

Keeping Up with New Legal Titles*

Compiled by Catherine F. Halvorsen** and Diana C. Jaque***

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Anand, R. P. *Studies in International Law and History: An Asian Perspective*.
Holland; Boston: Martinus Nijhoff Publishers, 2004. 273p. \$129.

Reviewed by William M. Ketchum

¶1 In spite of their previous publication in various scholarly journals and books or presentation at international law conferences from 1969 to 2003, this collection of nine papers by R.P. Anand is a valuable and surprisingly interesting source of international legal history from a non-Western perspective. *Studies in International Law and History: An Asian Perspective* covers the development of international legal relations of India, Japan, and Tibet from earliest times, as well as the development of the law of the sea, the World Court, and economic, ecological, and legal problems between states and between rich and poor countries.

¶2 For thirty-three years, Anand was head of the Division of International Legal Studies at Jawaharlal Nehru University in New Delhi. He is “widely recognized as a spokesman of the Third World views on the subject” (p.vi), and the author or editor of eighteen books and more than a hundred articles in professional journals in North America, Europe, and Asia.¹

¶3 An Asian perspective on these topics is refreshing to the Western reader. Anand notes Nehru’s assistance to Third World countries in gaining access to the “world forum,” and Nehru’s influence in the development of international law from a law “by and for Europeans” to a law for the “worldwide community of states.” Anand calls India the “fulcrum” of South Asia, noting the “absence of any bilateral or multilateral issues among the six smaller nations of the group” (p.227), and describes the competition between these nations and India for maritime resources. He decries “the colonization of free Tibet,” including the Anglo-Chinese trade agreements and the foreign recognition of Chinese “suzerainty” over Tibet (p.103). He explains Japan’s twentieth-century nationalism in the context of that country’s earlier attempts to gain the respect of Europe. The history of the World Court and how the powerful countries will not submit to its jurisdiction is also described. He shows how the idea that the ocean floor was “the common heritage of mankind,” suggested by Arvid Pardo in 1967, “lost its lustre and soul” as it became clear that the seabed would be “exploited on commercial terms, irrespective of the needs and interests of the weaker members of the international community” (p.196). Anand illustrates over and over again that, “as Bismarck had warned, the law of nations would apply only when it was to the advantage of the powerful” (p.57).

1. E.g., R.P. ANAND, INTERNATIONAL LAW AND THE DEVELOPING COUNTRIES: CONFRONTATION OR COOPERATION? (1987); R.P. ANAND, INTERNATIONAL COURTS AND CONTEMPORARY CONFLICTS (1974); R.P. ANAND, STUDIES IN INTERNATIONAL ADJUDICATION (1969).

¶4 In the 1995 paper that Anand puts last in this collection, he quotes the great Indian writer Tagore: “If we ever ventured to ask ‘progress towards what and progress for whom,’ it was considered to be peculiarly and ridiculously Oriental to entertain such doubts about the absoluteness of progress” (p.272). When Anand ends this paper by referring to “Western countries and their people continuously struggling to have even more luxurious lives completely disregarding the environmental destruction . . .” (p.273) and saying “orientals” have found no answer to Tagore’s questions, and when one reads the 1969 paper on Tibet, one wishes this 2004 book contained at least a preface or an epilogue updating its information. Anand merely states that the papers are left “as they were published originally to maintain their integrity” (p.xiv).

¶5 The substance of the work is compelling—the history is fascinating and Anand’s presentation style is inviting. However, editorial review is lacking. Numerous spelling, punctuation, and grammar errors exist, and some important factual information is reported incorrectly. For instance, Anand quotes a World Bank report that misleadingly places Sri Lanka with the Maldives to the southwest of India. Readers are advised to keep an atlas close at hand or, at a minimum, possess a basic familiarity with world geography. First, to more completely appreciate the competing interests governed by international law that are described by Anand; second, to avoid being misled in those discussions containing factual or geographical mistakes; and finally, so the Straits of Hormuz and Malacca, the Shantung Peninsula, and the Rann of Kutch are easy to place in geographical context.

¶6 This book belongs in academic and private law libraries that collect materials on the law of the sea and international relations with particular emphasis on Asia.

Dershowitz, Alan M. *America on Trial: Inside the Legal Battles That Transformed Our Nation*. New York: Warner Books, 2004. 586p. \$30.

Reviewed by Ruth Levor

¶7 The idea of surveying American history by reviewing its greatest courtroom episodes is not unique or novel, but for those of us who enjoy the storybook route through history, it is definitely an entertaining and captivating approach. In *America on Trial: Inside the Legal Battles That Transformed Our Nation*, controversial author and Harvard law professor Alan Dershowitz presents “an episodic history of our nation” by describing, explaining, and (mostly) commenting on more than sixty court cases—some well known, even notorious, and others obscure. Coverage extends from the Salem witchcraft trials in the late seventeenth century to the contemporary cases of terrorist detainees held in Guantanamo Bay. The author asserts his qualification to select the most historically representative trials in our nation’s lifespan by claiming, perhaps hyperbolically, that he has read more trial transcripts than any other lawyer alive today and has been involved in many of the most notorious cases of the past three decades.

¶8 The cases appear chronologically, grouped into chapters corresponding to the eras of American history. Each chapter begins by discussing the characteris-

tics and events of the period and the significance and role of each court case. An itemization of the date, location, defendants, charge, verdict, and sentence precedes each section on a particular case or set of cases. The trial accounts consist of descriptions of quirky, gruesome, or titillating details of crimes; lengthy quotes from the trial lawyers or judges; harangues about how the mistakes or misdeeds of the past are being repeated today; and insights, one-sided as they may be, about the author's personal involvement in the case.

¶9 For example, in the chapter on "The Roaring Twenties and the Depression Thirties," Dershowitz debunks the view that the famous Scopes trial² was a crusade for "tolerance, understanding, and pluralism" (p.263). He tells us that the book *A Civic Biology*,³ from which John Scopes was teaching, actually used Darwinism to promote the view that the Caucasian race is the most highly evolved of all human races. The text proposed "eugenic remedies" to deal with those members of society who supposedly transmit inherited criminal tendencies to their offspring. In a superfluous aside, Dershowitz relates that the stage play *Inherit the Wind*,⁴ which dramatized the Scopes trial, was the first Broadway play he ever saw and that it influenced his choice of career. The book is strewn with similar nonessential personal information, such as the fact that the author was giving a speech in the Washington Hilton Hotel at the time that John Hinckley shot President Reagan and James Brady outside the hotel.

¶10 *America on Trial* includes myriad other colorful and noncanonical versions of events in American legal history. For instance, the account of Clarence Darrow's courtroom defense of labor leaders in the early 1900s reveals that Darrow was subsequently indicted for jury tampering in those trials and tried to make a deal for a lighter sentence for himself by offering to testify against American Federation of Labor president Samuel Gompers. The account of the Nuremberg trials of Nazi leaders after World War II asserts that Justice Robert Jackson, who took a leave from the U.S. Supreme Court to serve as chief American prosecutor at the war crimes trials, bungled his cross-examination of Luftwaffe commander Hermann Göring. As an example of Jackson's sloppy trial preparation, Dershowitz tells of a German document that Jackson relied on to show Göring's role in planning the "liberation" of the Rhineland. It turned out that the document actually concerned cleaning the Rhine River by removing such obstacles as sunken boats. These and other diverting vignettes are supported by footnotes citing to secondary authorities such as newspaper articles and history books rather than to the trial transcripts on which the author bases his expertise.

¶11 Despite the dozens of pages of footnotes, this is not a scholarly treatise but rather a vehicle for the author's lively, wide-ranging, and strongly held political viewpoints. For example, the chapter on the Salem witchcraft trials provides

2. *Scopes v. State*, 289 S.W. 363 (Tenn. 1927).

3. GEORGE W. HUNTER, *A CIVIC BIOLOGY: PRESENTED IN PROBLEMS* (1914).

4. JEROME LAWRENCE & ROBERT EDWIN LEE, *INHERIT THE WIND* (1955).

few details of the actual trials, but it does devote five pages to surmising how America's current judiciary would respond to a similar contemporary hysteria, drawing invidious comparisons to McCarthyism, detentions of suspected terrorists, and sodomy prosecutions. To illustrate the potential dangers of judicial zealotry, Dershowitz warns that there are "feminist extremists" who believe that even innocence should not be a defense against sexual offenses. He footnotes this claim with an unexplained reference to a *New York Times* letter to the editor written by a male physician. This sort of diatribe is emblematic of the tone of the book. It is not a serious reference work, though it remains an engaging and thought-provoking read. For an even-handed and comprehensive reference treatment of the subject, law libraries should acquire Gale's two-volume *Great American Trials*,⁵ which covers 378 significant trials. While this work is more encyclopedic in nature, the trial accounts are nonetheless highly entertaining.

¶12 Not surprisingly, reviews of *America on Trial* reflect the spirit of controversy found in its pages. On April 12, 2004, *Publishers Weekly* (PW) ran a review that implied that Dershowitz relied excessively on student research.⁶ The review characterized Dershowitz's social and political commentary as well known to "those familiar with the author's various hobbyhorses"⁷ and charged him with "self-aggrandizement."⁸ Dershowitz wrote to PW complaining of the personal nature of these attacks. While he did not request a new review, PW agreed that the piece did not meet its "reviewing standards" and took the unheard of action of sending it out for a second review, which appeared in its May 17, 2004, issue.⁹

¶13 In an interview on the ABC television program *Good Morning America*, Dershowitz claimed, perhaps facetiously, to have done his vaunted prodigious transcript reading at the beach. Readers might want to tuck *America on Trial: Inside the Legal Battles That Transformed Our Nation* in with their sunglasses and flip-flops and head for the sand!

Foerstel, Herbert N. *Refuge of a Scoundrel: The Patriot Act in Libraries*. Westport, Conn.: Libraries Unlimited, 2004. 218p. \$35.

Reviewed by Cynthia W. Lewis

¶14 *Refuge of a Scoundrel: The Patriot Act in Libraries*, by Herbert Foerstel, will quickly dispel any notion the reader might have that libraries are merely boring repositories for dusty old books. Foerstel regales his audience with stories about FBI agents lurking in libraries, late night secret meetings in Washington, D.C., and

5. GREAT AMERICAN TRIALS (Edward W. Knappman et al. eds., 2d ed. 2002).

6. *America on Trial: Inside the Legal Battles that Transformed Our Nation—From the Salem Witches to the Guantanamo Detainees*, PUBLISHERS WKLY., Apr., 12, 2004, at 56 (book review).

7. *Id.* at 56.

8. *Id.*

9. *America on Trial: Inside the Legal Battles that Transformed Our Nation—From the Salem Witches to the Guantanamo Detainees*, PUBLISHERS WKLY., May 17, 2004, at 48 (book review).

librarians shredding documents in an effort to protect patron privacy. And no, this treatise is not the latest mystery thriller; *Refuge of a Scoundrel* is a nonfiction work depicting the relationship between the USA PATRIOT Act¹⁰ and modern libraries.

¶15 A veteran author on library censorship¹¹ and former head of branch libraries at the University of Maryland, Foerstel uses his personal experience and expertise to highlight the challenges presented by the USA PATRIOT Act for libraries and librarians. In the first chapter, a condensed version of Foerstel's earlier book, *Surveillance in the Stacks: The FBI's Library Awareness Program*,¹² Foerstel chronicles a series of FBI visits to university libraries and recounts his experience challenging the Library Awareness Program on television talk shows and public radio programs. Reveling in his activism and commitment, he also includes in this chapter a description of his role in urging the Maryland legislature to pass legislation in opposition to the Library Awareness Program.

¶16 In chapter 2, Foerstel introduces the USA PATRIOT Act and provides some legislative history detailing its drafting and enactment process. Foerstel describes a middle-of-the-night redrafting of the House Judiciary Committee's version of the bill by Attorney General Ashcroft's staff, and asserts that the House of Representatives voted the next morning to pass the revised version of the bill essentially unaware of the changes that had been made just hours before. Readers finding Foerstel's allegation of blatant disregard for congressional procedure a bit suspect may be quieted by his use of many long passages quoted directly from the *Congressional Record* to support his account.

¶17 Foerstel discusses library response to the USA PATRIOT Act in chapter 3, by far the most illuminating chapter. He suggests first that many librarians feel they are shielded from FBI visits because their libraries are small public libraries, and then contradicts that theory with the use of survey data. According to a University of Illinois survey of public libraries, 10.7% of libraries answered "yes" when asked if authorities have requested information about patrons since September 11, 2001 (p.90). The University of Illinois survey is reprinted in an appendix.

¶18 A section titled "What Are You Going to Do When They Come For You?" sounds ominous, yet it contains good advice for library administrators relative to staff training and processing information requests from governmental authorities. Foerstel not only offers response plans for court orders, search warrants, and subpoenas, but also provides sample documents in the appendixes for librarians

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10. Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001, Pub. L. No. 107-56, 115 Stat. 272.
 11. *E.g.*, HERBERT N. FOERSTEL, BANNED IN THE MEDIA: A REFERENCE GUIDE TO CENSORSHIP IN THE PRESS, MOTION PICTURES, BROADCASTING, AND THE INTERNET (1998); HERBERT N. FOERSTEL, FREE EXPRESSION AND CENSORSHIP IN AMERICA: AN ENCYCLOPEDIA (1997); HERBERT N. FOERSTEL, BANNED IN THE U.S.A.: A REFERENCE GUIDE TO BOOK CENSORSHIP IN SCHOOLS AND PUBLIC LIBRARIES (1994).
 12. HERBERT N. FOERSTEL, SURVEILLANCE IN THE STACKS: THE FBI'S LIBRARY AWARENESS PROGRAM (1991).

unfamiliar with these types of legal materials. He also discusses the use of sign-up sheets for Internet workstations and policies related to the destruction of patron circulation records. Foerstel cautions that the FBI may target young, inexperienced-looking library employees, thinking it will be easier to secure information from them. Chapter 3 should be required reading for librarians and administrators concerned that the next stop for the FBI will be their library.

¶19 The balance of the text is devoted to mapping out the various federal and state initiatives relating to the USA PATRIOT Act and libraries. Chapter 4 lists the amendments to the USA PATRIOT Act and mentions other affiliated efforts advanced by the Bush administration. Foerstel describes both the Pentagon's Total Information Awareness Program and the Justice Department's Operation Terrorist Information and Prevention System (TIPS), among others. He inventories state legislation enacted in response to the terrorist attacks, providing a laundry list of legislative sections potentially harmful to libraries, rather than an in-depth analysis of this body of law.

¶20 Overall, I found *Refuge of a Scoundrel* to be an interesting read substantively, but was disappointed by its weakness in form. For example, there are a number of typographical errors and spelling inconsistencies, and a total disregard of legal citation format. In chapter 4, Foerstel includes a compilation of state antiterrorism legislation enacted after September 11, 2001. However, none of the state laws are properly cited or even footnoted, an omission that undermines the credibility of the author and the title. It is best to approach the book as a personal account of Foerstel's experiences over the years, and not the seminal work on the subject. *Refuge of a Scoundrel: The Patriot Act in Libraries* is a recommended purchase for academic and public libraries—particularly for the practical guidelines outlined in chapter 3. Libraries requiring a detailed legal analysis of the USA PATRIOT Act should look elsewhere.

Halliday, Simon. *Judicial Review and Compliance with Administrative Law*. Oxford; Portland, Ore.: Hart, 2004. 188p. \$50.

Reviewed by Leigh Cohen

¶21 Written primarily for academics, *Judicial Review and Compliance with Administrative Law* analyzes the impact of judicial review of administrative agency decisions upon the behavior of the respective administrative agency bureaucracies. Simon Halliday, the Nicholas de B Katzenbach Research Fellow at the Centre for Socio-Legal Studies at the University of Oxford, examines the administration of homelessness law in Great Britain to gather empirical data to explore the barriers to judicial review's influence over government entities that implement administrative law. The content overlaps the disciplines of sociology and law.

¶22 Early in the text, Halliday indicates that his objective for the book is “to study the influence of judicial review judgments on the bureaucracies which were subject to them, and to construct a framework out of this which can help us think

about the ability of judicial review to positively influence bureaucratic processes” (p.9). Halliday uses a series of hypotheses in three distinct contexts to identify conditions that have an impact on the ability of judicial review to control government behavior. With regard to the first context—decision makers—Halliday spent several months in the field studying various local government homelessness persons units (HPUs) and conducted post-observation interviews to test his series of hypotheses. Halliday identified those HPUs with extensive exposure to and experience with judicial review litigation. Sufficiently autonomous HPUs were selected for study, and Halliday found that each administered the same homelessness program differently and reacted to judicial review of its decisions differently. One example of the hypotheses tested by Halliday is “the more decision-makers receive the legal knowledge from judicial review about what administrative law requires of them, the greater will be judicial review’s capacity to secure compliance with administrative law” (p.39).

¶23 In the second context, the decision-making environment, Halliday tested a single hypothesis—whether judicial review’s effectiveness in securing compliance with administrative law is enhanced where the competition between law and other normative forces is nonexistent, or, if a competition exists, where law’s strength is increased in the environment. Again, he gathered his empirical data through fieldwork and post-observation interviews at the three HPUs. Finally, in the context of the law, Halliday examined one last hypothesis—that judicial review must give out a consistent message about what compliance with administrative law requires in specific areas of governmental decision making. Halliday concludes, after reviewing the existing scholarship, that the concept of administrative justice is latent and highly contested within administrative law doctrine.

¶24 *Judicial Review and Compliance with Administrative Law* is arranged into five parts. The introduction provides background information on British homelessness law and its administration, making the topic accessible and the Halliday study easy to understand. It also includes a thorough discussion of the narrow objective of Halliday’s work. The next three parts correspond to the three contexts noted earlier and examine in great detail each of the hypotheses Halliday identifies. In the last part, Halliday proposes that the study of the impact of judicial review’s effectiveness in securing compliance with administrative law should be viewed in terms of degree of compliance rather than in terms of absolute compliance. Halliday also suggests in the conclusion that his study is intended only as an empirical enquiry to facilitate future research that will be more comprehensive and will include administrative law more broadly. The book also contains a table of cases listing the British cases referenced in the book, a thorough bibliography for further reference, and an index.

¶25 *Judicial Review and Compliance with Administrative Law* is a scholarly work with detailed and analytic treatment of the subject. It is an extension of Halliday’s Ph.D. thesis while studying at Strathclyde University’s Law School

and, as such, is dense reading and not suitable as an introductory text. *Judicial Review and Compliance with Administrative Law* is recommended for academic law libraries and academic university libraries that have strong programs in public administration, government, and sociology. Although it focuses on the British legal system, this book may also be instructive for those interested in American administrative agency management—the similarities between British and American administrative law are significant.

Klarman, Michael J. *From Jim Crow to Civil Rights: The Supreme Court and the Struggle for Racial Equality*. Oxford; New York: Oxford University Press, 2004. 655p. \$35.

Reviewed by A. Hays Butler

¶26 In the past year, many books¹³ and articles have been published celebrating the fiftieth anniversary of the Supreme Court's decision in *Brown v. Board of Education*.¹⁴ The decision is perhaps the most important case ever decided by the Court, and *From Jim Crow to Civil Rights: The Supreme Court and the Struggle for Racial Equality* is an excellent contribution to the celebration.

¶27 Klarman, a professor of constitutional law at the University of Virginia Law School, describes the most important civil rights decisions of the Court from *Plessy v. Ferguson*¹⁵ to *Brown*. While the emphasis is on segregation, the book also comprehensively covers the Court's civil rights decisions on voting rights, criminal procedure, jury participation, peonage, and housing discrimination. The volume is unique in the manner in which it uses the history of the Supreme Court's civil rights decisions to illustrate the relationship between legal and political factors in the Court's constitutional decision-making processes. As Klarman's analysis of the Court's segregation decisions demonstrates, the Court's resolution of constitutional issues frequently reflects the social and political context nearly as much as the purely legal considerations. The book's organization effectively focuses the reader's attention on the impact of political changes on the Court's civil rights jurisprudence. Each chapter discusses a different period, including the *Plessy* period, the Progressive Era, the inter-war period, World War II, and the post-war period. This organizational method permits the reader to observe the Court's jurisprudence evolving in response to the political and social context of each historic period.

¶28 In *Plessy*, the Court affirmed the constitutionality of state-imposed segregation. In *Brown*, the Court effectively overruled *Plessy*, holding that segregated elementary schools violate the equal protection clause. However, as

13. E.g., *BROWN V. BOARD OF EDUCATION AT 50: A RHETORICAL PERSPECTIVE* (Clarke Rountree ed., 2004); CHARLES J. OGLETREE, *ALL DELIBERATE SPEED: REFLECTIONS ON THE FIRST HALF CENTURY OF BROWN V. BOARD OF EDUCATION* (2004); *FROM THE GRASSROOTS TO THE SUPREME COURT: BROWN V. BOARD OF EDUCATION AND AMERICAN DEMOCRACY* (Peter F. Lau ed., 2004).

14. 347 U.S. 483 (1954).

15. 163 U.S. 537 (1896).

Klarman notes, the legal case for holding that the equal protection clause prohibited school desegregation was not strong. The Fourteenth Amendment does not prohibit “segregation.” At the time the Amendment was adopted, shortly after the Civil War, schools in the South and the North were almost universally segregated. Since the legal case for overruling *Plessy* was weak, the most likely explanation for the different result in *Brown* was the enormous shift in the political and social context that occurred between 1896 and 1954. The migration of blacks from the South to the North, the urbanization and development of a black professional class, and World War II, all had a strong impact on the attitudes of Americans toward racial discrimination. This radical shift in racial attitudes was reflected in the integration of the armed forces after the war, as well as the integration of many institutions in American life, such as baseball teams, police forces, and universities.

¶29 The reasoning of the Justices in deciding *Brown* reflected this growing American hostility to segregation. A number of the Justices, such as Douglas and Black, who believed that segregation was immoral, did not find it difficult to overrule *Plessy*. Others, such as Frankfurter and Jackson, shared their disdain for segregation but found this result far more difficult, believing that the legal case for overruling *Plessy* was weak and that judges should decide cases based solely on legal considerations, rather than their own personal moral convictions.¹⁶

¶30 Another unique feature of *From Jim Crow to Civil Rights* is its analysis of the Court’s limited ability to enforce its own decisions. The detailed account of efforts in the South to integrate public schools after the *Brown* decision demonstrates the difficulty in enforcing decisions that face massive popular resistance. Indeed, for at least a decade after the *Brown* decision, there was practically no significant integration of schools in the South. Ultimately, there was little integration in the South until the passage of the Civil Rights Act of 1964.¹⁷ The Act authorized the Justice Department to bring lawsuits enforcing school integration. Even more important, the statute authorized the withholding of federal education funds to school districts that refused to integrate. As a result of these statutory provisions, integration of southern schools proceeded fairly rapidly after passage of the Act.

¶31 Klarman also provides a fascinating account of the role of litigation as a method of protest. He evaluates the advantages and disadvantages of this method of protest and compares it to other methods, such as the civil rights movement. One of the advantages of litigation is that in the early part of the century it was the only viable method of protest available to blacks since any open protest utilizing the tactics that were used by the civil rights movement in the 1960s would have resulted in a great deal of violence and death. After the war, when violence as a

16. While these Justices eventually joined the Court’s decision, this result probably reflected the fact that, once a majority decided to overrule *Plessy*, they believed a unanimous decision was important and that their scruples did not justify joining a dissenting opinion.

17. Pub. L. No. 88-352, 78 Stat. 241 (codified as amended at 42 U.S.C. §§ 2000a to 2000h (2000)).

response became somewhat less common, an approach like the civil rights movement became a more viable form of protest.

¶32 *From Jim Crow to Civil Rights* would appeal to a number of different audiences. Law students will find the book useful in constitutional and civil rights classes. Since the book avoids the use of legal jargon, it also would appeal to the nonlawyer interested in a history of the civil rights movement and black history in the twentieth century.

Oldham, James. *English Common Law in the Age of Mansfield*. Chapel Hill, N.C.: University of North Carolina Press, 2004. 426p. \$27.50.

Reviewed by Renee Y. Rastorfer

¶33 Author James Oldham, the St. Thomas More Professor of Law and Legal History at Georgetown University Law Center, has been researching and publishing in the area of English legal history for more than twenty years.¹⁸ His latest book in this area, *English Common Law in the Age of Mansfield*, is an abridged version of an earlier, hefty, two-volume work.¹⁹ The earlier work consisted of three parts: transcriptions of notes taken by Lord Mansfield of jury trials,²⁰ Oldham's explanatory essays, and appendixes. Most reviewers commented on how useful the explanatory essays were, characterizing the collection as a modern textbook of eighteenth-century legal history for which there was no comparable source (p.xi). *English Common Law in the Age of Mansfield* contains only updated and abridged versions of those original explanatory essays—a welcome change rendering the work more readily accessible to a wider audience.

¶34 Lord Mansfield, Chief Justice of the Court of Kings Bench from 1756 to 1788, is widely thought of as the most dominant jurist of eighteenth-century England, having played a central role in the development of English common law. Many aspects of business, commerce, and maritime affairs converged in their evolution with Mansfield's reign as chief justice. All required the articulation of principles that eighteenth-century English merchants could apply to their dealings and rely upon for resolution in those instances when their measures failed. Oldham finds this process somewhat magical, referring to it as the "transmutation of mercantile custom into common law principles" (p.152). Acknowledging that Mansfield arrived on the shoulders of influential predecessors, he believes Mansfield to be the paramount "catalytic force. . . , represent-

18. E.g., James Oldham, *Truth-Telling in the Eighteenth-Century Courtroom*, 12 LAW & HIST. REV. 95 (1994); James Oldham, *New Light on Mansfield and Slavery*, 27 J. BRIT. STUD. 45 (1988); James Oldham, *Special Juries in England: Nineteenth Century Usage and Reform*, 8 J. LEGAL HIST. 148 (1987).

19. JAMES OLDHAM & WILLIAM MURRAY, EARL OF MANSFIELD, *THE MANSFIELD MANUSCRIPTS AND THE GROWTH OF ENGLISH LAW IN THE EIGHTEENTH CENTURY* (1992).

20. To which Oldham had access with the cooperation of the eighth Earl of Mansfield. These notes are contained in fifty-five small leather-bound notebooks and housed at the Mansfield ancestral home, Scone Palace in Perth, Scotland. *Id.* at xxi.

ing as he did a rare and formidable combination of ability and circumstance” (p.364).

¶35 The first two chapters of the book are devoted to a useful biographical summary on Mansfield and descriptions of the business and procedures of common law courts. The next eighteen chapters are divided into three major categories: “Commerce and Contract,” “Crime and Tort,” and “Status and Property.” The “Commerce and Contract” category is furthered organized into individual chapters dealing with topics such as bankruptcy, negotiable instruments, and intellectual property. The “Crime and Tort” topic covers matters such as libel, nuisance, and offenses against public order and welfare. Finally, under “Status and Property” we find the more specific topics of slavery, marriage, labor and employment, and property and wills.

¶36 Each chapter begins with an introduction to the status of the discrete area of law at the time Mansfield came to the bench, continues with a description of how the law advanced under Mansfield, and concludes with a summation of the law at the end of his tenure. The chapters have a grace borne of deep study and scholarly distillation. Oldham does not merely provide quick snapshots. The introductions are extensive enough to orient readers of all levels of expertise with the subject and to provide context sufficient to understand Mansfield’s importance, his victories, and in a few instances, his defeats. Consequently, each chapter can stand on its own as authoritative reading on the topic it covers.

¶37 Oldham occasionally reviews and weighs in on scholarly controversies as to the state of the law. In his review of authorities in the chapter on slavery, Oldham explains differing assessments of the importance of the seminal English case on slavery, *Somerset*.²¹ Again, in the case of libel, he brings to the fore newer voices that cast doubt on older, more well-established views. Interestingly, although in most cases Oldham’s admiration for Mansfield’s enormous abilities is clear, I detect some slight disappointment with regard to how Mansfield treated the development of seditious libel jurisprudence. On this, Oldham writes, “[H]ad Mansfield approached the doctrine in the spirit of modernizing the law and making it procedurally effective—the spirit that animated his commercial law decisions—he could have agreed with defense counsel and instructed the jury to consider the ‘whole matter’” (p.235). Despite the existence of precedent that would have permitted defenses less advantageous to the government, Mansfield instead elected, from his earliest days as a solicitor general for the Crown, to pursue a line of seditious libel cases that required for conviction only the finding that the allegedly seditious text was published, with no corollary finding by a jury that the text was libelous (p.235).

¶38 Academic law libraries, as well as college and university research libraries, are the more obvious beneficiaries of Oldham’s efforts. However, legal and

21. 98 Eng. Rep. 499 (K.B. 1772). Oldham discusses variations in the reporting of this case at pp.314–16.

nonlegal reference librarians, law students, and university professors—really, anyone with a love of history—would find *English Common Law in the Age of Mansfield* interesting and useful, as would advanced scholars interested in Mansfield's exact impact on the development of English common law. Although Mansfield is best known for his work in advancing the common law in the areas of contract, quasi-contract, and negotiable instruments, the chapters on insurance, labor and employment, and slavery are the most fascinating. All in all, I came away with an enhanced appreciation for the historic paths taken by many of the causes of action with which we are familiar today.

Pottage, Alain, and Martha Mundy, eds. *Law, Anthropology, and the Constitution of the Social: Making Persons and Things*. Cambridge; New York: Cambridge University Press, 2004. 310p. Cloth, \$75. Paper, \$34.99.

Reviewed by Jesse Holden

¶39 The essays in *Law, Anthropology, and the Constitution of the Social: Making Persons and Things* consider the division between “persons” and “things” in legal and cultural environments from a variety of perspectives. The philosophical framework of the investigation is outlined in the introduction by co-editor Alain Pottage, whose essay deconstructing the notion of “genetic patrimony” in contemporary legal and scientific discourse also concludes the book. He opens by explaining that the authors in this volume “address the question of how legal techniques fabricate persons and things” (p.1). These contributors “are concerned to apprehend legal and social action without presupposing a categorical division between persons and things” (p.2).

¶40 Three of the following eight chapters could be described as legal or ethno history. The first of the historical accounts, “*Res Religiosae*: On the Category of Religion and Commerce in Roman Law,” by Yan Thomas, investigates the laws and restrictions that defined religious versus sacred space to Romans. This is a close reading of Roman law relating to tombs and deceased persons that elucidates some fascinating intersections in the concepts of death and property. The method used by Thomas to analyze the minutiae of ancient Roman texts reflects techniques familiar in literary criticism. “Ownership or Office? A Debate in Islamic Hanafite Jurisprudence Over the Nature of the Military ‘Fief,’ from the Mumluks to the Ottomans” by co-editor Martha Mundy, is an examination of “arguments between proprietary right/ownership and government authority/office in Late Egypt Mumluk” (p.144). Mundy bases her analysis on two historical epistles that consider in detail the question of the nature of the *iqta'*, or administrative grant, to determine whether these were grants of land or titles of office. In the third essay, Engin Deniz Akarh looks at the transformation of the concept of *gedik* in both legal terms and cultural conception. This piece, built on an analysis of primary historical sources, reads like legal history rather than anthropology in the strict sense.

¶41 The remaining five essays deal with contemporary issues where the boundary or distinction between “persons” and “things” is problematic. Bruno Latour looks at modern institutions of science and law in France to determine the environments that create objects and objectivity in “Scientific Objects and Legal Objectivity.” This essay is one of only three in this book based on the traditional participant-observation model of anthropological practice. Tim Murphy follows the development of an international cultural property regime in the next essay, exploring “the question of cultural property and law’s ‘role’ in the emergence of this phenomenon” (p.117). In “Losing (Out on) Cultural Resources,” Marilyn Strathern examines the concept of “head pay,” a traditional payment of women to a clan to compensate for a wrongful death, to look at the clash between tradition and modernity, and differing notions of people as subjects versus people as objects in a specific cultural context. Her research highlights an especially complicated intersection of the global versus the local. Next, Susanne Küchler investigates, in “Re-visualising Attachment: An Anthropological Perspective on Persons and Property Forms,” how “attachment” is created through visual art within several Pacific Island cultures.

¶42 Finally, co-editor Alain Pottage’s contribution, “Our Original Heritage,” concludes this collection with a theoretically complex look at the bioethics of patenting of the human gene in the broader debate over the formal division between human technology and nature. Because of the level of abstraction, this essay tends toward the philosophical, much like Thomas’s contribution on *res religiosae*. However, Pottage’s piece develops the conceptualization of persons and things in the legal regime of a given culture the most dexterously of all the entries in this book and alone justifies its purchase.

¶43 This book is highly theoretical and approaches the categories of person and thing from different perspectives using a variety of techniques and contexts. It contains extensive footnoting, a substantial bibliography, and a thorough index. The bindings of both the cloth and paperback editions are quite sturdy. The elegant Goudy typeface is printed on acid-free paper. Despite the variety of subject matter and methodology across these essays, the quality of writing and diversity of ideas makes *Law, Anthropology, and the Constitution of the Social: Making Persons and Things* a valuable addition for law schools or other libraries in universities that offer graduate degrees in social sciences.

Slesnick, Twila, and John C. Suttle. *IRAs, 401(k)s, & Other Retirement Plans: Taking Your Money Out*. 6th ed. Berkeley, Calif.: Nolo, 2004. Paper, \$34.99.

Reviewed by Gwendolyn Lohmann

¶44 Written with the lay reader in mind, this self-help book focuses on the basic types of retirement plans, explaining how and when to withdraw money from those plans using various tax strategies that help minimize taxes and avoid penalties. Both authors have impressive backgrounds in retirement planning and financial

management counseling, and have coauthored another work on retirement planning.²² Twila Slesnick is a partner with the CPA firm of Slesnick and Slesnick, as well as an enrolled agent specializing in tax and retirement planning.²³ John C. Suttle practices law in the areas of estate and trust planning, and provides federal, state, and local tax counseling as a CPA.²⁴ Throughout *IRAs, 401(k)s, & Other Retirement Plans: Taking Your Money Out*, the authors stress the importance of tax planning and following basic guidelines in order “to maximize your after-tax wealth” (p.2–3).

¶45 The book is comprised of nine chapters, two appendixes, and an index. The table of contents and introductory chapter clearly state the well-defined scope of the book, covering the specific distribution rules for fourteen of the most common types of retirement plans for individuals and the employed: seven qualified plans, five types of IRAs, and two types of almost-qualified plans. The introduction provides an excellent overview and includes a list of frequently asked questions with references to the appropriate chapter for answers. Icons that suggest tips on strategies, cautionary alerts for pitfalls, sidebars with helpful terms, and the key tax code sections covered in each chapter are just a few of the many useful features included in *IRAs, 401(k)s, & Other Retirement Plans: Taking Your Money Out*.

¶46 Chapters 1 and 2 discuss the basic types of retirement plans and taxation rules for taking your money out (distributions), and emphasize how penalties affect planning. Chapters 3 and 4 cover the taxes for early distributions, strategies to avoid penalties, and the rules for computing and reporting your distributions to the IRS. The rules for determining when you must start withdrawing your money, for computing the required payments you must take during your lifetime, and designating a beneficiary are discussed in chapters 5 and 6. Rules regarding distributions to beneficiaries when the death of the plan participant occurs before and after age 70½ are found in chapters 7 and 8, respectively. The final chapter focuses on the special taxation rules that apply to Roth IRAs and summarizes the basic differences between Roth and traditional IRAs. Appendixes A and B provide sample IRS forms, publications, notices, schedules, and life expectancy tables used in computing payments.

¶47 Like many Nolo titles, new editions of *IRAs, 401(k)s, & Other Retirement Plans: Taking Your Money Out* have been released every two years or so. This sixth edition includes an expanded chapter 4 covering a new IRS method for computing minimum withdrawals. Unfortunately, valuable content is occasionally supplanted in subsequent editions. For example, Table S, an IRS “safe

22. TWILA SLESNICK & JOHN C. SUTTLE, *CREATING YOUR OWN RETIREMENT PLAN: A GUIDE TO KEOGHS & IRAS FOR THE SELF-EMPLOYED* (2d ed. 2002).

23. ABOUT NOLO: TWILA SLESNICK, at <http://www.nolo.com/author.cfm/ObjectID/F6FF4696-F571-4E82-889E4EC1A563B183> (last visited Mar. 11, 2005).

24. ABOUT NOLO: JOHN C. SUTTLE, at <http://www.nolo.com/author.cfm/ObjectID/08A70FCD-F347-42A0-917C9BA03F282EAA> (last visited Mar. 11, 2005).

harbor” annuity factor table, was replaced in the sixth edition by references to various Web sites offering free software programs that perform calculations for the researcher. Although these Web sites are interesting and even helpful, it might be more beneficial for the lay person if the authors retained the traditional IRS tables—some readers may find Internet resources as complex and bewildering as the tax codes and IRS rules.

¶48 Nolo publications are recognized for presenting information about difficult legal subjects in an interesting and palatable style. This work is no exception. *IRAs, 401(k)s, & Other Retirement Plans* is a reliable, basic resource that provides a good introduction and overview of the taxation and distribution rules for pension plans. It is recommended for academic and public law libraries.

Spencer, Ronald D., ed. *The Expert versus the Object: Judging Fakes and False Attributions in the Visual Arts*. New York: Oxford University Press, 2004. 241p. \$35.

Reviewed by Louise Tsang

¶49 News about a newly attributed Vermeer being auctioned off at a phenomenal price, or stories about a work of art being devalued to a fraction of its previous sale price after being re-attributed to a lesser-known artist, arouse the curiosity of art-minded people. “How do you know the piece is by a certain artist?” is the nagging question. The nature and process of authentication are not widely understood—even by judges involved in authentication cases—as several court decisions discussed in this book demonstrate. Legal issues surrounding the attribution of visual art have not been thoroughly discussed even in the art law arena. Ronald Spencer, a well-respected art law and foundation law attorney, explains the nature and process of authentication in *The Expert Versus the Object: Judging Fakes and False Attributions in the Visual Arts*. He endeavors, with this new collection of essays, to “help lawyers advise their clients and judges to arrive at more informed decisions” (p.xv). Spencer also suggests “a more systematic, organized and careful approach to the authentication process, so subjective judgment can be supported by rational and physical analysis of the art object” (p.xvi).

¶50 The book is divided into two parts. The essays in the first part, titled “Authentication and Connoisseurship,” are intended to provide the legal community with industry knowledge of the nature and process of authentication with a focus on connoisseurship. Art experts address attribution issues involving their particular areas of concern. The major tools for determining the authenticity of a work of art are explained and dissected. First, the reader learns that scientific analysis of the physical properties of the artwork can prove that the piece is from the period it claims to be, but cannot prove that it is by a particular artist from that period. Historical documentation is discussed next, but beware as provenance can be invented. Spencer places significant emphasis on authentication by visual inspection or connoisseurship. He asserts that connoisseurship is the most crucial authentication method, but

the one most difficult for the layperson to understand. Examples are provided to demonstrate that connoisseurship procedures are inconsistently applied. It is not unusual to see expert opinions of the same piece vary from expert to expert or over time. Such inconsistencies may compromise a connoisseur's expertise, and legal disputes can erupt over attributions that are questionable or change as different or more crucial data become available. Fear of litigation can and frequently does inhibit the willingness of experts to comment and to contribute to scholarly publications.

¶51 In part 2, "Authentication and the Law," Spencer examines how the law resolves disputes over issues of attribution. It begins with a historical account of art expert liability and continues with three essays written by Spencer. In the first, Spencer examines the required elements of legal claims made against experts and suggests ways to minimize the risk of liability. In the second, he establishes factors that judges consider important and persuasive and suggests systematic procedures for experts to follow that would stand up to legal challenge. Spencer's third essay recounts a groundbreaking New York Supreme Court case where financial sanctions were imposed on a plaintiff and his lawyer for having brought a frivolous claim concerning the attribution of visual art. Part 2 also includes a paper by a French art law lawyer and lecturer on *droit moral* (moral right) under French law as it pertains to issues of authenticity. It is a pity that this paper does not also discuss whether the French system of professionalizing art experts will work in the United States.

¶52 The essays contained in this book are well written, informative, and focus on unique areas of art law. While there are twice as many essays in part 1 as in part 2, the seeming imbalance may be necessary since the relatively esoteric concept of connoisseurship—so central to authentication even though it is inherently subjective—needs more explanation. *The Expert versus the Object* enjoys, but also suffers, from the intrinsic characteristics of any essay collection. The volume lets readers see the issues discussed from different perspectives, but inevitably it also allows holes and repetitions to creep in. Spencer did a fine job pulling the essays together to illuminate the nature of authenticity in his introduction. While not a perfect book, *The Expert versus the Object* is useful for "a wide range of individuals for whom a coherent system of authenticating works of art is important, if not crucial, in their professional lives" (p.xvi). The book is highly recommended for all law libraries that are building or have an art law collection, and for individuals who are interested in the visual arts.

Tyburski, Genie, ed. *Introduction to Online Legal, Regulatory, & Intellectual Property Research: Search Strategies, Research Case Study, Research Problems, and Data Source Evaluations and Reviews*. Mason, Ohio: Thomson, 2004. 391p. \$49.95.

Reviewed by Jennifer S. Murray

¶53 Serendipity is a beautiful thing. In life, there are few occasions where the right book comes along at the right time and has a profound impact on the reader.

When I selected *Introduction to Online Legal, Regulatory, & Intellectual Property Research: Search Strategies, Research Case Study, Research Problems, and Data Source Evaluations and Reviews* to review, I worked in an academic law library and did not know that I would soon be working instead in a private law firm library. The audience for this book is the private law firm or corporate librarian. When the book arrived, I was working at the law firm and immediately recognized that it was targeted directly to me. For the first time, a book significantly impacted me on a professional level. Although *Introduction to Online Legal, Regulatory, & Intellectual Property Research* may not affect other legal researchers in quite the same way, they will benefit nonetheless.

¶54 *Introduction to Online Legal, Regulatory, & Intellectual Property Research* is part of the Business Research Solution Series produced by the Benjamin Group on behalf of the Thomson Corporation. The series includes several hardbound titles that provide instruction in various types of online research. This particular title is divided into four chapters and focuses on the application of research strategies. Chapter 1 outlines the steps for an effective legal research strategy, while chapter 2 follows the application of the research strategy to a trademark due diligence research project. The third chapter revisits the research strategy, applying the strategy to many smaller and more discrete research projects. Chapter 4 evaluates numerous data sources including, but not limited to, major aggregators, legal research sources, and public records sources. The book also contains a comprehensive index and an appendix including directory information, ratings for business databases, and contributor biographies.

¶55 Although *Introduction to Online Legal, Regulatory, & Intellectual Property Research* is edited by Genie Tyburski, well known to law librarians as a law firm librarian and Web manager of *The Virtual Chase: Teaching Legal Professionals How to Do Research* (www.virtualchase.com), there are numerous other contributors to chapters 3 and 4. They are not all law librarians and, as a result, they bring diverse perspectives to the work. Writing an online research text is a huge undertaking, and some attempts are more successful than others. In this instance, the contributors have succeeded, unequivocally. Their success is due in large part to the focus on applied research. I could find no similar treatment in other online legal research texts. Tyburski provides law firm and corporate librarians a rare opportunity to glimpse the logic and deduction of other librarians in answering research questions. While the applied strategies may not be appropriate for all readers, they establish a solid basis from which readers can adapt their own personalized research style.

¶56 The primary criticism of any online research book is that it will quickly become obsolete, but this publisher regularly updates and revises its publications, occasionally online. The efficacy of this book will remain for quite some time due to the focus on applied research. Given its reasonable price and the lack of similar titles actually demonstrating the application of research, *Introduction to Online*

Legal, Regulatory, & Intellectual Property Research: Search Strategies, Research Case Study, Research Problems, and Data Source Evaluations and Reviews is recommended as an excellent addition to any law firm or corporate library collection. Certainly it would be an invaluable resource for a newer law firm or corporate librarian, but it has still wider appeal. Any law librarian hoping to improve or maintain his or her online legal research skills or law libraries that serve patrons performing online research would find value in the text.