Books for Lawyers from 2005
A Very Subjective View of the Scribes Prize Nominees

Steve Sheppard* *Professor*

Introduction

Waves of new law books are published each year, many of them interesting to the lawyer but few of them reaching lawyers' bookshelves. In part this gap comes from the scope of publishing: it takes valuable time to consider all the new books. And, it comes from problems of access: even though Amazon or Barnes & Noble sell nearly everything on-line, it is rare for most of such specialized books to reach the local bookstores. So, for the busy lawyer, browsing for interesting new law books is a rather unlikely chore.

On the other hand, each year publishers nominate various new books for prizes. Different prizes are created to reward different strengths, and there are many awards in specific subject areas, as well as a few general awards. A bit like the Grammy Awards, for most of these prizes, nominations are made by the producers, and the prizes awarded by an independent panel. Thus, prize nominations often reflect the books that their editors believe are the most important or the best written that year.

For several years, I have been fortunate to serve on a committee of judges, lawyers, and other professors, selecting the annual book award for Scribes – The American Society of Writers on Legal Subjects. Scribes was founded in 1953 "to honor legal writers and encourage a 'clear, succinct, and forceful style in legal writing.'" Membership in Scribes is open to members of the legal profession who have edited or published various forms of writing, and more information regarding membership can be found at www.scribes.org.

Details of that award and its recipients over the last six decades can be found at www.scribes.org/awards.html. The gist of this award is to celebrate the best writing about the law each year. Since the nomination process

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is so extensive, and the books nominated are so wide-ranging, the list presents a wonderful opportunity for reviewing some of the better law books of the year.

The descriptions and assessments of the books below do not represent the views of the prize committee. Its work will result in an award at the ABA meeting this summer. Rather, they are my quite subjective summaries and opinions. Indeed, what with late nominations and early reading, the list below is not necessarily complete. Still, I offer it for your amusement and convenience, and I welcome all disagreements with my assessments, at sheppard@uark.edu.

The Assessments

A First Caveat

Each summary is followed by six assessments. Let me stress that these are entirely subjective, made by me as a matter of my opinion. Like Anne Elk in the Monty Python sketch on the Brontosaurus, this is my theory, entirely by me, not someone else, and so there is no one else to blame. These assessments do not reflect the views of Scribes or its committee or, for that matter, any responsible adult. I present my assessments for fun and to encourage others to disagree with them.

The Criteria

The first five initial criteria for assessment are Importance, Writing, Reading, Practitioner Utility, and Fun Quotient. By these I mean the following.

– Importance: This represents a best guess at how important this argument is to the book's field. If a book in, say, contracts, is likely to redefine how we all think about a contract or its enforcement, then it is quite important. This is not to say that it is more or less important than a book that is important in another field.

– Writing: Some of these books are written in beautiful and clear prose that illustrates the problems they consider better than anyone would have expected them to do.

– Reading: Despite being well written, a book might or might not grab a reader and pull the reader along. This measures how likely you are to finish the book after you start it, its other merits notwithstanding.

– Practitioner Utility: Some books are valuable for the professional in the field. You read them and learn tricks you can use. Some are really absorbing but still not that helpful.

– Fun Quotient: All things being equal, is this a book you might really want to read, even if you don't have to?

These five quick assessments are marked from five to one. Five is preferable to one. When a book contains essays by various authors, a range may be given to reflect the differences among entries.

The last is a summary remark, labeling the book as Tops, Worthy, or Interesting.

– If I mark a book "Tops," it is because I think it is important to lawyers in all fields of law, particularly owing to the effect the book might have on our idea of the rule of law. It is at least well enough written that, even if reading it might be tough, I'd hope a good lawyer would be able and willing to work through it sufficiently to become familiar with its content.

– I use "Worthy" for something worth reading by, though not essential to, all lawyers.

– "Interesting" marks out a book for someone with a particular interest in the topic, especially if that person has sufficient understanding of it to assess its strengths in the field.

A Further Caveat

These six summary remarks must all be understood in the context that these books are each already at the top of the game. Publishers don't make these nominations lightly, and the whole array of books are well worth any time you have to read them. Yet, there is always the tug in our culture to put the last little distinction among the already distinguished. And I recognize the unlikelihood that a busy lawyer or judge will actually read but a few books per year for the pleasure of professional development. Thus some sorting may actually help.

The Books

Books are listed by category, and within each category by relatively arbitrary order. All books were published initially in 2005, unless they are otherwise noted. Also, the suggested retail price is given for each book, although the books may be available at discounts from these prices.

The books are arranged in categories below. The categories are a bit unfair, as many books would rightly be copied in a half-dozen or more pigeonholes, yet they are each given only one slot here. They are also idiosyncratic, dictated by the nature of the books nominated, rather than any organic divisions of the law. The categories are these:

Contracts
Torts
Criminal Law
Corporate Law
Bankruptcy
Legal History
Constitutional Law
Individual Rights
The Wars on Terror
Race and Law
American Indian Law
State and Religion
Law and Medicine
Environmental Law
Family Law and the Law of Children
The Idea of Law and Legal Philosophy
International Law and Human Rights
Lawyering
Fiction

Contracts

Insincere Promises: The Law of Misrepresented Intent, by Ian Ayres and Gregory Klass (316 pages, Yale University Press, $45.00). This is a rare book, explaining a difficult area of the law clearly while bringing clarity both to the problems in it and to solutions for them. The question is when misrepresentations in contracts and negotiations ought to give rise to actions for fraud, both as a tort and as a crime. This study, by a Yale law professor and a young lawyer, considers the boundaries of tort and crime, the problems of evidence, and the role of contract enforcement, with plenty of illustrations from case law and culture.

Importance: 5 Writing: 5 Reading: 3
Practitioner Utility: 5 Fun Quotient: 2
Worthy

Torts

Exploring Tort Law, edited by M. Stuart Madden (504 pages, Cambridge University Press, $90.00). The essays in this book present the state-of-the-art of the current contours of tort liability. There is a nice balance between theory and application: Guido Calabresi has a rich essay on the competing roles of tort, and Ernest Weinrib on the decline of the notion of duty, but questions of application receive a useful treatment in the light of cases, as in the role of insurance or the increasingly comparative nature of toxic tort and products liability. For the lawyer who litigates tort claims of any novelty, this is a quite useful collection.

Importance: 5 Writing: 3-4 Reading: 2-4
Practitioner Utility: 4 Fun Quotient: 2
Worthy

Criminal Law

Courtroom 302: A Year Behind the Scenes in an American Criminal Courthouse, by Steve Bogira (416 pages, Knopf, $25.00) (paper, Vintage, $14.95). A journalist's view of the Cook County Criminal Court, the Chicago courthouse. This is a much better-than-average courthouse chronicle, narrating the words of the lawyers, the moods of the jurors, the lives of cops, crooks, druggies, and judges, while allowing not only the stories of the cases to shine through but illuminating a few lessons from an overworked legal system.

Importance: 3 Writing: 5 Reading: 5
Practitioner Utility: 3 Fun Quotient: 5
Worthy

The Informant: The FBI, the Ku Klux Klan, and the Murder of Viola Liuzzo, by Gary May (448 pages, Yale University Press, $35.00). The 1965 murder of a white woman by the Alabama Ku Klux Klan was one of many shocks to the American conscience during the Civil Rights Movement. The quick arrest of the murderers led to the disclosure of an FBI informant who had himself participated in many of the Klan's worst acts of violence and terror. This well researched and well written story of the victim and the informant unearths a wealth of detail about the shadowy worlds of the civil rights era, but it also sounds a warning about domestic intelligence in a war on terror.

Importance: 4 Writing: 4 Reading: 4
Practitioner Utility: 2 Fun Quotient: 4
Worthy

Lying, Cheating, and Stealing: A Moral Theory of White-Collar Crime, by Stuart P. Green (270 pages, Oxford University Press [2006], $74.00). White-collar crime is rarely thought out as a coherent field of criminal law; it is usually defined more by the defendant than the crime itself. The author, an LSU professor, has considered a broad range of cases, including both workaday reports of corporate misfeasance and high profile cases in political and corporate life, ranging from Martha Stewart to Mikhail Khodorkovsky, to develop a coherent theory of the moral foundation for criminal sanctions for lying, cheating, and stealing in these complex organizations.

Importance: 4 Writing: 4 Reading: 2
Practitioner Utility: 5 Fun Quotient: 2
Interesting

Eye For an Eye, by William Ian Miller (278 pages, Cambridge University Press, $28.00). A meditation on the nature of retaliation as a basis for criminal law by the Michigan law professor who wrote *Faking It*. Considering the rules of the *lex talionis*, what we might now think of as damages for wrongful death, he ranges from the Bible and Norse laws of the ancient Germans to the modern law in considering how we value peace after violence. An interesting, at times poetic book, it is provocative but not for everyone.

Importance: 3 Writing: 4 Reading: 3
Practitioner Utility: 3 Fun Quotient: 3
Interesting

The Detection of Deception in Forensic Contexts, edited by Par-Anders Granhag and Leif A. Stromwell (358 pages, Cambridge University Press [2004], $90.00, paperback, $42.99). Most people think they can detect a lie, and our jury system depends on the idea that the ordinary observer is best suited to weigh the truth of a witness. On closer study, it turns out that most people are really bad at detecting a lie, but in truth, jurors are no worse at it than many people who think they are experts at it. This fascinating series of essays considers the problems of truth and lie detection, both describing new research and summarizing the state of the field, with strong and useful cautions for those whose work requires judgments of the truth of others.

Importance: 5 Writing: 2-4 Reading: 2
Practitioner Utility: 5 Fun Quotient: 2
Worthy

Corporate Law

Chocolate on Trial: Slavery, Politics and the Ethics of Business, by Lowell J. Satre (352 pages, Ohio University Press, $24.95). This fascinating study of slave labor, lasting well into the twentieth century, is a disturbing portrait of early globalization. Focusing on the plantations on the Atlantic islands near the African coast, the author, a history professor, chronicles the pernicious support of slavery by colonial powers and local government, as well as inconsistent efforts of corporations, national and local governments to ensure fair labor. At times, the writing is a bit inconsistent, yet the book is a powerful read and quite rewarding.

Importance: 4 Writing: 3 Reading: 3
Practitioner Utility: 2 Fun Quotient: 3
Worthy

Icarus in the Boardroom: The Fundamental Flaws in Corporate America and Where They Came From, by David Skeel (264 pages, Oxford University Press, $35.00, paperback, $15.95). In the wake of the Enron convictions and the great corporate scandals of the last decade, one might hope that the inherent flaws in corporate governance were somehow being cured. As this book clearly describes the history of the corporation and the nature of corporate structure, recurrent scandals and failures plague corporations owing to the reward of risk, the nature of competition to seek monopoly, and the immense size and complexity of modern corporate organizations. The author, a financial journalist and Penn law school

professor, employs useful examples in a compelling story, leading to recommendations for meaningful and achievable reforms. (I will warn readers about one quibble: the author uses a neologism, "Icaran," rather than the quite respectable word, "Icarian.")

Importance: 5 Writing: 4 Reading: 3
Practitioner Utility: 4 Fun Quotient: 3
Worthy

Bankruptcy

Courting Failure: How Competition for Big Cases is Corrupting the Bankruptcy Courts, by Lynn M. LoPucki (336 pages, University of Michigan Press, $27.95). A smartly written book by a UCLA law professor that makes bankruptcy truly interesting, and frightening. The book details the race to the bottom by forum-shopping companies and competing courts, diminishing the protection of creditors and shareholders in large-scale bankruptcy. In the process, the system of corporate bankruptcy is clearly explained, with plenty of illustrations.

Importance: 5 Writing: 4 Reading: 4
Practitioner Utility: 5 Fun Quotient: 3
Worthy

Legal History

The Tyrannicide Brief: The Man Who Sent Charles I to the Scaffold, by Geoffrey Robertson (352 pages, Chatto & Windus [2005], Pantheon Books [2006], U.S. price n/a). The American republic would probably have been very different if the monarchy in England had not been shaken by civil war, regicide, a protectorate, and a constitutional compact between Parliament and a contracted monarch from Holland. The key event, the 1649 execution of Charles I, followed a trial more villified than understood. This book, by an internationally renowned Australian member of the English bench and bar, studies the trial through the life of its prosecutor, John Cooke. Cooke was a courageous barrister and a surprisingly complicated fellow, and his story is told with passion and verve, as well as a strong defense against Cooke's own prosecution for regicide. American lawyers will be surprised by not only the compelling tale but also the echoes for today's special tribunals.

Importance: 3 Writing: 4 Reading: 4
Practitioner Utility: 2 Fun Quotient: 4
Worthy

Constituting Empire: New York and the Transformation of Constitutionalism in the Atlantic World, 1664-1830, by Daniel J. Hulsebosch (504 pages, University of North Carolina Press, $45.00). The last decade has seen a wealth of new history of the English colonial experience in North America, challenging the notion that a new constitutional order arose suddenly during and after the Revolutionary era. This is the first large-scale study of the colony and state of New York during this period to embrace the new approaches to colonial constitutional thought. Written by an NYU legal historian, it contributes important evidence to the view that the constitution the colonists embraced after separation was very much what the British colonial administration would have wanted beforehand but struggled to achieve over local opposition.

Importance: 4 Writing: 4 Reading: 3
Practitioner Utility: 2 Fun Quotient: 3
Worthy

Yale Law School and the Sixties: Revolt and Reverberations, by Laura Kalman (488 pages, University of North Carolina Press, $49.95). In recent memory, Yale Law School has enjoyed a special reputation as a home of radical politics and whacky theory, a

reputation solidified by the upheavals of the sixties. This story is vividly told in this well researched history, which is the successor to the author's highly regarded history of Yale Law School at mid-century. Given Yale and its alumni (including an Arkansan named Clinton who was there then) have maintained a considerable influence through the twentieth century, this story is one of great interest to all of the legal academy and the legal profession.

Importance: 4 Writing: 5 Reading: 4 Practitioner Utility: 1 Fun Quotient: 3*
Worthy

*If you went to Yale, then the Fun Quotient is a 5.

Nimrod: Courts, Claims, and Killing on the Oregon Frontier, by Ronald B. Lansing (306 pages, Washington State University Press, $21.95). The carefully researched tale of a murder case on the frontier in 1850, with all the ingredients of claim-jumping and self-defense that usually spice up a John Ford movie. Written by a law professor at Lewis & Clark College, it sounds a bit like a fireside tale but still covers the procedure, the evidence, and the context well.

Importance: 2 Writing: 2 Reading: 3 Practitioner Utility: 1 Fun Quotient: 3
Interesting

Constitutional Law

Righteous Anger at the Wicked States: The Meaning of the Founders' Constitution, by Calvin H. Johnson (308 pages, Cambridge University Press, $75). Histories of the constitutional convention are thick on the ground, but this is a genuinely interesting take on the constitutional convention. By focusing on the framers' goals and their priority, the author – a University of Texas professor who writes on tax and constitutional history – emphasizes the real federal problem, to reign in states that were consistently interfering with national goals, particularly in developing a stable national economy. His reading places the nationalist argument for a single federal economy as a part of the constitutional plan earlier than the Marshall court, where some would have it start.

Importance: 4 Writing: 3 Reading: 2 Practitioner Utility: 3 Fun Quotient: 2
Interesting

Justice Curtis in the Civil War Era: At The Crossroads of American Constitutionalism, by Stuart Streichler (271 pages, University Press of Virginia, $37.50). The dissenter in *Dred Scott* who resigned from the Court rather than accept the majority's pernicious opinion, as well as the lawyer for Andrew Johnson in successfully defending his impeachment, Benjamin Curtis has remained an overlooked figure in the constitutional history. This biography, by an American law professor in Tokyo, emphasizes more Curtis's later career as a lawyer than his years as a justice and carefully depicts his pragmatic approach to bringing the common law to the profound legal questions of his time, most of which Curtis influenced.

Importance: 3 Writing: 3 Reading: 2 Practitioner Utility: 1 Fun Quotient: 2
Interesting

Griswold v. Connecticut: Birth Control and the Constitutional Right of Privacy, by John W. Johnson (266 pages, University Press of Kansas, $35.00, paperback, $15.95). Few Supreme Court opinions spark the arguments fired by *Griswold*, which forty years on still provokes passions on both sides, as much for Blackmun's endorsement of the right to privacy as for the constitutional

protection of the right to make such decisions beyond state regulation. As part of the wonderful series, Landmark Law Cases and American Society, the Kansas Press has recruited a history professor at Northern Iowa who has written a clear history that gracefully explains the sometimes arcane distinctions in privacy rights. Rightly spending much of the book in the prelude to the case, the author tells of Estelle Griswold's case in appropriate detail, as well as concisely updating the case's influence to the present. A nice introduction not only to the case but also to privacy and standing.

Importance: 5 Writing: 4 Reading: 4
Practitioner Utility: 3 Fun Quotient: 3
Worthy

David Hackett Souter: Traditional Republican on the Rehnquist Court, by Tinsley Yarbrough (336 pages, Oxford University Press, $29.95). Having served on the Court for fifteen years, Justice Souter remains one of its more enigmatic figures. This biography, by a political science professor and respected judicial biographer, is the fruit of intense research and interview, although not with the assistance of Justice Souter. Considering both his early life and time on the bench, Souter's participation in major cases is considered at a comfortable level of detail and context. The picture, of a cautious and careful judge, is one rooted in his moderate New England republicanism, which has moved him, for what are traditionally thought to be conservative reasons, to write what are now seen as liberal opinions.

Importance: 4 Writing: 4 Reading: 3
Practitioner Utility: 3 Fun Quotient: 3
Worthy

The Rehnquist Legacy, edited by Craig Bradley (414 pages, Cambridge University Press, $80.00, paperback, $24.95). This collection of eighteen essays is by a who's who of constitutional scholars and court observers, including Yale Kamisar, Mark Tushnet, Linda Greenhouse, and other heavy hitters. It presents a broad array of influences exerted during the tenure of William Rehnquist as Chief Justice of the United States. Largely a tale of ideological assertion in the early years, some observers find a surprising moderation in the later years, as the justices proved unwilling to extend some doctrines to the logical extremes, even if those extremes seemed the goal when the doctrine was unveiled. The survey is organized by constitutional doctrines and is useful for anyone interested in constitutional law or litigation.

Importance: 4 Writing: 2-4 Reading: 2-3
Practitioner Utility: 4 Fun Quotient: 2
Interesting

Revolution by the Judiciary: The Structure of American Constitutional Law, by Jed Rubenfeld (252 pages, Harvard University Press, $30.95). Most observers of the Supreme Court agree that the Court sometimes plays fast and loose with history, with precedent, and with the text. There is little agreement on when such loose play is good or bad, and the people who attack, for instance, problems in *Griswold* seem unbothered by similar problems in *Bush v. Gore*, though most everyone likes *Brown*. The question is how to tell the acceptable from the unacceptable in such comparisons, without just picking results one likes. This author, a Yale con.law professor, proposes a new theory of constitutional interpretation, employing a pair of unnecessarily cumbersome neologisms

to clarify the central conflict between rights and legislation. Legislation may fail in the courts if it contradicts historical prohibitions against such legislation but not if it doesn't. It is an important theory that explains why the living constitution model is probably quite right.

Importance: 4 Writing: 3 Reading: 3 Practitioner Utility: 3 Fun Quotient: 1
Interesting

Advice and Consent: The Politics of Judicial Appointments, by Lee Epstein and Jeffrey Segal (192 pages, Oxford University Press, $23.00). The appointments of Chief Justice Roberts and Justice Alito, as well as the continuing sparring between the White House and Senate Democrats over judicial appointments, have spotlighted the constitutional balance inherent in the presidential appointment and senatorial consent of federal judges. Recurrent questions, especially the likely effects of appointments on the outcomes of specific cases, are hard to answer. This wonderfully clear and unbiased book, by political science professors at Washington and Stony Brook, presents the context and recent history of federal judicial appointments, with recent data on its central issues.

Importance: 4 Writing: 4 Reading: 4 Practitioner Utility: 1 Fun Quotient: 4
Worthy

Individual Rights

The Case for Gay Rights: From Bowers to Lawrence and Beyond, by David A.J. Richards (247 pages, University Press of Kansas, $29.95). The legalization of adult, consensual, gay sex is probably the most important step on the long road to equal treatment of gays and lesbians. The story is told here by one of the earliest advocates for gay rights, an NYU law professor who updates his book on identity and gay rights, bracketing the history of homophobia's war on equality with his own narrative. It is well reasoned, passionate, and compelling. Pity that its opponents are unlikely ever to read it.

Importance: 4 Writing: 4 Reading: 4 Practitioner Utility: 2 Fun Quotient: 2
Interesting

Disabling Interpretations: The Americans With Disabilities Act In Federal Court, by Susan Gluck Mezey (235 pages, University of Pittsburgh Press, paperback, $27.95). The ADA is now over a decade and a half old, and in most instances, claims under it are more governed by judicial interpretation of the act than by the act itself. This well researched study by a political scientist at Loyola-Chicago amply demonstrates that most interpretation of the language of the statute – particularly in applications against states – has narrowed the meaning of the act and limited federal protection of the disabled.

Importance: 4 Writing: 3 Reading: 2 Practitioner Utility: 4 Fun Quotient: 3
Interesting

The Wars on Terror

The Torture Papers: The Road to Abu Ghraib, by Karen J. Greenberg and Joshua L. Dratel, with an introduction by Anthony Lewis (1284 pages, Cambridge University Press, $50.00, electronic download, $40.00). The American public, horrified at the acts done in its name in Iraqi prisons by the U.S. Army, or its Guard and Reserve, has about the same lengthy attention to national scandal as the crow can focus on a single grain of confetti.

A valuable corrective, this book is an archive of the reports and memoranda written by government officials that justified these acts of abuse and torture. It has very, very little editorial intrusion, but these amazing memoranda and reports are damning evidence of the role of a few government lawyers and bureaucrats in the attempt to evade or dismantle core ideas of both U.S. law and international law particularly because the bulk of the international law in question was written by lawyers for the United States to advance American interests.

Importance: 5 Writing: 1-5 Reading: 2 Practitioner Utility: 3 Fun Quotient: 1
Tops

Protecting Liberty in an Age of Terror, by Philip B. Heymann and Juliette N. Kayyem (160 pages, MIT Press, $20.00). The need to adjust American policy to better fight terror but still to protect freedom is a central question for the government and for the law. Clear answers are hard to find, amid concerns for mistakes made and threats unknown. The authors, a law professor and policy professor at Harvard, both have extensive government experience in anti-terrorism policy and management, and have consulted with a wide range of officials to present a short book of clear standards that balance freedom and law with intelligence and counter-terrorism. This should be required reading for every member of Congress, agent of the administration, or lawyer representing those accused of terror-linked activities.

Importance: 5 Writing: 4 Reading: 4 Practitioner Utility: 4 Fun Quotient: 2
Worthy

Darkest Before Dawn: Sedition and Free Speech in the American West, by Clemens P. Work (318 pages, University of New Mexico Press, paperback, $19.97). Political repression in the U.S. during World War I is now largely forgotten. This nicely researched history centers on Montana, which passed a sedition law under which U.S. citizens of German descent were arrested for pro-German speech on the thinnest pretexts and sentenced to twenty years' hard labor and massive fines. It also chronicles the use of the sentiment of the times by local corporations to pass and use laws to stifle labor unions and worker dissent against corporate practices. The nationwide story is not lost, however, and the book, by a journalism professor at the University of Montana, is an important caution for the age of the War on Terror.

Importance: 3 Writing: 3 Reading: 3 Practitioner Utility: 2 Fun Quotient: 2
Interesting

Race and Law

When Affirmative Action Was White, by Ira Katznelson (256 pages, W. W. Norton, $25.95, paperback, $14.95). The usual way of thinking of affirmative action is to see it as the action of government to create preferences for one race over another in access to jobs and services, particularly as an initiative of LBJ's beginning in the 1960's to benefit African Americans. The author, an historian at Columbia, looks back to the last major federal jobs and services program and finds it to have created preferences for one race over another. Thanks to political trading during the second New Deal, most federal relief and access was available only to whites, allowing them to protect what assets they had when blacks lost theirs utterly. This challenging book is richly supported with cases and explanations, but it will be received with great hostility by opponents of modern affirmative action.

Importance: 5 Writing: 4 Reading: 4 Practitioner Utility: 3 Fun Quotient: 3
Worthy

The Black Laws: Race and the Legal Process in Early Ohio, by Stephen Middleton (384 pages, Ohio University Press, $26.95). The cartoon version of American history holds the Abolitionist North as the egalitarian place of refuge for slaves escaping from the racist South. The unfortunate truth was, of course, that racism was a national problem, and while many Northerners sought fair treatment for all, others were only a bit less unjust than their slaveholding neighbors. This finely researched history of antebellum Ohio puts that story in a bright light, describing the biases in the law and legal system and the political see-saw to bring justice to them both. The research and narrative by this historian from North Carolina State are particularly good at moving back and forth among white and black perspectives in the decades in which Ohio was the fastest growing state in the union.

Importance: 3 Writing: 3 Reading: 2 Practitioner Utility: 2 Fun Quotient: 2
Interesting

Jim Crow Moves North, The Battle Over Northern School Segregation, 1865 - 1954, by Davison M. Douglas (344 pages, Cambridge University Press, $70.00). Carrying the history above forward, the ugly truth of racial segregation remained a national problem through and after Reconstruction. The fact that most Northern states outlawed segregated education made it only a bit less common than in the South, which required it. Beginning his history with the difficulty of establishing education for Blacks in the antebellum North, and carrying it through to *Brown*, the author, a William and Mary law professor, documents not only the continuation of segregated schooling but the many pernicious limits placed on Black students in Massachusetts, New York, and elsewhere.

Importance: 4 Writing: 4 Reading: 3 Practitioner Utility: 2 Fun Quotient: 2
Interesting

The Chicago Black Renaissance and Women's Activism, by Anne Meis Knupfer (272 pages, University of Illinois Press, $40.00, paperback, $20.00). The history of women of color in the United States remains a generally neglected field. This wonderful study, by an education professor at Purdue, examines the role of women of color in Chicago during the thirty years of its Black Renaissance, from 1930 to 1955. Women organized clubs for social and literary purposes as well as for political action in seeking better conditions in schools, neighborhoods, and housing projects. Women spoke out as individuals, as well as through organizations, resulting not only in significant reforms of Chicago laws and culture but also in unique institutions such as African-American museums, literary journals, historical collections, and libraries.

Importance: 3 Writing: 3 Reading: 3 Practitioner Utility: 2 Fun Quotient: 3
Worthy

American Indian Law

How the Indians Lost Their Land: Law and Power on the Frontier, by Stuart Banner (352 pages, Harvard University Press, $29.95). Between 1500 and 1900, the indigenous peoples of North America lost control of it to European settlers. The usual view is that this loss resulted from disease, deception, and destruction by the invading

armies, but the truth is both subtler and more disturbing. In this sweeping but careful history by a UCLA law professor, the story turns on the growth of a legal system based on contract and property as an essential tool in the dispossession. Even so, the author concludes that the seizures of most native lands were hardly legal under the standards at the time, and this contemporary illegality remains the primary basis for successful suits over Indian lands. Yet the real questions are not settled by lawsuits but by the increasing political and economic power of tribes, which have led to far more land return through purchase.

Importance: 4 Writing: 4 Reading: 3 Practitioner Utility: 3 Fun Quotient: 3
Interesting

Conquest by Law: How the Discovery of America Dispossessed Indigenous Peoples of Their Lands by Lindsay G. Robertson (272 pages, Oxford University Press, $29.95). The central case defining Indian interests in land remains Marshall's opinion in *Johnson v. MacIntosh* which held indigenous people only occupy and do not own their land, as their title could not have been derived from a sovereign state. The author, a University of Oklahoma law professor, discovered a trunk in 1991 containing the records of that suit chronicling its collusive and artificial nature. This book is the fruit of the research that led to and followed that find, and it sets the case as the focal point in examining the loss of native lands up to the Civil War.

Importance: 4 Writing: 4 Reading: 3 Practitioner Utility: 4 Fun Quotient: 2
Worthy

Indian Gaming and Tribal Sovereignty: The Casino Compromise, by Steven Andrew Light and Kathryn R.L. Rand (not to be confused with a similarly titled book by Dale Mason) (240 pages, University Press of Kansas, $29.95). Nothing else now so defines the reservation to Anglos as the casino. Inspiring resentment and envy as much as hope and pleasure, the reservation casino has become not only a signal basis for wealth in some few tribes, but like the oil claims on reservations in an earlier generation, the basis for stereotyped derision and political chicanery. This quite balanced and well researched book by a political scientist and a law professor at North Dakota covers the history of the debates leading to and following the Indian Gaming Regulatory Act, as well as the resulting state-tribal compacts. It is less clear in making recommendations for further reforms, yet proves the need for some reform to establish intertribal equity and better management of the many interests involved.

Importance: 4 Writing: 3 Reading: 3 Practitioner Utility: 4 Fun Quotient: 3
Interesting

State and Religion

God vs. the Gavel: Religion and the Rule of Law, by Marci A. Hamilton (428 pages, Cambridge University Press, $28.00). A passionate argument against preferences for churches, church officials, or believers being outside the scope of the criminal law and civil regulation, this book is based not only on careful criticism of recent Supreme Court cases but also on a broad history of church-state relations in England and early America. Set against a variety of arguments for special privileges for religiously motivated actions, the book, by a Cardozo law professor,

is provocative but still presents a moderate argument in the center of the American constitutional tradition.

Importance: 4 Writing: 3 Reading: 2
Practitioner Utility: 2 Fun Quotient: 2
Interesting

Divided by God: America's Church — State Problem — And What We Should Do About It, by Noah Feldman (320 pages, Farrar, Straus and Giroux $25.00, paperback, $14.00). This well written book studies the tension between those who seek to make American government more Christian and those who fear religious government. The author employs a bit of oversimplicity in comparing "values evangelicalism" with "legal secularism," which may lead him, an NYU law professor and pundit, to be overly optimistic about resolution through discourse with and respect for the demands of the devout. Indeed, it is hard to see why giving evangelical leaders a greater voice in government would satisfy them, rather than encouraging them to demand an even more religious government. Yet the pleas for tolerance of the religiously sincere and respect for diversity are well set in a landscape of American history and modern politics.

Importance: 4 Writing: 4 Reading: 4
Practitioner Utility: 2 Fun Quotient: 2
Worthy

Law and Medicine

The Medical Malpractice Myth, by Tom Baker (214 pages, University of Chicago Press, $22.50). Few attorneys practice law for long without coming into contact with the insurance industry, and in one manner or another with health insurance. The gyrations of the insurance market, the political fallout for doctors, patients, attorneys, and the public, have all made for grim news in the last decade. "Tort reform" can start a fight among the gentlest of lawyers. This study, by the insurance law professor at the University of Connecticut, is an amazingly clear and well balanced introduction to the problem of medical mistake, liability, and insurance. Favoring no one but the patient and the careful doctor, the author unfolds numerous myths promoted by trial lawyers and counter-myths by the defense bar, and neatly debunks them all. The recommendations, for better information for patients, better oversight of the doctors, and appropriate compensation for those who are truly harmed, are placed in achievable goals. This book deserves a wide reading.

Importance: 5 Writing: 4 Reading: 3
Practitioner Utility: 4 Fun Quotient: 2
Tops

Making Medical Decisions for the Profoundly Mentally Disabled, by Norman L. Cantor (not to be confused with Norman F. Cantor, the legal historian) (296 pages, The MIT Press, $35.00). The law can do no better at resolving profound and divisive questions than any other institution, yet the law is uniquely required to resolve such questions. From such a quandary arise questions in the care of the profoundly mentally disabled. A few cases of national attention, the *Cruzan* case or the related case of Terry Schiavo, raise these questions yet rarely resolve them as needed for the daily problems confronting doctors and families: does a lack of significant mental function alter the meaning of personhood? of rights? of care? Who can make decisions for the severely mentally disabled, and what is the state's duty to them? When does the decision-maker move from the selfish interests of the patient to altruism for the best interests of all (as in the question of allowing organ donation from the patient to someone else)? Is there a difference between the judgment of a parent, a spouse, a guardian, or a judge? This clear

and thoughtful book, by a law professor and medical ethicist at Rutgers-Newark, presents these questions with clear and reasoned answers, based on the central moral and legal philosophy of our age.

Importance: 4 Writing: 4 Reading: 3 Practitioner Utility: 4 Fun Quotient: 2
Worthy

The Encyclopedia of Forensic and Legal Medicine, edited by Roger Byard, Tracey Corey, Carol Henderson, and Jason Payne-James (2,000 pages in four volumes, Academic Press, $1,095.00). This is a fascinating reference work, rich in detail in a surprising array of medical questions affecting the law. The volume reviewed, the last in the series so it included the index, covered questions ranging from the injuries resulting from road accidents to tattoos and other marks encountered among prison inmates. The book is extensively illustrated, with an unusual wealth of tabular data. As the lawyer's basic medical book, this series is well worth the investment.

Importance: 5 Writing: 3 Reading: 1 Practitioner Utility: 5 Fun Quotient: 1
Worthy

Environmental Law

Saving Our Environment From Washington: How Congress Grabs Power, Shirks Responsibility, and Shortchanges the People, by David Schoenbrod (320 pages, Yale University Press, $28.00). A highly personal but still wide-ranging account of the federal regulation of the environment, and its many failures to do right. Interestingly, the author, an environmental litigator and teacher at New York Law School, is a CATO Institute conservative, yet he persistently blames the government for insufficient regulation, largely as a result of political pressure from corporations and the politicians of both parties who pander to them. His illustrations and reasoning, and his explanation of the science and politics involved, are clearly and compellingly presented, as is his argument that the best solution at this stage is for states and localities to take back their powers over their own environment.

Importance: 3 Writing: 4 Reading: 4 Practitioner Utility: 3 Fun Quotient: 3
Worthy

Family Law and the Law of Children

Hers, His, & Theirs: Community Property Law in Spain And Early Texas, by Jean A. Stuntz (217 pages, Texas Tech University Press, $35.00). The history of women's rights under law has been considered fairly well for half of the country, but few books have considered the rights of women in the colonial West, which was subject to Spanish law instead of the English common law and which thereby assured much greater control of women over their property during the marriage and at their widowhood. This omission is puzzling, particularly given the influence of Texas and California on the law of marital assets throughout the United States. Written by an attorney who teaches history in Texas, this clear and well written history develops and illustrates the ganancial law (or law of community property) on the Texas frontier, and its derivation from Moorish and Roman law in Spain.

Importance: 3 Writing: 4 Reading: 4 Practitioner Utility: 3 Fun Quotient: 3
Worthy

By Birth or Consent: Children, Law and the Anglo-American Revolution in Authority, by Holly Brewer (464 pages, University of North Carolina Press, $34.95). This fascinating book examines the history

of the law of children in the last centuries of English law preceding the Revolution, to discover some wonderful ideas, about the cultural understanding of childhood as well as the general nature of authority in society and in law. It is a complex story told easily and clearly and it sheds new light on what it means to be a free and independent person under American law.

Importance: 4 Writing: 4 Reading: 4 Practitioner Utility: 3 Fun Quotient: 3
Worthy

Crimes Against Children: Sexual Violence and Legal Culture in New York City, 1880-1960, by Stephen Robertson (320 pages, University of North Carolina Press, $59.95, paperback, $22.50). In many ways, this book is a second volume following *By Birth or Consent*, picking up the story of children and the law only a few decades later but with a different emphasis. As children became seen as more dependent, the obligation of legal officials to protect them from predators became more apparent. This history, by an historian in Australia, tells the evolution of the definition of crimes against children, as seen in 1,700 cases in the New York district attorney's records. That evolution is one in which the law integrated new ideas about child development into older ideas of child protection, eventually creating a series of offenses that varied in definition according to the ages of the victim and the accused. It is a story in which the legislative aims of the law were recurrently hijacked for personal ends by complainants and their advisers, or were stymied by slowly evolving cultural notions of child responsibility. In the end, the author demonstrates that the results of enforcement were far from how they appeared to legislators and reformers, and the likelihood of real protection of children may have diminished during this period.

Importance: 4 Writing: 3 Reading: 3 Practitioner Utility: 3 Fun Quotient: 2
Interesting

From Madness to Mutiny: Why Mothers Are Running from the Family Courts – And What Can Be Done About It, by Amy Neustein and Michael Lesher (284 pages, Northeastern University Press, $19.95). This is a polemic on family courts, describing the failures of many courts to protect children from abusive parents and to investigate fairly and sensibly the charges of protective parents and others. Among other targets of the book are questionable bases for psychiatric evidence, slipshod management of serious cases, greedy and abusive parents (usually but not always fathers), and irresponsible judges. While the book presents significant evidence of systemic failure, it suffers a bit from a polemical style that suggests the evidence is not always given a neutral assessment. Still, it is an important reminder of the need for very thorough and careful investigation of and hearing on all charges of child abuse and custodial conditions.

Importance: 4 Writing: 2 Reading: 3 Practitioner Utility: 4 Fun Quotient: 1
Interesting

The Idea of Law and Legal Philosophy

The Gift of Science: Leibniz and the Modern Legal Tradition, by Roger Berkowitz (222 pages, Harvard University Press, $49.95). The idea of law as an organization of rules based on scientific analysis and organization has a compelling place in modern America. The restatements of law, uniform codes, the very nature of the law as reduced to written rules that reflect the best policy assessments – all of these aspects of modern law trace to a few writers in the early modern era. One of the most important, but least understood by American lawyers, is Gottfried Leibniz. This book, by a political scientist at Bard College, is a brief but thorough introduction to Leibniz's surprisingly practical approach, as well as to its influence on later generations.

Importance: 4 Writing: 4 Reading: 2 Practitioner Utility: 2 Fun Quotient: 2
Worthy

Form and Function in a Legal System: A General Study, by Robert S. Summers (420 pages, Cambridge University Press, $80.00). One of the co-authors of Summers and White on the UCC is also one of the best known legal theorists in the U.S. This study of law explores what a legal system is by inventorying its components and methods. Summers, a Cornell law professor, emphasizes the forms of institutional activity as a defining element of law, and compares them to values such as the rule of law, democracy, liberty, and justice, in developing an important picture of what law does. The book is very clearly written, but it will still be hard going for some lawyers, though it will be quite rewarding for those who master it.

Importance: 5 Writing: 4 Reading: 2 Practitioner Utility: 2 Fun Quotient: 1
Worthy

International Law and Human Rights

A New Deal for the World: America's Vision for Human Rights, by Elizabeth Borgwardt (480 pages, Harvard University Press, $35.00). In the midst of a war in Iraq, our occupation in Afghanistan, our prisons in Cuba and elsewhere, and the ongoing arguments by government officials that their views of the law are all that matter, this is a good moment to recall that the architecture of international human rights and the law of war are largely the result of persistent work by the U.S. government. This carefully researched and clearly written book by a Utah historian tells the story of American policy before, during, and after World War II to promote the international recognition of basic human rights and to protect those rights through law. That this legacy of the sacrifices of that "greatest generation" teeters on the brink of bungling disassembly makes this book all the more significant.

Importance: 4 Writing: 4 Reading: 4 Practitioner Utility: 2 Fun Quotient: 3
Worthy

Law Without Nations? Why Constitutional Government Requires Sovereign States, by Jeremy A. Rabkin (350 pages, Princeton University Press, $29.95). The United States has contributed more than

any other government to the creation of a global network of treaties and institutions to promote peace, welfare, and the rule of law. There is tension between this system and individual states, including the United States, and the management of that tension, rather like the management of federalism, requires respect by both sides. This book, by a political scientist at Cornell, argues that American commitments to international treaties – like agreements to slow global warming, or to investigate accused war criminals when their own states refuse to do so, or to ensure human rights, even in U.S. prisons – risk the protection of basic American rights and the loyalty of citizens to law at all. It is a provocative (to me short-sighted and emotional) view of national sovereignty, but one that remains very popular.

Importance: 3 Writing: 3 Reading: 4 Practitioner Utility: 1 Fun Quotient: 2
Interesting

The Limits of International Law, by Jack L. Goldsmith and Eric A. Posner (272 pages, Oxford University Press, $29.95). The same questions raised in *Law without Nations?* are posed with more nuance in this work, by law professors at Harvard and Chicago often identified with neoconservatism. Their argument is interesting and presented with clarity and force. They contend that the system of international law is not sufficient as a motive for national action not in a nation's economic or domestic political interests, but it can still serve as a useful tool for the advancement of national interests. Indeed, they argue that some international institutions, especially by providing good procedures for treaty implementation, help to attain compliance to agreed norms and to arrange international cooperation for a few global projects. Certain concepts, such as the idea of "internalizing international law" are not well developed in the light of U.S. statutes, but the ideas in general are well developed if not especially novel.

Importance: 3 Writing: 4 Reading: 3 Practitioner Utility: 1 Fun Quotient: 2
Interesting

Lawyering

Lowering the Bar: Lawyer Jokes and Legal Culture, by Marc Galanter (448 pages, University of Wisconsin Press, $45.00). We all know them, and we probably all tell them. What we don't know about them, though, can fill a book, and this is that book. The author, a law professor at Wisconsin and the LSE, has collected a compendium of the jokes and placed them in historical and contexts worthy of a folklore specialist. The sociology here is no burden but a salve on the guilty pleasures of reading more of these professional attacks. Usefully, the organization and narrative framing the stories illustrates the role of the profession as seen or feared by others. An interesting result is the cautionary tale that emerges of the dangers of unprofessional and unethical practice, as well, of course, of the lawyer's constant need for a dose of humility.

Importance: 4 Writing: 4 Reading: 5 Practitioner Utility: 4 Fun Quotient: 5
Tops

Plain English for Lawyers, Fifth Edition, by Richard C. Wydick (139 pages, Carolina Academic Press, $17.00). Although withdrawn from consideration for a prize at the request of the author, the decision of the publisher to nominate this wonderful primer

on legal writing was quite understandable. An updated edition of a wonderful book with essential ideas for strong legal prose, this should be on every lawyer's desk.

Importance: 5 Writing: 5 Reading: 5 Practitioner Utility: 5 Fun Quotient: 3
Tops

Fiction

In the Shadow of the Law, by Kermit Roosevelt (384 pages, Farrar, Straus and Giroux, $24.00, paperback, $14.00). This debut novel by a young lawyer and now young Penn law professor is set in a major Washington, D.C., law firm, bouncing between the private lives and professional stresses of lawyers and clients. With better than average writing (although the similarity of some characters' names with names in other books can be distracting), the real attraction of the book is the depiction of the lives of law clerks and young lawyers.

Importance: 1 Writing: 3 Reading: 4 Practitioner Utility: 1 Fun Quotient: 4
Interesting