 640

Barnes, Robin D. *Outrageous Invasions: Celebrities' Private Lives, Media, and the Law*. New York: Oxford University Press, 2010. 285p. \$55.

Reviewed by Greg Ewing

¶1 Every day, supermarket tabloids and infotainment outlets shout the news of the latest celebrity birth, break-up, or misbehavior. In *Outrageous Invasions: Celebrities' Private Lives, Media, and the Law*, University of Connecticut law professor Robin D. Barnes maintains that the U.S. media goes too far in revealing the personal details of celebrities' lives, particularly details backed by nothing more than rumor. Barnes analyzes the legal and policy issues raised by media coverage of celebrities and suggests a number of reforms. Principally, she argues that U.S. law should recognize a zone of privacy that would protect many of the private actions taken both by celebrities and by the rest of us. In the course of her arguments, Barnes examines coverage of well-known icons like Michael Jackson and John Lennon, as well as more marginal celebrities such as "Octomom" Nadya Suleman and her children.

¶2 In chapter 1, Barnes reviews the current state of privacy protection law in the United States and compares it to that of the European Union. She asserts that the European Union's standard for the protection of privacy is higher, and in support of this proposition, describes a European Court of Human Rights decision involving Princess Caroline [von Hannover] of Monaco.¹ The Princess filed a complaint in response to the publication of unauthorized photographs of her and her children taken outside their residence in France by paparazzi working for a German newspaper. The court ruled that the publication violated Caroline's rights, finding that the Princess had an expectation of privacy, even in a public locale. As Barnes explains, because U.S. law does not generally protect the privacy interests of well-known celebrities in public places, courts in the United States would likely have ruled against the Princess.

¶3 Barnes supplements her comparative legal analysis with commentary about significant, noncelebrity news events that the mainstream media has neglected. She hypothesizes that if the media focused less on the minutiae of celebrities' lives, it might provide better coverage of other, more important issues. While this argument has some merit, there should be ample airtime and web space in a world of twenty-four-hour news outlets to address both celebrity trivia and more traditionally newsworthy subjects. Viewership and advertising revenue drive media coverage. Presumably, the media is offering details on the lives of celebrities because an audience is tuning in.

¶4 Unfortunately, *Outrageous Invasions* discusses nontraditional media sources only in passing, describing the celebrity coverage found in a few blog postings. An investigation into the impact of nontraditional sources on celebrity privacy would have been worthwhile. User-generated content—such as YouTube videos or anonymous comments on newspaper web sites—is not likely to be subjected to extensive editorial control, leaving ample opportunity for invasions of celebrity privacy and for the dissemination of potentially defamatory misinformation about celebrities.

¶5 *Outrageous Invasions* includes footnotes with citations to cases, web sites, and articles. It also contains a useful index with both topical entries, like *paparazzi*, and name entries, like *Suleman*, *Nadya*, and *Suleman children*. Despite these features, the book is not an exhaustive research source. Instead, it provides a comparative approach, with proposals for changing U.S. law. *Outrageous Invasions* is also not a traditional casebook. The book's foreword describes a supplemental text, *Privacy and Defamation in the U.S. and European Union*, that will, when published, offer select primary source materials.² Although this might prove useful for course use, the monograph stands on its own quite well for most purposes.

¶6 *Outrageous Invasions* will be a valuable addition to the collections of academic law libraries and university libraries that support journalism programs. It is a reasonably priced, timely monograph that reflects widespread societal interest in celebrities and journalism. However, the text does not include practice-oriented

1. Von Hannover v. Germany, 2004-III Eur. Ct. H.R. 294.

2. At the time of writing, the supplemental text was not available for purchase on the Oxford University Press web site.

materials, such as forms, checklists, or drafting advice, and may thus be a less useful choice for law firm collections.

Bollinger, Lee C. *Uninhibited, Robust, and Wide-Open: A Free Press for a New Century*. New York: Oxford University Press, 2010. 210p. \$21.95.

Reviewed by Helen N. Levenson

¶7 In his latest book, First Amendment scholar Lee C. Bollinger examines the past, present, and future of a free and independent press both in the United States and around the globe. The volume, *Uninhibited, Robust, and Wide-Open: A Free Press for a New Century*, is concise in format yet expansive in ideas. In it, Bollinger analyzes how the free press can and should evolve into an entity capable of adapting to and supporting the complexities of an increasingly global and technologically advanced world.

¶8 *Uninhibited, Robust, and Wide-Open* is organized into four chapters. In the first, Bollinger presents a framework for his analysis of twentieth century U.S. Supreme Court cases addressing First Amendment rights. He structures his analysis around “three . . . pillars of . . . jurisprudence” (p.5): protection from censorship, journalistic access to information, and government regulation of media. Bollinger continues this tripartite construction of First Amendment rights throughout the book and, in his fourth and final chapter, advocates the direction that jurisprudence concerned with each of these pillars needs to take in the future.

¶9 The book’s first chapter offers a superb background on the current state of First Amendment rights in the United States, as illuminated by the seminal case of *New York Times Co. v. Sullivan*.³ In ruling for the newspaper in *Sullivan*, the Court explained that it considered the case “against the background of a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials” (p.16).⁴ (Herein lies the origin of the book’s title.) Bollinger illustrates throughout the text how the *Sullivan* case moved the country toward the establishment of a nationwide standard for freedom of the press and protection against libel. This new national standard, Bollinger argues, was vital to the increasingly pluralistic and nationalized society that was developing in the United States during the 1960s.

¶10 In chapter 2, Bollinger chronicles how the Supreme Court strengthened the principles of open, public discussion in decisions after *Sullivan*. He explains that the Court, in advancing these principles, sought to promote “better ideas” by providing a “venue in which citizens could develop the capacities of mind and character that are so necessary in an increasingly complex and pluralistic society” (p.67). This provocative chapter presents a powerful argument that the media’s rights to access and to disseminate information are essential to informed public debate on difficult contemporary issues.

3. 376 U.S. 254 (1964).

4. Quoting *id.* at 270.

¶11 Moving into the twenty-first century, Bollinger's third chapter reasons that the Internet and increased globalization demand an elevated global standard for journalistic freedoms, one similar in kind to the national standard established in the 1960s by *Sullivan*. In his discussion, Bollinger marshals an impressive array of meticulously footnoted statistics illustrating the power of the Internet and the dynamic and far-reaching effects of globalization. Enhanced communication technologies, foreign investment, international trade and travel, and myriad other factors all contribute to the need for a global standard for protecting the press. Bollinger sees the media as the large-scale institution most capable of shouldering responsibility for the worldwide dissemination of information, a responsibility that is also the media's unique social duty. The challenge lies in obtaining and upholding an elevated standard for press freedoms across the globe that will allow the media to achieve its task.

¶12 In the final and most compelling chapter, Bollinger eloquently equates freedom of the press with the very attainment of basic human rights throughout the world. He identifies freedom of information as the "touchstone" . . . to securing other rights and to serving other ends" (p.113). He persuasively advocates for a flexible, global application of "Madisonian self-government" (p.118) and outlines the various changes that will be needed in the areas of constitutional law, international law, public policy, education, and international trade and investment in order to create "a global public forum with a widely accepted standard of press freedom" (p.131). His discussion includes an examination of threats to journalistic freedom, including concerns raised by the current financial woes of the print press, and he offers concrete and specific recommendations for achieving global media rights. In the process, he critically evaluates the direction in which each of his three pillars of jurisprudence should advance over the next century.

¶13 *Uninhibited, Robust, and Wide-Open* is part of Oxford University Press's Inalienable Rights series. The series, edited by Geoffrey Stone of the University of Chicago Law School, includes works written by such luminary constitutional authors as Laurence Tribe, Richard Epstein, Alan Dershowitz, Mark Tushnet, and Richard Posner. As president of Columbia University and a world-recognized First Amendment scholar, Lee Bollinger provides a worthy addition to this group, and his contribution packs quite a punch in just a slim volume. The book is gracefully written and filled with impeccable legal analysis, thus making for quite an enjoyable and stimulating read. Readers will take away from it renewed understandings of First Amendment freedoms and the responsibilities of the media. The book is highly recommended for public and academic law libraries, as well as general academic libraries.

Brooks, Susan L., and Robert G. Madden, eds. *Relationship-Centered Lawyering: Social Science Theory for Transforming Legal Practice*. Durham, N.C.: Carolina Academic Press, 2010. 398p. \$40, paper.

Reviewed by Nolan L. Wright

¶14 As a practicing attorney for twelve years before becoming a law librarian, I participated in a lot of cases that involved high-conflict situations and complex

relationship, developmental, and psychological issues. So I was genuinely excited at the prospect of reading *Relationship-Centered Lawyering: Social Science Theory for Transforming Legal Practice*, the latest Psychology and the Law title from Carolina Academic Press.

¶15 This work might seem just another collection of writings—a *reader*, albeit one with an interdisciplinary mix. It does have such a component, with thirty pieces that represent the work of forty-nine authors, including scholars, practitioners, and three sitting judges. However, the book is more than the sum of its collected parts. The editors picked the individual selections to illustrate specific legal and social science perspectives and practice approaches that serve as foundational building blocks for the framework advocated in this book, which they refer to as “Relationship-Centered Lawyering” (p.4) and present here as a new model for legal practice.

¶16 One reason for my initial interest in the book was the interdisciplinary background that its editors brought to the project. Susan L. Brooks, Associate Dean for Experimental Learning and Associate Professor of Law at Drexel University’s Earle Mack School of Law, previously served for many years as director of the child and family advocacy clinic at Vanderbilt University Law School. Co-editor Robert G. Madden is Professor of Social Work and Special Assistant to the President at St. Joseph College, Lecturer in Law at the University of Connecticut, and an adjunct professor at Smith College Graduate School of Social Work. Each editor holds a J.D. and bar membership as well as a graduate degree and certificate or license in social work. Additionally, both editors have experience as family mediators. Given this training and experience, it should come as no surprise that the editors advocate incorporation of social science perspectives into legal education and practice. However, the scope of the application they envision for this interdisciplinary approach and the benefits they expect to result will probably give pause to many in the legal community.

¶17 Social scientists and mental health professionals already serve as expert witnesses in court, and social science research contributes to the decisions of both judges and juries. Brooks and Madden are not simply arguing for more of the same. Instead, the crux of the editors’ argument is that lawyers themselves need to develop new competencies, grounded in social science theory and empirical research, in the following areas: (1) a grasp of the context for human development, recognizing that individuals are parts of families and of other social systems and networks; (2) a process perspective focusing on both justice and effectiveness, considering factors that increase perceptions on the part of both clients and others that they have been treated fairly when interacting with the legal system; and (3) greater affective and interpersonal awareness and skills, including cultural competency and emotional intelligence. Brooks and Madden do not suggest that these supplant lawyers’ traditional skill set of legal knowledge, analytical ability, and advocacy skills. Rather, they argue that these additional competencies will lead to more nuanced analysis, more sensitive client counseling, better legal problem solving and outcomes, improved public perceptions of the legal profession, and greater satisfaction on the part of lawyers with their lives in the law.

¶18 Brooks and Madden made similar arguments in a 2009 law review article that introduced the Relationship-Centered Lawyering approach.⁵ A version of that article is included as an introduction to this book. New here, however, are the inclusion of excerpted writings from other authors, examples applying the framework in specific practice and educational settings, and a closing section in which the editors state their recommendations and vision for the future. The first set of separately authored materials, presented in chapters 1 and 2, introduces reform perspectives from within the legal community that are identified as consistent with the editors' relationship-centered approach: therapeutic jurisprudence, preventive law, restorative justice, and mediation. The next set, presented in chapters 3 through 6, covers the theoretical foundations of the relationship-centered framework. Pieces on family systems theory, human development science, attachment theory, and network theory provide the substantive concepts that collectively serve as "the normative framework of the relational approach" (p.14). Materials from a process-oriented or psychological perspective give "background for understanding the significance of the process elements of legal practice" (p.15), with selections that discuss factors impacting law-abidingness and public satisfaction with the outcome of legal system processes—most critically, perceptions of fairness. Items dealing with interpersonal and affective perspectives cover cultural perceptions and competence, approaches to working with clients that focus on client strengths and empowerment, and methods for understanding and managing emotions. Chapter 7, which ends the book, presents excerpts from two prior articles⁶ by Brooks that illustrate how relationship-centered approaches can be applied, first to legal practice involving the representation of children, and second to law school clinical education. The chapter closes with a section co-authored by Brooks and Madden that articulates their visions and recommendations for the future.

¶19 Various factors make this book worth considering for addition to law library collections. The combination of materials the editors have selected is not duplicated or equaled in any other compilation of which I am aware. The work brings together pieces from disciplines that rarely experience much cross-pollination, including sources not originally intended for a legal audience but which have a lot of potential to enrich the perspectives of lawyers and judges. Uniquely, the editors offer this amalgamation not merely to introduce a range of issues or treatments, but rather to collectively flesh out a new framework that they, the editors, are proposing. In addition to their own original and republished contributions, Brooks and Madden add further distinct value to the book as editors. They provide an introduction that establishes context for the project and summarizes what they hope to accomplish with the undertaking. They introduce each chapter with comments and observations on the selections, as well as rhetorical questions to spur additional reflection (albeit less of this than some readers might like). The index does a good job of identifying a broad array of access points and underscoring the interconnections

5. Susan L. Brooks & Robert G. Madden, *Relationship-Centered Lawyering: Social Science Theory for Transforming Legal Practice*, 78 REV. JUR. U.P.R. 23 (2009).

6. Susan L. Brooks, *Representing Children in Families*, 6 NEV. L.J. 724 (2006); Susan L. Brooks, *Using Therapeutic Jurisprudence to Build Effective Relationships with Students, Clients and Communities*, 13 CLINICAL L. REV. 213 (2006).

between issues raised in the individual pieces. Prior to publication, Brooks and Madden vetted the book at several clinical legal education workshops, and they obviously put a lot of thought into the project. Finally, at forty dollars a copy, the book is quite reasonably priced.

¶20 Several things about the book, however, may give pause to collection development librarians. Aside from some of the editors' contributions, only one of the book's selections was written specifically for this collection. The rest are excerpts from previously published articles, some of which are more than ten years old, and all of which are readily available online. Because anyone can compile copies of the articles, there may seem little reason to buy the book. Yet which of our patrons would both think to do so and prove capable of assembling an equivalent set of materials? The editors' decision to use excerpts instead of providing articles in their entirety may also concern potential library purchasers. However, this decision makes it possible for the book to cover more ground and include more authors, thus presenting additional viewpoints without increasing the size and cost of the volume. It also allowed the editors to exercise independent judgment grounded in their uniquely interdisciplinary backgrounds by presenting only those portions of the material truly relevant to the book's purpose and audience. These advantages seem a fair trade-off and a boon to practitioners, researchers, and students trying to digest the material.

¶21 A more serious drawback is that the book is not entirely clear in communicating exactly what the editors mean by the "Relationship-Centered Lawyering framework" (p.331). Despite some familiarity with the social science literature, I still found myself a bit confused. The editors state in the introduction to the volume that it represents "an effort to compile and organize . . . to create a unified and cohesive framework" (p.4). That implies a degree of integration I did not find. The book would have benefitted from a concise summary at the beginning of the final chapter. Without that summary, the experience is a bit like reading a casebook without a law professor to help fill in the gaps and with no commercial outline to diagram and highlight the underlying structure.

¶22 Despite these concerns, I strongly recommend *Relationship-Centered Lawyering* for all academic law libraries. It represents a unique and inexpensive resource, one that is particularly timely given current discussions on the reform of legal education. Clinical faculty should find that the book has ready application to their classes, and the work may also appeal to faculty who teach upper-level seminar courses or classes in professional responsibility. Law students with social science backgrounds, those attracted to social justice issues, and any who hope to apply their legal training in ways that genuinely help people will find the text rewarding, as well. The book should also be considered for public law libraries that are extensively used by practitioners and judges. Although the editors would argue that the book's subject matter should be valuable to attorneys who do significant family law work or small businesses counseling—practice areas where relationships and extra-legal issues are particularly salient—I cannot recommend *Relationship-Centered Lawyering* for law firm libraries, practical environments in which the book's problems with clarity and cohesion will undercut its value to the greatest degree.

Charlesworth, Lorie. *Welfare's Forgotten Past: A Socio-Legal History of the Poor Law*. New York: Routledge, 2010. 234p. \$125.

Reviewed by Chad J. Schatzle

¶23 *Welfare's Forgotten Past: A Socio-Legal History of the Poor Law* is a timely reminder of society's legal duty to the poor. In an era of global economic turmoil, with recent welfare reform and heated debates over the extension of unemployment benefits here in the United States, it is easy to forget that laws for the relief of poverty have roots reaching back more than 400 years. Author Lorie Charlesworth, Reader in Law and History at Liverpool John Moores University, focuses her book on the *poor law*—a historical, English system derived largely from the seventeenth-century laws of settlement and removal, which provided support for the settled poor within their home parishes. Charlesworth carefully notes that modern welfare law and the poor law are not the same. Modern welfare law is administered on a national scale by a central agency funded through general taxation, while the poor law, until 1865, involved “local autonomy, local financial obligations, duties and responsibilities with *ad hoc* relief patterns” (p.3). Nonetheless, her work demonstrates an important but overlooked point, that the “[p]oor law was law” (p.1), and the book emphatically asserts that this law, “an immediate personal legal right to relief . . . possessed by the settled poor” (p.202), “has been consistently undervalued, marginalised, denied and, finally, forgotten” (*id.*).

¶24 Charlesworth draws upon statutes, case law, local records, and written histories to explain the emergence and development of the poor law and to prove that it was an actual legal right. For example, Charlesworth describes the 1601 Act for the Relief of the Poor,⁷ one of the earliest acts relating to the law of settlement and to support for the poor. The 1601 Act required both ecclesiastical and civil officials to administer its terms. The churchwarden and two to four members of the parish were appointed annually as overseers to watch over the poor, arrange for the apprenticeship of poor children, determine the level of funds—the poor rate—needed to provide for the maintenance of the poor, and assure that cottages built for the poor were utilized solely by the impoverished. Residents of each particular parish were required, upon threat of imprisonment, to contribute to the parish poor rate; the amount of contribution was based upon the value of the resident's property and the degree of local need. In addition to such distinctly legal sources, Charlesworth employs a literary source, Charles Dickens's *Little Dorritt*, as a case study (similar to those encountered in law schools) to demonstrate how the law of settlement might have applied to Amy Dorrit and Arthur Clennam.

¶25 Charlesworth takes direct aim in her book at legal scholars, whom she blames for the current, forgotten status of the poor law. She maintains that the inclusion of mere “elements of ‘history’” (p.74) in their scholarship results in a failure on the part of these scholars to recognize the poor law as the legal right that it was. Instead, this scholarship relegates the poor law to a position of merely a social rule or local custom, readily changeable over time in response to new circumstances. Such treatment by scholars, according to Charlesworth, provokes negative social

7. An Act for the Relief of the Poor, 1601, 43 Eliz., ch. 2 (Eng.).

views on welfare laws in general, rather than recognition of a “400-year-old common law” (p.1) tradition and a “positive cultural norm” (*id.*) worthy of celebration.

¶26 *Welfare’s Forgotten Past*, at 234 pages, is approachable for both students of law and legal scholars. The text is well researched and heavily footnoted, and includes both an extensive bibliography and a helpful appendix illustrating some of the law of settlement. Overall, *Welfare’s Forgotten Past* would be a valuable addition to any university or academic law library collection.

Howard, Erica. *The EU Race Directive: Developing the Protection Against Racial Discrimination Within the EU*. New York: Routledge, 2010. 238p. \$135.

Reviewed by Helen Frazer

¶27 The European Union (EU) Race Directive⁸ is important antidiscrimination legislation, binding upon member states of the EU, each of whom must implement it through national law. In *The EU Race Directive: Developing the Protection Against Racial Discrimination Within the EU*, a new study that evolved from research for the author’s Ph.D. thesis, Erica Howard sets the twin goals of assessing the directive’s effectiveness and analyzing the legislation under concepts of formal and substantive equality. Howard posits that the directive must be examined both in the context of the history and sociopolitical climate of its adoption and with respect to subsequent developments in the fight against racial discrimination.

¶28 In a series of topical chapters that read as mini-essays, the author lays out a careful, textual analysis of the EU Race Directive and related international human rights instruments, discussing relevant scholarly commentary as appropriate. The first chapter traces the history of the movement to eliminate racial discrimination in the EU, a history that resulted in the quick adoption of the EU Race Directive. The chapter also charts changing socioeconomic conditions throughout Europe that provide a possible explanation for the subsequent slow implementation of the directive by individual member states.

¶29 The second chapter broadens Howard’s analysis to encompass the equality clauses of other human rights instruments, particularly the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)⁹ and the European Convention on Human Rights.¹⁰ As these instruments have been signed and ratified by all of the EU member states, Howard concludes that the prohibition of racial discrimination is clearly situated within international human rights law. The chapter also reviews case law from the European Court of Justice (ECJ), an institution that “consider[s] the principle of equality to be a fundamental principle of Community law” (p.39).

¶30 Chapter 3 provides an extended discussion and analysis of contested definitions for *race*, *racism*, *racial discrimination*, and *racial or ethnic origin*, and chapter

8. Council Directive 2000/43, Implementing the Principle of Equal Treatment Between Persons Irrespective of Racial or Ethnic Origin, 2000 O.J. (L 180) 22 [hereinafter EU Race Directive].

9. International Convention on the Elimination of All Forms of Racial Discrimination, *opened for signature* Mar. 7, 1966, S. EXEC. DOC. C, 95-2 (1978), 660 U.N.T.S. 195.

10. Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, 213 U.N.T.S. 221.

4 analyzes these concepts as they relate to the EU Race Directive, which itself defines only *racial discrimination*. These analyses draw primarily on British and European scholarship, but Howard also references Cass Sunstein's *Three Civil Rights Fallacies*.¹¹ Chapter 4 further compares the EU Race Directive to other EU legislation on race and xenophobia. In it, Howard considers the meaning of the phrase *racial or ethnic origin* and questions whether the directive can also protect those discriminated against on the basis of "colour, descent or nationality" (p.85). This chapter also raises concerns about gaps in the protection of groups not recognized in the directive or in other human rights instruments.

¶31 Beginning with chapter 5, the discussion turns to an evaluation of various potential concepts of equality. Howard identifies four concepts—including *formal equality* and two concepts that together make up *substantive equality*—that may be "used in" or form "the aim of" (p.108) legislation and analyzes them in light of three functions that equality must perform in order to combat racism adequately. Chapter 6 applies this equality analysis to the EU Race Directive. Article 1 of the directive adopts the formal equality "principle of equal treatment."¹² This principle is informed by Article 2's definition of direct discrimination as "where one person is treated less favourably than another is, has been or would be treated in a comparable situation on grounds of racial or ethnic origin."¹³ Such discrimination is prohibited without exception. Article 2's definition of indirect discrimination, however, approaches a more substantive definition of equality, prohibiting seemingly neutral provisions that disadvantage certain racial or ethnic groups, but allowing an exception when such provisions are "objectively justified . . . and the means . . . are appropriate and necessary."¹⁴ The chapter also notes that article 5 allows member states to take positive action—i.e., adopt additional measures to support substantive equality, such as those labeled affirmative action in the United States. These measures are particularly relevant now, because discussion and debate in the EU are starting to focus more directly on issues of substantive equality.

¶32 Finally, chapter 7 reviews the conclusions of the preceding chapters, proposes changes to advance the fight against racism and racial discrimination, and concludes that the EU Race Directive has improved legal protections for victims of racial and ethnic discrimination. Howard provides a new analysis of ECJ decisions interpreting the EU Race Directive and recommends that the ECJ apply a high threshold to asserted justifications for indirect race discrimination. She also makes several recommendations, urging (1) uniformity of definitions; (2) the extension of protections to include "grounds of religion or belief, disability, age and sexual orientation" (p.198); and (3) the removal of obstacles to protection for third-country nationals. Lastly, she recommends using legislation in the company of other complementary and supporting measures to achieve greater racial equality.

11. Cass R. Sunstein, *Three Civil Rights Fallacies*, 79 CAL. L. REV. 751 (1991).

12. EU Race Directive, *supra* note 8, art. 1, at 24.

13. *Id.* art. 2(2)(a), at 24.

14. *Id.* art. 2(2)(b), at 24.

¶33 Although the analysis and argument throughout this treatise are detailed and complex, each individual chapter clearly sets forth the path of discussion and wraps up the material in a chapter summary. The table of cases, bibliography, and index reflect the study's scholarly origin as a Ph.D. thesis. The index, however, is too meager to be considered complete. Also, readers attempting to follow the book's arguments will need access to the EU Race Directive and the ICERD, but copies of these instruments are not included with the text. Despite these minor failings, this is an excellent treatise for advanced study of the EU Race Directive and other international instruments prohibiting racial discrimination. It deserves a place in graduate and law school libraries.

Kaye, David H. *The Double Helix and the Law of Evidence*. Cambridge, Mass.: Harvard University Press, 2010. 352p. \$45.

Reviewed by Frances M. Brillantine

¶34 For many of us, the 1995 O.J. Simpson trial was our first real introduction to the use of DNA as evidence. As David H. Kaye demonstrates in his new book, *The Double Helix and the Law of Evidence*, genetic evidence actually has a much longer history, one that began in the 1930s with the cases that first introduced ABO blood typing to the nation's courts.¹⁵ Professor Kaye, an expert on scientific evidence and the use of statistics in law, is Distinguished Professor of Law, Weiss Family Faculty Scholar, and a member of the graduate faculty in the department of forensic science, all at Pennsylvania State University. He has written numerous books and articles, including contributions to four editions of both *McCormick on Evidence*¹⁶ and *Modern Scientific Evidence*.¹⁷ In *The Double Helix*, Kaye draws on evidence law, genetics, and statistics to detail the history of DNA and earlier forms of genetic evidence and to investigate the legal and scientific controversies that have surrounded both. He also discusses current and emerging issues in DNA evidence, focusing on the interpretation of mixtures containing DNA from multiple persons and on the analysis of low copy number samples—small samples involving relatively few copies of an individual's genetic code.

¶35 *The Double Helix* is well organized, with a helpful time line of key scientific and legal developments and a list of relevant cases and statutes. The notes are detailed, and the index is thorough. Unfortunately, the book lacks a glossary, and one would be helpful, as the more scientific portions of the book—though largely accessible to the nonscientist—are nonetheless complex. Chapters generally explore the science and statistical reasoning behind specific developments in forensic genetics and include case histories and analogies that demonstrate and clarify the scientific issues. The book's preliminary chapters focus on the various genetic markers, such as blood type, that were in widespread use prior to the advent of DNA evi-

15. See, e.g., *State v. Damm*, 266 N.W. 667 (S.D. 1936) (recognizing as scientifically valid the use of blood type to disprove paternity, while nonetheless affirming the exclusion of blood type evidence in the case at bar).

16. The most recent is KENNETH S. BROUN ET AL., *MCCORMICK ON EVIDENCE* (6th ed. 2006).

17. The most recent is DAVID L. FAIGMAN ET AL., *MODERN SCIENTIFIC EVIDENCE* (2007–2008 ed. 2007).

dence and on the standards developed by courts for deciding when to admit such markers as evidence. Kaye also discusses mathematical frequency and probability and the abuses that occurred when probabilities derived from genetic evidence were introduced in courts.

¶36 In 1984, Sir Alec John Jeffreys discovered “DNA fingerprinting” (p.50) and the world of forensic science changed forever. To place this discovery in context, Professor Kaye explains the nature of DNA, describes early DNA typing, and details two difficult criminal cases resolved through the use of DNA analysis. By the late 1980s, courtroom disputes over the regular use of DNA typing had spread into the scientific and academic communities. Kaye demonstrates how the resolution of such disputes over genetic profiling, probability, and population genetics helped contribute to the admissibility of DNA evidence in future cases. Of particular interest is the admissibility of the random-match probability, which purports to measure the likelihood that someone picked randomly from the general population would happen to possess a particular DNA profile. Kaye discusses this issue in detail, devoting a full chapter to the O.J. Simpson case, still considered the apex of arguments against allowing DNA evidence.

¶37 Tremendous advances have been made in genetic technologies since the Simpson case, but concerns about DNA evidence still exist. Professor Kaye explains the science behind these advances and describes how they solve some problems but give rise to others. Most disquieting among the new challenges are the use of racial categories to estimate random-match probabilities and the challenge of unraveling the jumbled mixtures of DNA sometimes found at crime scenes. Kaye offers various ideas for addressing these issues, such as the use of likelihood ratios in identifying combinations of DNA. One particularly interesting technological advance involves the use of mitochondrial DNA (mtDNA), a development that began to impact forensic science in the late 1990s. Since mitochondrial genetics are passed directly from mother to child, mtDNA is particularly useful for establishing membership in a family. It is also used where only old, degraded, or small tissue samples are available. Professor Kaye presents fascinating examples of how mtDNA has been used to establish family connections and to associate suspects with human hairs found at crime scenes.

¶38 So, in the end, what can we learn from the courts’ experience with genetic evidence? Kaye concludes with a general discussion on the integration of science into law, the increasing speed with which new technologies are introduced and accepted by courts, and the various means by which these processes might be improved. Although the book closes without reaching many important topics, such as the issues involved in acquiring DNA samples or the creation of a national DNA database, Professor Kaye promises to address these and related issues in another, forthcoming book.

¶39 *The Double Helix* is a fascinating account of the complex history of genetic evidence. Professor Kaye clearly explains the science and statistics behind genetics, and the compelling examples he pulls from both civil and criminal cases provide valuable context to his explanations. The book is recommended not only for academic libraries, but also for individual lawyers and judges.

Oshinsky, David M. *Capital Punishment on Trial: Furman v. Georgia and the Death Penalty in Modern America*. Lawrence, Kans.: University Press of Kansas, 2010. 144p. \$29.95.

Reviewed by Laura Frost

¶40 David M. Oshinsky is a historian, a *New York Times* essayist, and the Pulitzer Prize-winning author of several acclaimed works of legal history. His latest book, *Capital Punishment on Trial: Furman v. Georgia and the Death Penalty in Modern America*, provides a stellar addition to the Landmark Law Cases and American Society series from the University Press of Kansas. Despite its subtitle, Oshinsky's book treats readers to much more than an account of a single court case. Throughout American history, the death penalty has been a hot button topic, and popular opinion has swung between one extreme and the other—from widespread support to complete opposition—most commonly landing somewhere in the middle. *Capital Punishment on Trial* tells the story of these swings and of the Supreme Court decisions that have helped sway Americans' views on the issue.

¶41 The concept of capital punishment has helped shape both American history and the history of the nation's highest court. Since capital cases disproportionately involve male, African American defendants and Caucasian victims, death penalty questions tend to arrive at the Supreme Court hand-in-hand with hotly debated issues of racial prejudice. *Furman v. Georgia*,¹⁸ referenced in the book's subtitle, is a prime example of this phenomenon, and a detailed account of the case provides the underlying structure for Oshinsky's analysis. By the time a capital case like *Furman* reaches the Supreme Court, it has usually garnered significant national attention and likely become infamous. Yet the Court retains a large and pivotal role in such sensational cases, one that often triggers major strife between the Justices. Oshinsky devotes a substantial portion of his book to delving into the makeup of the Supreme Court, tracking how different Justices voted on various death penalty issues, and determining how each Justice's outlook affected the Court's majority opinions. His research on topics like these is admirable in both quantity and quality, and it allows Oshinsky to portray the shifting relationship between America, its Supreme Court, and capital punishment.

¶42 In addition to a thorough index, this small book includes a detailed time line of cases and major events, and a bibliographic essay that describes the methodology behind Oshinsky's historical research. The time line commences with an entry for 1608, date of the first execution recorded for the North American colonies, and ends with the Supreme Court's 2005 decision finding unconstitutional the death penalty for minors.¹⁹ The time line is presented without frills, in a simple manner that helps the reader keep track of events as they relate to one another and to the general history of the United States. The bibliographic essay is a nice feature of this particular series, which allows for a clean, easy-to-read main text by collecting all references at the end of the book where they will not interrupt the flow of

18. 408 U.S. 238 (1972).

19. *Roper v. Simmons*, 543 U.S. 551 (2005).

the work. The essay should prove especially useful for newer law students who are less familiar with academic research.

¶43 The table of contents for *Capital Punishment on Trial* is not particularly useful. Chapter titles—e.g., “I Didn’t Intend to Kill Nobody” or “Let’s Do It”—are attention-grabbing, but they are not indicative of content. Once the chapters have been read, the titles make perfect sense. In the meantime, however, readers cannot determine from the table of contents which cases will be discussed or which time periods will be addressed in any particular chapter.

¶44 In this short book, Oshinsky manages to use what on the surface appears to be a single, simple case, *Furman v. Georgia*, to demonstrate how America has repeatedly come full circle on the death penalty. I recommend *Capital Punishment on Trial* for academic and public libraries. Academic users will find the information very complete, and the bibliographic essay should prove extremely useful in conducting additional legal research. Public library patrons will find the topic captivating and will appreciate the time line as an aid to a thorough understanding of events.

Peñalver, Eduardo Moisés, and Sonia K. Katyal. *Property Outlaws: How Squatters, Pirates, and Protesters Improve the Law of Ownership*. New Haven, Conn.: Yale University Press, 2010. 304p. \$45.

Reviewed by Marie Templo Capule

¶45 The title of this book, *Property Outlaws: How Squatters, Pirates, and Protesters Improve the Law of Ownership*, highlights a counterintuitive truth about the law of property. Though common sense insists that one can obtain or retain legal ownership of property only by strictly obeying the requirements of the law, property law itself grows and evolves only when its boundaries are challenged. This book offers an excellent examination of this tension and chronicles the past acts of disobedience that have led to improvements in the realm of property law as we now know it.

¶46 Both of the book’s authors, Eduardo Moisés Peñalver and Sonia K. Katyal, are law professors and authors whose previous scholarship appears in prominent legal publications. Peñalver teaches property and land use law at Cornell Law School, while Katyal teaches at Fordham Law School in the areas of property, intellectual property, and civil rights. The two begin *Property Outlaws* with a preface and introduction that detail their intentions and goals in writing the book. They emphatically reject the glorification of illegal behavior or complete disregard for the law, but do hope to expand the focus of discussion beyond the importance of stability to address property law’s “need for dynamism, its ability to change and to fluctuate according to shifting norms, values, and social realities” (p.11). Specifically, Peñalver and Katyal seek to highlight the powerful role that selective disobedience has played in fostering necessary progression in the law.

¶47 To bring to life a topic that first-year law students traditionally find quite boring, the authors deploy a variety of intriguing examples from the history of outright disobedience to property law. In chapter 3, for example, the authors analyze the significant influence that the nineteenth-century squatter’s movement had

on American land law. Chapter 4 describes the lunch counter sit-ins employed by civil rights protesters during the 1960s. Peñalver and Katyal also provide appealing examples from within the arena of intellectual property: the challenge to DVD-encryption technology that incensed the motion-picture industry (chapter 5); the resistance to patent protection for HIV/AIDS treatments in South Africa, Brazil, and Thailand in the late 1990s (chapter 6); and the online civil disobedience demonstrated by students at more than fifty college campuses in response to efforts by Diebold Election Systems to stop the dissemination of leaked internal documents (chapter 7).

¶48 Following such relatively straightforward cases of disobedience, the book's conclusion offers as an example a lengthy and detailed discussion of San Francisco Mayor Gavin Newsom's 2004 decision to issue marriage licenses to gay couples. Many readers may be taken aback by this example, not necessarily because of the topic's controversial nature, but due to its questionable relevance to property law. Peñalver and Katyal acknowledge this concern: "It may seem odd that a book devoted to the topic of property disobedience ends with a story about marriage" (p.233). The authors see Newsom's actions as an instance of "dissenting by deciding" (*id.*),²⁰ and defend their choice of topic by contending that these actions are closely akin to those of the property outlaws that form the focus of the book. In each case, the authors maintain, acts of disobedience forge a path toward legal change for minorities who lack an effective voice within larger majoritarian political processes. In their conclusion and throughout the main text, Peñalver and Katyal underscore the importance of challenging the status quo to effect reform of the law. Without prodding, they argue, law can evolve only slowly, through either lengthy legislative processes or long, drawn-out court challenges, and will rarely change fast enough to keep up with the pace of technology and society.

¶49 *Property Outlaws* is appropriate for all types of law libraries. It will appeal to law students and scholarly researchers who need an authoritative source to suggest case law and explain legal concepts. Meanwhile, litigators and judges may find in the book inspiration on how to trigger change in the law.

Reynolds, Susan. *Before Eminent Domain: Toward a History of Expropriation of Land for the Common Good*. Chapel Hill, N.C.: The University of North Carolina Press, 2010. 192p. \$40.

Reviewed by Catherine Fitzpatrick Halvorsen

¶50 *Before Eminent Domain: Toward a History of Expropriation of Land for the Common Good* is author Susan Reynolds's contribution to Studies in Legal History, a series from the University of North Carolina Press and the American Society for Legal History that addresses critical questions in American and European legal history. Reynolds, a well-credentialed historian, holds positions as Emeritus Fellow of Lady Margaret Hall, University of Oxford; Honorary Fellow of the Institute of Historical Research; Honorary Research Fellow, University College London; and

20. This term and its application to Newsom's action derive from Heather K. Gerken, *Dissenting by Deciding*, 57 STAN. L. REV. 1745 (2005).

Senior Fellow of the British Academy. Her book is not, and is not intended to be, a comprehensive treatise on eminent domain, but is, instead, an extremely basic and cursory introduction to land expropriation practices in pre-1800 Western Europe and British North America.

¶51 Although Reynolds seems determined to render a scholarly treatment of the subject matter and to provide at least a preliminary academic overview, her efforts fall a bit short of the mark. There are only four brief substantive chapters, running a mere 139 pages. A significant portion of the remainder of the book—at least thirty pages—is devoted to a list of works cited and an index. This leaves *Before Eminent Domain*, in reality, little more than an essay drafted “in the hope of stimulating others to go further” (p.139). Indeed, readers legitimately interested in or intrigued by the evolution of eminent domain and the legal, philosophical, and political components of land expropriation practices *must* go further to satisfy their curiosity.

¶52 As applied to modern society, the underlying premise of *Before Eminent Domain*—that public takings of land are justified and tolerated by communities when initiated for the common or public good and appropriately recompensed—is a well-recognized and generally accepted tenet. Reynolds refers generically to a number of present-day and post-1800 primary legal authorities (e.g., constitutions, declarations, and legislation) that support this premise, particularly in her last two chapters. She also asserts that pre-nineteenth-century societies in Western Europe and British North America similarly accepted land expropriation practices that benefited the community, so long as the owner was fairly compensated for the taking.

¶53 Reynolds does not, however, identify much, if any, empirical evidence in defense of her hypothesis as applied to pre-1800 communities. In fact, Reynolds appears to presuppose that a lack of evidence regarding such communities is itself good evidence. She repeatedly contends that finding no direct evidence indicates that “the right of the community to take land for the common good, with compensation to the owner, seems to have been taken for granted” (p.7). This assertion is suspect and calls into question the quality and quantity of Reynolds’s research. Suggesting, as Reynolds does throughout the work, that because she “found no examples [of expropriation,] . . . the whole thing was taken for granted” (p.60), leaves readers unable to ascertain with any degree of certainty whether existing data support the book’s thesis, whether Reynolds is trying to justify insufficient research efforts, or whether discoverable evidence is simply unavailable. As such, the claim represents a significant qualification to Reynolds’s stated hypothesis.

¶54 Legal scholars and practitioners will undoubtedly struggle with this qualification of the book’s hypothesis since it calls into question both the scope and depth of Reynolds’s research. The same groups are also likely to find objectionable certain oversights in her use of and citation to source materials that further impact the credibility of her work. Though she cites numerous secondary sources to support her expropriation theory, Reynolds references very few primary sources in its defense. When she does attempt to use primary legal sources, she sometimes does so clumsily or incorrectly. In chapter 4, for example, Reynolds states, “Lawyers or judges in two cases of 1796, in Pennsylvania and South Carolina, used the expres-

sion ‘eminent domain’” (pp.107–08). She identifies no party names for either case, and fails to use an appropriate legal citation format in the footnote. Although the Superior Court of South Carolina did issue the second decision,²¹ the first is not a Pennsylvania case at all, but an opinion from the U.S. Supreme Court in a case on appeal from the Circuit Court for the District of Virginia.²² *Before Eminent Domain* is, unfortunately, replete with other such questionable allusions to primary legal authority, including discussions of municipal statutes, legislation, and state constitutions for which no proper citation is provided and the corresponding city, state, or country is not even mentioned.

¶55 Despite such weaknesses, some readers, particularly those from the non-legal and paralegal communities, may embrace the relaxed organization and narrative style employed by Reynolds. Textual passages in *Beyond Eminent Domain* are conversational in tone and flow together much like a class lecture rather than a dense law review article or legal thesis. Indeed, Reynolds admits, in her acknowledgments, to using previous drafts of various sections or chapters as lecture notes.

¶56 *Before Eminent Domain* offers a significant focus on land expropriation practices in England throughout its text, and the book is more than satisfactory for the purpose of an elementary survey lecture or seminar on this topic. Reynolds provides similarly adequate, though more basic and succinct, discussion on land expropriation practices in Italy, France, Germany, Spain, and the English Colonies. *Before Eminent Domain* also serves as an excellent launching point for further study. Given these functions, and Reynolds’s nontechnical approach, the work is most appropriate for general academic libraries. Some academic law libraries may also find the title worthwhile as a supplement to substantial preexisting collections in legal history or real property. However, Reynolds’s historical focus and scholarly intent combined with errors of evidence and citation make the book less suitable for public or private law library collections.

Ronner, Amy D. *Law, Literature, and Therapeutic Jurisprudence*. Durham, N.C.: Carolina Academic Press, 2010. 308p. \$45.

Reviewed by Christopher D. Hudson

¶57 In *Law, Literature, and Therapeutic Jurisprudence*, Professor Amy D. Ronner invites us to step away from the traditional confines and preconceived notions of legal practice and education to consider the humanity of law in all its applications. She urges us to include imagination, empathy, and emotion in our roles as practitioners and educators. And she challenges us to explore the “potential for literary studies plus Therapeutic Jurisprudence to not only improve legal education and the practice of law, but also to elevate our consciousness as human beings” (p.6).

¶58 Broken into five chapters, *Law, Literature, and Therapeutic Jurisprudence* examines literature, law, and legal education through the lens of Therapeutic Jurisprudence (TJ). Ronner’s analysis employs an integrative approach refreshing in its originality and inspiring in its ability to seamlessly combine compelling liter-

21. *Lindsay v. Commissioners*, 2 S.C.L. (2 Bay) 38 (1796).

22. *Ware v. Hylton*, 3 U.S. (3 Dall.) 199 (1796).

ary criticism with solid legal analysis and TJ principles. For those new to the Law and Literature and TJ movements, chapter 1 includes a concise history of each. Ronner describes the seemingly less familiar term, TJ, as a “multi-disciplinary universe that integrates psychology, mental health, and other related enterprises to enrich and transform the law” (p.5). She explains that TJ, conceived within the field of mental health law, has evolved into a “full fledged approach to all legal niches . . .” (p.20). Indeed, for those, like Ronner, “who consider [them]selves TJ lawyers, educators, or scholars, . . . therapeutic jurisprudence has become a lens through which [they] view all facets of life” (p.20).

¶59 In her present work, Ronner expands the TJ universe to encompass literary criticism by incorporating TJ concepts into her examination of literary works chosen to illustrate important legal principles and topics. Chapter 2 investigates therapeutic criminal justice, exploring the Sixth Amendment right to counsel through Melville’s *Billy Budd* and the law of confessions through Dostoyevsky’s *Crime and Punishment*. Chapter 3 looks at antitherapeutic tribunals and the destructive potential of mob mentality as illuminated by Arthur Miller’s *The Crucible* and William Wright’s *Harvard’s Secret Court: The Savage 1920 Purge of Campus Homosexuals*.²³ Chapter 4 considers the negative aspects of contemporary law practice and the potential for including TJ in the law school experience using both Melville’s *Bartleby, the Scrivener* and a review of two recent accounts of big-firm life: *Proceed with Caution: A Diary of the First Year at One of America’s Largest, Most Prestigious Law Firms*²⁴ and *Double Billing: A Young Lawyer’s Tale of Greed, Sex, Lies, and the Pursuit of a Swivel Chair*.²⁵ Finally, chapter 5 revisits the previous chapters through W.H. Hudson’s, *A Crystal Age*,²⁶ concluding that “utopia is not utopia without passionate emotion” (p.296) and that “those . . . involved in Therapeutic Jurisprudence and Law and Literature[] invite into [their] lives and work lots of love, passion, and emotion” (*id.*).

¶60 A professor of law at St. Thomas University who holds a Ph.D. in English literature and language, Professor Ronner is perhaps uniquely equipped to write such a novel and expansive book. Her text is well written, logically organized, and well documented with extensive footnotes in the typical, law review style. Thanks to its multidisciplinary approach, the book should appeal to a wide range of readers, including legal and literary scholars, TJ advocates and practitioners, educators, and those involved in the humanities and social sciences. Although previous experience with the literature examined will improve the reader’s sense of connection to the work, such familiarity is not a prerequisite, as pertinent story lines and plot elements are summarized throughout. Likewise, Ronner presents her legal analysis in an unambiguous, narrative style that presupposes no prior or extensive knowledge of the law.

¶61 In short, *Law, Literature, and Therapeutic Jurisprudence* presents an insightful and refreshing take on the potential for law and literature and TJ to better the

23. WILLIAM WRIGHT, *HARVARD’S SECRET COURT* (2005).

24. WILLIAM R. KEATES, *PROCEED WITH CAUTION* (1997).

25. CAMERON STRACHER, *DOUBLE BILLING* (1998).

26. W.H. HUDSON, *A CRYSTAL AGE* (E.P. Dutton & Co. 1917) (1887).

practice and study of law. It is one of those rare reads that is simultaneously informative, intellectually stimulating, and enjoyable. Because of its broad appeal, it is highly recommended for all law school, government, undergraduate, and public libraries.

Shesol, Jeff. *Supreme Power: Franklin Roosevelt vs. the Supreme Court*. New York: W.W. Norton & Co., 2010. 644p. \$27.95.

Reviewed by Julie L. Kimbrough

¶62 Widely considered one of President Franklin D. Roosevelt's worst political defeats, the court-packing plan of 1937 is among the most important yet least understood chapters in U.S. constitutional history. In *Supreme Power: Franklin Roosevelt vs. the Supreme Court*, historian Jeff Shesol challenges the standard notion that Roosevelt conceived his plan as retaliation against a Supreme Court that had overturned several critical pieces of New Deal legislation.²⁷ Instead, he presents the underlying dispute as a clash over constitutional interpretation. In President Roosevelt's view, the "Constitution [had] proved itself the most marvelously elastic compilation of rules of government ever written" (p.46–47). A majority of the "Nine Old Men" (p.4) on the Supreme Court, however, saw the Constitution as "a machine, a well-calibrated instrument" (p.47), with established rules, impervious to progress and changing times.

¶63 A former speechwriter for President Clinton and author of a *New York Times* Notable Book,²⁸ Shesol has crafted a taut, riveting tale of the struggle between the President and the Supreme Court in what Roosevelt himself called "a war for the survival of democracy" (p.235). *Supreme Power* offers a detailed account of the President's attempt to expand the Court from nine to fifteen Justices. Although the Constitution is silent on the number of Supreme Court Justices, by 1937 that number had been fixed at nine for more than seventy years. The introduction of Roosevelt's legislation to pack the Court with six new nominees quickly drew fire from legislators, members of the bar, and even Roosevelt's fellow Democrats. The plan precipitated a constitutional crisis that consumed all three branches of government and captured the attention of a Depression-weary nation.

¶64 From the opening chapter, *Supreme Power* offers richly drawn portraits of the politicians, Justices, and lawyers at the center of the controversy. The author's balanced, objective approach is evident throughout the book. He allows the players to speak for themselves through diary entries, personal letters, and records of private meetings. In fact Shesol's methodical research is the book's greatest asset. Drawing on years of research in manuscript collections, personal papers, and oral history transcripts, *Supreme Power* offers readers a revealing glimpse behind the closed doors of the Oval Office, Justice Department, Capitol, and Supreme Court chambers.

27. Erin Miller, *Ask the Author with Jeff Shesol, Part I*, SCOTUSBLOG (Mar. 22, 2010, 3:13 P.M.), <http://www.scotusblog.com/2010/03/ask-the-author-with-jeff-shesol-part-i>.

28. JEFF SHESOL, *MUTUAL CONTEMPT* (1997).

¶65 The first half of the book details the events leading up to the unveiling of Roosevelt's plan, including the Supreme Court decisions that struck down key pieces of his New Deal. Shesol describes, for example, *Schechter Poultry Corp. v. United States*,²⁹ which invalidated the National Recovery Act, relegating the country, in Roosevelt's view, to a "horse-and-buggy definition of interstate commerce" (p.150). Likewise, *United States v. Butler*³⁰ held that the Agricultural Adjustment Act intruded on powers reserved to the states by the Tenth Amendment. Other, similar cases dealt severe setbacks to Roosevelt's efforts to fight the Depression. According to Shesol, the Court continued to overturn acts of Congress at an alarming "ten times the traditional rate" (p.2).

¶66 Though Roosevelt's plan for protecting the New Deal ultimately involved packing the Court with additional Justices, he initially dismissed this notion as "a distasteful idea" (p.183). He and his Attorney General, Homer Cummings, also considered proposing various constitutional amendments, either to address some of the Court's concerns with New Deal legislation or to allow Congress to overturn unfavorable Supreme Court decisions. However, the Judiciary Reorganization Bill of 1937, the option Roosevelt eventually chose, proposed sweeping reforms to the judicial system that included authorization for the President to appoint an additional Justice for each member of the Court over the age of seventy. The plan met immediate resistance and, after much procedural wrangling, the bill was returned to the Senate Judiciary Committee, where the controversial court-packing provision was eliminated. In spite of the defeat of his plan, Roosevelt managed to appoint eight Justices during his twelve years in office, successfully transforming the Supreme Court over time.

¶67 Although focused on a brief moment in the nation's history, *Supreme Power* is a cautionary tale about constitutional interpretation and the balance of power that is at the heart of American government. With its meticulous research, the book fills a major gap in the historical record of the New Deal, making *Supreme Power* a valuable resource for constitutional scholars, legal historians, and librarians. Law librarians will appreciate the author's meticulous research, detailed endnotes, and exhaustive index. Accordingly, this title is highly recommended for academic law libraries and general academic libraries.

29. 295 U.S. 495 (1935).

30. 297 U.S. 1 (1936).