Keeping Up with New Legal Titles

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Keeping Up with New Legal Titles*

Compiled by Susan Azyndar** and Susan David deMaine***

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* The works reviewed in this issue were published in 2018. If you would like to review books for "Keeping Up with New Legal Titles," please send an email to sdemaine@iu.edu and azyndar.1@osu.edu.

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Would you like to run for president? Would you like to be one of the rumored 15 to 20 Democrats lining up for the chance to run against the current president in 2020? If so, take a day or two and read The Oath and the Office. In 15 short chapters, Corey Brettschneider explains the powers you will inherit (assuming you win) and the limits that will constrain you on your inauguration. All presidents have taken the oath of office with high hopes and dreams of accomplishing what they set out to do. However, they have oftentimes failed to accomplish these goals because they neither understood nor appreciated the powers and limits of the U.S. Constitution.

In a conversational style, Brettschneider acts as a tutor as he reinforces the many ideals on which our nation was founded. Using historical examples, he explains how our current president and many of his predecessors have not always lived up to the expectation of defending these ideals. Providing background and historical context, Brettschneider impresses on you, the future candidate, the reasoning behind why certain things were included or excluded from the Constitution as they pertain to the role of the president in defending those ideals. Some of the historical examples may shock those who view the Trump administration as lead-
ing unprecedented assaults on our cherished freedoms. Brettschneider, while accurately calling out the Trump administration’s abuses, fairly describes how some abuses of power have been going on for quite some time over multiple presidencies. This should not deter you, though, as you start out on your campaign. Perhaps you, with the help of this guide, can begin to correct these past abuses.

¶3 Yes, this book is written in a way to guide future presidents. However, it is also a great guide and tool for teaching constitutional law, history, and presidential powers. While it may not be useful as the main text in a course on these topics, it would be an excellent addition to the reading materials assigned in such courses. Academic law libraries would do well in selecting this title for their collections, and librarians should consider suggesting it to their faculty.


*Reviewed by Emily J. Flanigan*

¶4 This book has one very clear audience and purpose: to assist the soon-to-be-employed attorney in preparing for the first day on the job. The introduction reads from the perspective of that first-day attorney being called into a senior partner’s office, presented with a legal question, and asked to create a legal analysis. Then these words of advice follow: “Your legal career will get off to a much better start if you know how to ‘get back to her with your legal analysis’” (p.xix). Next are 19 chapters, 372 pages, 4 appendices, and a glossary on how to read, synthesize, analyze, write, and edit a legal analysis specifically for the law firm environment.

¶5 First, some practical notes: the book is paperback, with a bendable yet sturdy cover. The paper is thick, does not tear easily, and has a smooth, pleasant texture for margin notes. Felt tip pens will show through, but highlighters and colored pens are safe. The margins are wider than usual, at both the edge and bottom of the page. This is useful for readers in taking copious notes, which they will want to do.

¶6 *A Lawyer Writes* uses several mechanisms to aid information retention. Sidebars, shaded in blue, are used throughout and contain practical advice for the first-year attorney, such as what it means to synthesize cases and what legal jargon is used synonymously with legal terms. Also, when the authors parse a particular law or passage from a court opinion, they use small-text, light blue notes to highlight aspects of the legal text and reinforce the principles taught in earlier paragraphs. These notes also reference other chapters that delve into related principles. Finally, each chapter except the last ends with a “Practice Points” box that reviews the major ideas from the chapter, making it a valuable counterpart to the outlines at the beginning of each chapter.

¶7 The book’s authors and designers obviously considered carefully which elements would ease the physical effort that studying requires. One example is the book’s frequent use of cross-references to remind readers how the discussion at hand pertains to other chapters. For example, chapter 11, which discusses statutory analysis, references chapter 3, which explains reading statutes for comprehension.

Readers do not need to sort through mental or written notes; the reference is right there in front of them.

¶8 A couple chapters merit highlighting: chapter 2, “Sources and Systems of the Law,” and chapter 18, “Professional E-mails.” Chapter 2 gives one of the best explanations of the U.S. federal court system I have seen, not only giving several pages over to discussing jurisdiction and hierarchy but also looking carefully at the meaning of *stare decisis* and the effect it has on the “why” of gathering case law. Chapter 18 is a valuable tool for helping new attorneys craft professional and concise email responses. The authors tell readers that credibility is “evaluated with every piece of work you complete” (p.308), including emails. This chapter will help new attorneys acquire the basic principles of professional communication, and readers can build on individual firm preferences from there.

¶9 If you are a law librarian in a law school or a firm librarian in charge of the incoming attorney orientation and are asked for a book that will help a new attorney on the first day, this is a good book to consider handing to them. The book, although requiring careful reading, rewards the reader with understanding, and has numerous tools and useful information that will help anyone get a better grasp on legal analysis and the place it has in legal research.


Reviewed by Nick Sexton*

¶10 Every academic law library will likely purchase a copy of Jane Sherron De Hart’s *Ruth Bader Ginsburg: A Life*. De Hart’s book is a comprehensive and engaging biography of a sitting Justice on the U.S. Supreme Court: in other words, an easy selection decision for those of us in collection development. The question is, is the book worth reading? After completing its 540 pages of text (the remainder of its 723 pages are notes, bibliography, and index), I can vouch that it is.

¶11 What makes the book readable is its clear unfolding of Ginsburg’s story, from her birth in Brooklyn in 1933 to the point when Brett Kavanaugh was nominated for Anthony Kennedy’s Supreme Court seat in 2018. De Hart’s biography confirms what we would have guessed: Ginsburg was an excellent student throughout her school career, and she has worked hard, incessantly, with an undistracted focus, in every job she has held.

¶12 Ginsburg’s early story provides a few surprises. For example, Ginsburg had a sister, Marilyn, who was born in 1927 and died in 1934 of spinal meningitis. De Hart says that Ginsburg “was too young to remember her sister” (p.5), but it was Marilyn who, observing her little sister kicking as a baby, gave her the nickname “Kiki,” which stuck with Ginsburg for years. Ginsburg’s mother, Celia, whom Ginsburg called “the strongest and bravest person I have ever known” (p.27), and from whom Ginsburg acquired her work ethic (among other traits), died two days before Ginsburg graduated from high school. These losses are important, having left lifelong impressions on Ginsburg. The death of Marilyn, for example, who was gone

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before Ginsburg was old enough to engage with her, plunged the household into the somber cast that Ginsburg felt throughout her childhood.

¶13 At Cornell University, where Ginsburg was an undergraduate, she took a course with Vladimir Nabokov (yes, the author of *Lolita*), and it was under Nabokov’s influence that Ginsburg learned the importance of words and their placement, a lesson she put into practice as a writer of legal briefs and opinions. And while her first two years of law school were at Harvard, she did her final year and received her diploma at Columbia Law School. The reason: Ginsburg’s husband, Marty, graduated from Harvard Law School a year before she did and got a job in New York City; Ginsburg moved there with him.

¶14 Once out of law school herself, Ginsburg had difficulty finding employment. She tied for first place in Columbia Law’s graduating class of 1959, but her gender was an immutable hurdle in the job market. There were few women in the legal workforce, and the male attorneys were reluctant to hire them. Ginsburg had met with such gender restrictions before as a female law student at Harvard. One night, while needing to check a footnote to an article, she found she could not enter “Lamont, the undergraduate library at Harvard where old periodicals were kept, [because it] was designated for men only. . . . In the end, she had to ask a male classmate to do the job” (p.58). Also, there was no women’s bathroom in Langdell Hall, where law classes were held, so “[i]f nature called, she made a ‘mad dash’ of nearly a block to Austin Hall” (p.59). As difficult as it is now to believe, the issue of the lack of women’s bathrooms occurred again when she joined the Supreme Court. “Despite [Sandra Day] O’Connor’s presence for twelve years, only after Ginsburg joined the Court was a women’s bathroom installed [in the Justices’ robing room]” (p.326). How one of Ginsburg’s chief legal concerns became gender discrimination is made clear by these and a multitude of other experiences.

¶15 De Hart furnishes readers with numerous and often remarkable details about Ginsburg’s career, from her start as a clerk for a district court judge, her coauthorship of a book about civil procedure in Sweden (for which she had to learn the language), her role among the first women to teach at Rutgers Law School, her achievement as the first woman to earn tenure at Columbia Law School, her work with the Women’s Rights Project at the ACLU, her appearances as an advocate before the Supreme Court, her appointment as a judge on the U.S. Court of Appeals for the District of Columbia Circuit in 1980, and finally to Ginsburg’s elevation to the Supreme Court in 1993.

¶16 De Hart also provides many specifics (background, facts, parties, issues, legal strategies) about the notable cases Ginsburg has had a hand in, both as a lawyer and a judge. Ginsburg’s personal life, although full with a 56-year-long marriage, two children, grandchildren, and even successful battles against cancer, does not contain enough drama to make this book as thick as it is. The noteworthy aspect of Ginsburg’s life has been, and continues to be, her work. When she found pleasure outside of work, it was mostly in traveling and attending the opera.

¶17 Almost 250 pages of this biography cover Ginsburg’s time on the Supreme Court. As she does elsewhere in the book, De Hart records a lot of fascinating behind-the-scenes details about Ginsburg’s nomination (her husband Marty was an indispensable supporter; Stephen Breyer was also being considered at the time) and the landmark opinions she wrote, whether as part of the majority or in dissent. It is
here, in her Supreme Court jurisprudence, that we see Ginsburg’s lifetime of study, legal practice, and thoughtful consideration of the law serve her most well.

¶18 A problem with a biography of a living subject is that no one knows how the story ends. As of this writing, Ginsburg is still a working Justice on the Supreme Court. She could add more chapters to her life, depending on the cases that come before the Court and what she decides about them. Despite not knowing the rest of Ginsburg’s story, I was grateful for De Hart’s volume. It helped me understand why Ginsburg—the brilliant student, hardworking attorney, devoted wife, strict and loving mother, and indefatigable judge—continues to work so hard after living what anyone else would consider an extraordinarily full and rewarding life. The reason goes back, at least in part, to her mother, Celia. Ginsburg’s serious commitment to goals and her unyielding work ethic were learned early on. She has simply never stopped employing them.


Reviewed by Melissa Strickland*

¶19 In the course of writing this book on creativity and innovation, Michele DeStefano interviewed more than a hundred law firm partners and corporate general counsel from around the world. She breaks down her argument in favor of innovation and a culture of creativity into three parts: (1) why innovation in the legal profession is necessary; (2) how to create a culture that fosters innovation; and (3) what teams experience (or need to experience) as they go through the creative process.

¶20 In analyzing the first part of her argument, DeStefano asserts that lawyers should think and act like innovators in other fields, even if their current business model is still working for them. Each of the five chapters in this part gives a different reason why lawyers should at least try to adopt the mindset of innovation, such as market forces and changing client needs, as well as addressing forces in the current practice of law that make innovation difficult.

¶21 Building on this foundation, DeStefano discusses several rules lawyers can follow to create a culture of creativity, collaboration, and innovation within their practices. Lawyers can achieve this goal by keeping an open, rather than static, mindset, working to become more comfortable with emotion and develop empathy, cultivating a willingness to not always be a superstar, and building diverse teams and networks, including people from disciplines outside the law.

¶22 DeStefano claims there are seven essential experiences that a team must go through in the process of innovation, analogizing those experiences to various life experiences. For example, she compares committing to a particular problem’s solution to getting engaged or married. Then DeStefano describes her “3-4-5 Method of Innovation for Lawyers” (p.155), so named because it has three phases that take place over four months with five necessary steps. She follows a team in one of her previous workshops as it works its way through the method, using this team’s example to further explain and expand on how her methods work.

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DeStefano peppers the text with a great deal of jargon and numerous buzzwords. While these references currently relate to hot topics in law practice management, many may lose their relevance as the book ages. The book also contains some inconsistencies. For some concepts, DeStefano provides many explanations and examples, sometimes to the point of repetitiveness. For other concepts, there are considerably fewer explanations, some of which are relegated to the endnotes.

This book is clearly directed at practicing attorneys in large firms and, to a lesser extent, corporate legal departments. There are discussion questions at the end of each chapter that are mostly aimed at people working for larger law firms representing corporations. It has less to offer academic readers, though the book is heavily footnoted. The focus on big firms and corporate clients leaves little content for lawyers in smaller practices or those serving individual clients. While I can definitely recommend this book to large firm libraries, especially those that might be interested in using the discussion questions to spark ideas among their attorneys, I am less inclined to recommend it to government or academic law libraries.


Reviewed by Christine Bowersox*

Environmental law is a complex area of law relevant to local, national, and international communities, yet it lacks a clear and consistent resolution. Elizabeth Fisher, a professor of environmental law at Oxford University, breaks down the history, development, and future of our need to create laws to protect our ability to grow and develop our nations while also taking environmental protections into account.

Fisher defines environmental law as “the law relating to environmental problems” (p.1). She establishes that environmental law is necessary, but she also acknowledges the challenges faced in passing laws that protect the environment, whether the resistance is political, social, economic, or philosophic at root. After detailing the complexity of environmental problems, Fisher notes that many of these issues share a common structure: the “tragedy of the commons” (p.8), which in its most simple form means that everyone overuses a common good for their own benefit, placing too many demands on a finite resource.

Next, the book addresses some of the substantive nature of various environmental laws and how they have permeated nearly every level of government in every nation. Environmental protections are found in legislation, policy measures, case law, and regulations, using both “legally conventional and . . . legally innovative” (p.19) methods to craft the message. Fisher also explores the diversity that complicates environmental law—diversity between jurisdictions, diversity of environmental problems, and diversity in the types of legal response.

Fisher also traces the history of environmental law, starting with the United Kingdom’s development of legal reform as a result of various outbreaks, such as cholera, in the 1850s. In the United States, the work of John Muir led to the creation of our national park system as well as the birth of the Sierra Club in the late 1800s. The 1940s and 1950s saw international agreements covering whaling, fishing, and air and oil pollution.

Despite this progress, Fisher suggests that “legal imagination” (p.51) is needed to develop environmental laws that will have lasting impact. This imagination plays a role in international laws in the form of agreements and treaties, such as the Kyoto Protocol, Cancún Agreements and, in more recent times, the Paris Agreement. Other results of legal imagination include the environmental impact statements required by the National Environmental Policy Act of 1969.

As mentioned above, jurisdiction is one of the complexities of environmental law. Domestic environmental laws vary widely from nation to nation, often depending on the structure of that nation’s government. Of special interest is Fisher’s discussion of the Treaty of Waitangi in New Zealand, in which the indigenous Maori and non-native citizens of New Zealand worked together to establish legal principles for all, efforts neither the United States nor Australia has undertaken with their indigenous populations. Fisher highlights the balance that must be taken into account between environmental protection and the freedoms of the citizens. Powers of the state are often the cause of many disagreements over environmental changes.

After presenting the jurisdictional framework of environmental law, Fisher circles back to the concept of “legal imagination” in environmental law and how to put imaginative practices into practical effect. Specific examples of some of the success stories include the United Kingdom’s Clean Air Act and the legal protection of certain species in the United States. Many other laws do not have tangible results right away but may show positive but slow results over a long period of time.

The imagination of environmental law is important to the quest for environmental justice, which is made up not of a “single ideal [but] many songlines, many ways of foraging meaning” (p.110). As the reach of environmental laws spreads into other areas of law and permeates the international community, the use of courts to settle disputes over environmental laws and greater accessibility to these courts are key to environmental justice. Reform is also a powerful tool, as is employing adaptive management as a way to achieve justice.

Fisher concludes with a summary of lessons learned in environmental law. In particular, the core concept is that this complex area of law offers no easy answers to the myriad problems and legal questions that arise when we try to create effective environmental law without infringing on the sovereignty of nation-states. She points out that there is no magic wand or easy solution to the creation and implementation of new laws. In addition, there is a real need to review existing laws as times change to make sure they remain relevant and accurately aimed at solving the issues for which they were designed.

I recommend this book to any firm with an environmental law practice as a refresher or a glimpse into nontraditional approaches to environmental issues. It is especially relevant for any law schools offering environmental law classes.

Reviewed by Sandra B. Placzek*

¶35 “A dynamic system, the Constitution was far more than the words with which it was written, and it was incumbent upon successive users to keep that system in motion by exercising appropriate discretion, and where needed, adding meanings that did not previously exist” (p.129).

¶36 Language and its impact are the absorbing, underlying themes that Jonathan Gienapp, a professor of history at Stanford University, explores in the intense, approximately 10-year span of the early history of the U.S. Constitution. Gienapp explores the theme of language in a variety of ways: the *choice* of words and their *meanings* in crafting the Constitution; the critical decision to have a *written* document; the seeming ambiguity, brevity, incompleteness, and silence of the *text* in certain areas; the ratification *discussions*; the subsequent *interpretation* and *application* of the written text; the *revisions* through amendment; the increasing reliance on the framers’ *intent* through consultation with the *archives*; and finally the recognition of the *evolving* nature of language and its impact on future generations. The tension created because of these linguistic issues, the resulting struggle to figure out what kind of object this document was, and how to *fix* or set—not repair—language in the creation and early foundational period of the Constitution’s life are the threads tying his work together.

¶37 Gienapp presents detailed, nuanced discussions of select, historically significant events to illustrate these linguistic issues and the resulting evolution of constitutional thought and application. Deliberate in choosing those events, he focuses on the teasing out of meanings, particularly as related to key government players, by exploring how their duties and responsibilities were presented in the document—and how those duties and responsibilities were eventually interpreted and defined through the resolution of the events.

¶38 Beginning with the Constitutional Convention, Gienapp examines not only the importance of language in crafting the document but also the decision to create a written document, a break from British tradition. He then leads the reader through different issues related to its implementation, interpretation, and application, including detailed discussions of the amendment process and the separation of powers. He pays special attention to the interests of the rising political parties and the views of the Federalists and Anti-Federalists, then later Republicans and Federalists, and the impact those views had on the evolution of the Constitution. He also keenly recognizes that inherent in those linguistic issues and the ensuing debates were concerns about power—both the balance of power and the potential abuse of power by individuals or branches of government. He explores the amendment debates; traces the limits of executive power through the Removal Debates, the Supremacy Clause, and the Jay Treaty ratification; explores the Necessary and Proper Clause through the Federal Bank Charter; and revisits the exploration of the boundaries of the power and role of the House of Representatives (“‘the people’s...

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branch of government” (p.260) in the treaty ratification process, all the while illuminating the struggles to create an understanding of what the Constitution is, how it should be used, and how much meaning to place on the actual text versus interpretation.

¶39 Gienapp weaves a second, more biographical story into the constitutional narrative—that of James Madison, “father of the Constitution” (p.327), and his involvement in the creation and the evolution of the Constitution. Gienapp beautifully, almost seamlessly, integrates Madison’s contributions, impact, and personal evolving views on the document into the larger narrative. So closely intertwined are the two that readers may not realize how truly important Madison’s contributions to the Constitution were until reading this book.

¶40 In this rich history of the creation and early implementation of the Constitution, Gienapp shows how those historical events and the subsequent development of the document are significant to how we interpret the Constitution today. In addition to his excellent discussion, Gienapp provides a rich notes section with almost 100 pages of references to the treasure of materials consulted in the writing of this book. It is an intriguing, highly readable, engaging, and extraordinarily thought-provoking work. Gienapp’s nuanced analysis makes The Second Creation an excellent acquisition for all collections and a welcome addition to the U.S. constitutional bibliography. I highly recommend it.


Reviewed by Louis M. Rosen*

¶41 Since I was a teenager, I have idolized journalists, particularly investigative reporters. I followed in the footsteps of one of my writer-heroes, novelist and Miami Herald columnist Carl Hiaasen, to the University of Florida College of Journalism and Communications, where I ended up majoring in telecommunications—what most other schools would have called a broadcasting degree. Then I proceeded to never work a day in the industry (I turned out to have a face for radio and a voice better suited for print media), choosing law school instead.

¶42 Still to this day, I have the utmost respect and reverence for the press, especially in a time when they are facing less respect and more danger than ever before from the political class, about half of the general public, and even within their own field. In Journalism Under Fire, Stephen Gillers delves deeply into the new challenges investigative reporters face, starting with a detailed analysis of the First Amendment’s Press Clause (Congress “shall make no law . . . abridging the freedom of . . . the press”). Later chapters cover what and who comprise “the press,” what the Press Clause demands of the press, protection of confidential information, Press Clause protection for newsgathering, and a policy-related chapter introducing four legislative changes that would safeguard investigative reporting.

¶43 In defining who and what make up the press, Gillers argues that despite technology and the Internet giving everyone a voice, not everyone counts as a journalist for Press Clause protections due to the ethical standards that make journal-
ism a legitimate profession. It would weaken the Press Clause and render it irrelevant if any individual could be a journalist since it would no longer be distinct from the Speech Clause of the First Amendment. Gillers cites and analyzes landmark cases throughout the book, establishing a historical perspective by including First Amendment classics like *New York Times v. Sullivan* and *Branzburg v. Hayes*, while also drawing from current events.

¶44 The four legislative changes Gillers recommends are “spending public money for investigative reporting, adopting a national anti-SLAPP\(^1\) law, ensuring the opportunity for appellate review of adverse jury decisions, and strengthening freedom-of-information acts” (p.147). Gillers believes anti-SLAPP laws would empower courts to resolve litigation against the press by powerful opponents with deep pockets, like venture capitalist Peter Thiel’s funding of former wrestler Hulk Hogan’s lawsuit against Gawker, which eventually bankrupted the media company. Anti-SLAPP laws would wrap lawsuits up quickly and cheaply and force losers to pay legal fees and costs for reporters and news organizations if the cases are dismissed, to discourage costly litigation aimed at silencing the press.

¶45 With reporters being barred from the very places they are hired to cover, threatened, harassed, sued, and even targeted for violence, it is more important than ever for the legal profession to stand with our allies in the Fourth Estate, to protect their voices, their rights, and their lives. Giller’s book would be an important and very affordable purchase for every law school or university library, particularly for law schools that offer First Amendment law or media law classes, or colleges and universities with journalism programs. It would be an invaluable resource for any student writing a paper on media and the law or a professor developing such a course.


*Reviewed by Deborah L. Heller*

¶46 *How to Save a Constitutional Democracy* is a timely look at the structure and meaning behind the phrase “constitutional democracy.” One might be lured into thinking that the election of Donald Trump and his ensuing attacks on the U.S. democratic system of government provides the fodder for this entire volume, but that assumption would be incorrect. While the book mentions Trump and his populist rise to power, the book delves deeper into examples of democratic collapse and erosion in the United States and beyond. Ultimately, Ginsburg and Huq provide a detailed analysis of how democracies fall, whether abruptly collapsing or slowly crumbling, and how the United States and other democracies can adapt to prevent such ends.

¶47 The introduction carefully lays out the premise that, although inspired by the election of Donald Trump as president of the United States, the book is not about him. Ginsburg and Huq look at examples around the globe over the past century to investigate how legal and constitutional design can benefit or hurt democracy. Early chapters define the phrase that lies at the heart of the book—

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1. SLAPP stands for strategic lawsuits against public participation.

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“liberal constitutional democracy”—and investigate the two paths of constitutional collapse: authoritarian collapse and democratic erosion. Later chapters examine whether the Constitution, the revered foundational document of the United States, can save the United States from loss of democracy, and how the United States and other countries can better prevent democratic decline.

¶48 Most chapters begin with an example of democratic decline from around the world or, in the case of chapter 5, a look into what the future of democratic decline in the United States could look like. The examples provide snapshots of both quick and slow democratic decline: the rise of the Nazi Party in Weimar Germany and the quick collapse of democracy following the implementation of the Enabling Act on the heels of the burning of the Reichstag in 1933; Indira Gandhi declaring a state of emergency in India in 1975; the declaration of a state of emergency in Thailand in 2014; military coups in Turkey; Alberto Fujimori’s presidential coup in Peru in April 1992; the rise of Jim Crow in the American South in the 1880s; the rising again of Fidesz to power in Hungary in 2010; the rise to power of Mahinda Rajapaksa in Sri Lanka; or the actions of Húgo Chávez in Venezuela. Ultimately, the lesson is that democracies can decline quickly or slowly, anywhere, and at any time.

¶49 Ginsburg and Huq define a liberal constitutional democracy in terms of three core institutions that must all be present. First, there must be a democratic electoral system with free and fair elections in which each adult, with some limited exceptions, can vote. Second, the right to speech and association must be guaranteed. Third, it is vital to have a rule of law sufficient to allow democratic engagement without any fear of coercion. All three elements must appear in practice and not merely on paper.

¶50 Authoritarian collapse occurs when a country takes a rapid and complete turn away from democracy, while democratic erosion occurs slowly and cumulatively, resulting in a substantial unraveling of the rule of law. Interestingly, Ginsburg and Huq contend that democratic erosion unfolds through several methods, including constitutional amendments that alter basic governance; elimination of checks between branches of government; centralization of power; contraction of the rights of speech and association; and elimination or suppression of political competition. Elimination of political competition can take the form of a charismatic populist leader or partisan degradation in which a single party emerges to claim power.

¶51 As for the United States in particular, Ginsburg and Huq suggest that the United States is unlikely to fall victim to authoritarian collapse given its wealth and a long history of democracy. Therefore, the only real possibility remains democratic erosion. They go on to discuss the U.S. Constitution as one of the most rigid in the world since it is incredibly hard to amend—a fact that may work in the country’s favor. Additionally, the complete absence of emergency powers in the U.S. Constitution offers protection. The most likely source of democratic erosion in the United States comes from a presidency that gathers powers beyond those outlined in Article II.

¶52 The final chapters offer possible means for guarding against democratic decline. Ginsburg and Huq note that democratic design plays an important role, but that design can take a country only so far without decency and political morality. Two possible design options include (1) allowing for amendments over a num-
ber of years so that more than one party can wield power during the change process; and (2) involving multiple institutions with distinct constituencies in the democracy. Ginsburg and Huq posit that parliamentary systems allow for greater distribution of political benefits by allowing even minority party members to exert actual power. Additionally, parliamentary systems do not have fixed-term executives and can respond with greater speed to shifts in public opinion. However, parliamentary systems can lead to their own forms of instability as well.

¶53 One of the most important design elements highlighted is the constitutional court, which can help prevent backsliding and serve as a safeguard of democratic mechanisms. For the United States, other suggestions include the adoption of independent electoral commissions to draw boundaries for legislative districts (or for the Supreme Court to develop a more rigorous doctrine on redistricting than that currently in use); the creation of legal powers for legislative opposition; improving congressional oversight of the president, including reviving the impeachment power beyond requiring the need for “high crimes and misdemeanors”; and greater cooperation between the legislative and executive branches of government. Ginsburg and Huq have additional ideas regarding the judiciary, special counsels, damages for constitutional violations by federal officials, and many more.

¶54 Trump may not be the focus of the book, but many people see signs of democratic erosion in the United States under Trump: unchecked false statements and exaggeration, lack of trust in science and facts, and general lack of political, let alone moral, decency. This book should serve as a wake-up call about the danger of slipping into constitutional decline and the role that each of us can play in maintaining democracy in the United States. The book is readable and informative, and the use of real-world examples helps illustrate the concepts discussed. How to Save a Constitutional Democracy would make an excellent addition to any law library and would be useful in other academic libraries and public libraries as well.


Reviewed by Mary Thurston*

¶55 With data breaches happening regularly—such as large ones recently at Marriott and Experian—and social media allowing us to display our lives 24/7, we live in a privacy paradox where we want to protect our data and yet at the same time show the world who we are. Now is an apt time to explore the history and evolution of privacy in the United States.

¶56 Beginning with the poem “Unknown Citizen” by W.H. Auden, Sarah Igo borrows the poet’s question, “Could known citizens be happy? Were they, in fact, free?” to survey and begin her narrative of the history of privacy in the United States (p.2). She examines the push and pull of society, emerging technologies and media, surveillance and official documentation, and the propulsion of the problem of individual privacy into the forefront of society.

¶57 Spanning from colonialism to the present, Igo reviews the maze of technologies, changes in media, the meaning and importance of privacy, the legal pro-

ections of privacy, and who is entitled to its protections. Each chapter brings a dizzying array of detail regarding society’s thoughts on privacy, the technologies surrounding it, the pushback by society when intrusion becomes too bold, and the government’s response. Taking the reader through the decades, Igo divides the book into eight themed chapters that jump back and forth through decades, bringing us to the present. Each chapter is ripe with examples of privacy issues and considerations.

¶58 The book begins in the 1800s, when privacy belonged to the white bourgeois male. This begins to be disrupted in the late nineteenth century with the implementation of new technologies such as instantaneous photography, telegraphy, telephony, sound recording, and the popular press. With the advent of these new technologies, personal lives became “increasingly accessible to a large number of others, irrespective of acquaintance, social or economic class, or the customary constraints of propriety” (p.27). A backlash against these intrusions resulted in the invention of the right to privacy by Samuel Warren and Louis Brandeis in their 1890 *Harvard Law Review* article, “The Right to Privacy.”

¶59 Igo explores the willingness of the populace in the 1930s and 1940s to allow the state into their personal lives to receive social security benefits. Some also feared the threat posed by a national identification system, but Igo asserts that people were more fearful of what employers would do with the information than of what the government would do with it. In the 1950s and 1960s, government surveillance was used to root out so-called subversives. Contemporaneously, the middle class avidly pursued therapy sessions and read advice columns, allowing intrusions into their inner psyche. Employers were also now interested in the motivations and personality flaws of the individual. At the same time, the right to be let alone was being expanded as the courts constitutionalized privacy in *Griswold v. Connecticut*, and discussions of informed consent and the right not to be harmed became standard among philosophers, lawyers, and social scientists.

¶60 In the 1960s and 1970s, with the expanding use of computers and general distrust of government, came fear of centralized databases and the concern that one’s success or failure might be determined by whatever is in his or her “file.” Post-Watergate, transparency replaced the presumption of secrecy. Life became more causal, and the lines between political and personal began to blur, especially with the early advent of reality TV in the 1970s with *An American Family*. By the 1990s, “confession had come to define American public life” (p.309). Now, in a nearly postprivacy society with technology tracking every click of a button, Igo concludes that the privacy debate continues and finds Auden’s questions to be just as relevant as they were in the 1940s.

¶61 With continued use of new technologies unveiling our innermost secrets and the push-and-pull between the psyche and society to display our lives and yet remain hidden, the privacy paradox that has been with us for centuries will not resolve anytime soon. *The Known Citizen* provides a very detailed, well-researched, broad-brush look at America’s relationship with personal privacy, guiding us to see the patterns of history. Overall, it would be a reasonable, but not imperative, purchase for academic law libraries.

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Reviewed by Susan Gualtier*

¶62 In *Lost in Translations: Roman Law Scholarship and Translation in Early Twentieth-Century America*, Timothy Kearley tells the story of five American scholars and translators of ancient Roman law: Samuel Parsons Scott, Justice Fred H. Blume, Charles Sumner Lobingier, Charles Phineas Sherman, and Clyde Pharr. Kearley has spent a considerable amount of time working with Justice Blume’s translations and researching his life and the lives of his contemporaries. The attention to detail in describing the backgrounds and work of Blume and his fellow scholars reflects how deeply the author cares about the topic. Arguing that the scholarship of these five men “was motivated and supported by their classically-oriented educations and, more generally, by a pervasive American cultural connection to the classical past that we find hard to imagine today” (p.3), Kearley has written an informative and enjoyable book that sheds light on both the educational interests of early Americans and the lives and work of five individuals who greatly influenced the study of Roman law.

¶63 *Lost in Translations* is as much a history of libraries, books, and American education as it is a biographical account. Kearley begins the book with an overview of the education system in colonial America. He continues to trace the development of primary, secondary, and legal education, as well as the availability of libraries, classical works, and law books, through the Antebellum Era and the Gilded Age. As Kearley states early in the book, “England’s classics-based education was imported into much of colonial America, and it continued, in progressively diluted form, until the early twentieth century” (p.3). Although colonial education was very much rooted in the study of classical languages and literature, shifting priorities and an increasing emphasis on more “practical” subjects and modern languages meant that, by the Gilded Age, classicism had become the domain of the elite, with the American Bar Association hoping to revive the study of Roman law, albeit from a historical and comparative perspective rather than from a practical one.

¶64 In the second half of the book, Kearley explores the individual histories of Scott, Blume, Lobingier, Sherman, and Pharr, tying their stories together and reflecting on how each of their educational backgrounds affected their later work on Roman law. Of the five translators, Kearley deems Blume to have been the most successful. Although Scott’s translation of the *Corpus Juris Civilis* (entitled in English, *The Civil Law*) was published earlier, and until recently was the only printed English translation of Justinian’s Code and Novels, it was widely criticized. According to his critics, Scott failed or refused to rely on modern sources of Roman law scholarship to inform his translation—a phenomenon that seems inexplicable given his connections to academia through the ABA’s Comparative Law Bureau and his communications with Lobingier in particular. The consensus is that Scott had little understanding or interest in how the Roman law operated in practice.
By contrast, Blume appears to have invested a great deal of energy in understanding the practical application of the law. Though his library was smaller than Scott’s, Blume read and subscribed to scholarly journals and collected volumes of modern Roman law scholarship, particularly in German, which was the “primary language of scholarship on the Corpus Juris Civilis in the nineteenth and early twentieth centuries” (p.135). As a busy jurist, Blume had to work on his translation in his spare time and did so “at considerable cost to his health and to his private life” (p.143). Blume also corresponded with Pharr for almost three decades, collaborating on both the Corpus Juris Civilis translation and Pharr’s translation of the Theodosian Code. However, Pharr had sweeping plans to translate the entirety of the Roman law texts into English, which proved a drain on Blume’s efforts to translate the Corpus Juris Civilis. Although he completed his manuscript and sent it to Pharr for comment, it would not be published in his lifetime.

The final chapter of Lost in Translations focuses on Kearley’s own involvement in finally publishing Blume’s translation. Although Pharr’s copy of the manuscript disappeared, Blume’s working copy made its way to the University of Wyoming College of Law along with the rest of Blume’s library. As director of the University of Wyoming Law Library, Kearley learned of the manuscript and began to feel an obligation to make the decades-long translation widely available. Kearley states that he began to empathize with Blume as he read through Blume’s correspondence with Pharr and others. This empathy is clear throughout Kearley’s book as he describes the laborious task that became Blume’s life’s work. Kearley began working on an electronic version of the translations and was eventually contacted by an editor who wished to use the electronic version as the basis for a new English translation of the Justinian Codex. After several years of transcribing and editing, Cambridge University Press published The Code of Justinian: A New Annotated Translation, with Parallel Latin and Greek Text, based on a Translation by Justice Fred H. Blume, almost 75 years after Blume first sent his manuscript to Pharr for review.

Legal historians, librarians, and book lovers will likely be pleased with Lost in Translations. It is a quick and enjoyable read, and is recommended for law libraries, particularly those collecting in the areas of Roman and civil law, and for other libraries with classically focused collections.


Reviewed by Courtney Segota*

Complementing works like Michelle Alexander’s renowned The New Jim Crow, The War on Neighborhoods brings a local focus to the national issue of mass incarceration by describing its multigenerational effects on the impoverished, predominantly black neighborhood of Austin, on Chicago’s West Side. Authors Ryan Lugalia-Hollon and Daniel Cooper describe the interconnections between mass incarceration, poverty, crime, trauma, and the continuing effects of racist housing
practices and the war on drugs. They go on to offer examples of the equally interconnected and wide-ranging solutions necessary to address the entrenched systems of inequality that lead our society to rely on punitive criminal justice.

¶69 The book opens by describing the post-WWII history of Chicago’s West Side. During these decades, many black neighborhoods, such as Austin, were gutted by racist real estate practices, the War on Drugs, and the lack of noncriminal employment options for residents, while nearby white neighborhoods thrived.

¶70 Lugalia-Hollon and Cooper explore the vast financial, employment, and policing differences between rich and poor (and predominantly white and black, respectively) Chicago neighborhoods, despite their similar geography, and how these differences came to be through “white flight” to the suburbs and the resulting divestment of businesses and government in West Side neighborhoods. As obtaining legal employment became more difficult, people turned to the more lucrative, and more local, drug trade. At the same time, the government’s focus shifted from alleviating poverty to punishing those who were most affected by it. However, this did not mean that society stopped bearing the cost of unemployment. On the contrary, while money for social services has evaporated, more and more money continues to be pumped into policing and incarceration. This expensive shift has done nothing to curb either crime or drug addiction.

¶71 This segues to the policing and sentencing strategies that have predominated since the start of the War on Drugs, increasing both police saturation of poor areas and the sentences meted out to their residents. These policies also led to changes in the behavior of the drug market—for instance, moving drug sales from peoples’ homes (which could now be seized) to street corners, which increased turf wars, gang violence, and chaos.

¶72 Lugalia-Hollon and Cooper then turn to the root causes of violence in poor areas like Austin, such as sexual and child abuse, economic and societal insecurity and, surprisingly, the disorganization of gangs after their leaders are locked up. Increased policing of disadvantaged areas only makes matters worse, by destabilizing neighborhoods and ruining residents’ trust in police. In a dark twist, the authors point out how police themselves are also harmed by punitive policies that encourage them to dehumanize poor people of color and to focus more on arrest numbers than on actual public safety.

¶73 Mass incarceration of black fathers is the next step in this wretched cycle. While the media blames youth violence on irresponsible fathers abandoning their families, forced removal creates a cycle of trauma that harms children, women, and entire neighborhoods, as well as the fathers themselves. Lugalia-Hollon and Cooper urge that systems need to be in place for disadvantaged youth to succeed. They decry how these systems have been defunded while apparently limitless money is funneled into the criminal justice system. Furthermore, systemic injustice makes it hard for people to escape the criminal justice system once it has impacted them, despite token efforts at drug sentencing reform.

¶74 Meanwhile, rural (largely white) areas have become dependent on prisons for employment and thus on a constant supply of (largely black) prisoners. Both rural and urban residents would be helped by reallocation of funds from prisons to social welfare programs, but Illinois’s dysfunctional politics will not fund such reforms.
¶75 In conclusion, Lugalia-Hollon and Cooper support calls for a “new Marshall Plan” that would move money from the prison system to investments in jobs, commerce, community building, and youth support in disadvantaged communities (p.177).

¶76 This book presents both problems and potential solutions in their historical context and serves as a stinging rebuke to punitive theories of justice. However, the authors sometimes lapse into a frustrating idealism that contrasts oddly with the matter-of-fact tone of the volume, especially when describing their own projects. They explain that the systems for helping people have already been imagined and just need funding—but most money is not in the hands of people who care about people, and the authors describe only a few of the powerful interests vested in our current, unjust system. For example, why would corporations create jobs in poor areas when they can rely on prison labor at slave wages? As the authors correctly state, legislative mandate could eliminate many of these injustices and move money from the prison system to reinvestment in blighted neighborhoods. But a legislative mandate would require political will, which would require votes, and felons, who have the most to gain, are not allowed to vote.

¶77 However, most of my complaints are about the trees, not the forest. The authors have done solid research and present some very compelling arguments. I would recommend this volume to any library whose users are interested in holistic analyses of urban society, poverty, crime, and punishment (and its alternatives), especially in the Midwest.


Reviewed by Heather Holmes*

¶78 Three consistent themes emerge from Carol Ottolenghi’s excellent new book, Intentional Marketing: A Practical Guide for Librarians. The mission, vision, and values of a library should embody and reflect the library’s identity as a dynamic, responsive, and accessible resource, with user-centric content offerings and a skilled staff of librarian experts.

¶79 All messaging should be directly linked to the library’s mission, vision, and values and should promote the three core components—place, collection, and staff expertise—that define its function in a community.

¶80 Marketing efforts should be thoughtful and deliberate, communicating a unified message that conveys the impact and worth of a library to its stakeholders and situates the library in the minds of its users as an essential and desirable resource.

¶81 These clear through-lines propel the book forward, providing a steady momentum and an engaging read. Ottolenghi’s writing is swift and accessible. She inspires the reader to develop new marketing campaigns derived from the ideas presented and encourages a shift in the reader’s thinking from a product-centered to a user-centered model of library marketing.

¶82 In a culture saturated with media, marketing, and messages, it seems that everyone, both consumers and content creators alike, should be experts at recognizing which marketing messages work and which efforts are simply wasted. Identifying successful approaches—and distinguishing a persuasive message from a dud—is far from intuitive, however. Ottolenghi’s talent is in parsing the qualities of an effective marketing strategy and providing concrete examples (many drawn from the successful real-life marketing approaches of AALL members in academic, firm, and government law libraries) of marketing methods that work.

¶83 At the core of Ottolenghi’s intentional marketing model is an increased emphasis on the user experience and a direct appeal to user values. To this end, Ottolenghi’s model accentuates the strategies (big-picture governance) and tactics (strategy implementation) that put users at the center of the plan. Such an approach inspires user loyalty by forging an emotional connection and appealing to the personal needs and interests of library users. This is where intentional marketing truly gets the most mileage, as it requires libraries to be purposeful in designing their marketing strategies, not only sensitive to what users want but firmly grounded in what the community needs. This, Ottolenghi says, is the critical difference between marketing and intentional marketing and the key to building a community’s perception of its library as vibrant, relevant, responsive, and essential:

Intentional marketing is a mind-set, not a set of marketing tactics. Branding is part of it, but intentional marketing is much deeper than branding. Branding seeks to remind people of your library when they see a particular graphic or hear a slogan. Intentional marketing seeks to position your library positively in the minds of users and potential users. Intentional marketing influences how people rank—or position—your library when they compare it to other information, entertainment, and life-enriching options. (p.2)

¶84 Responding to what your users value, accommodating their needs, creating an effortless and engaging user experience, and reducing friction by addressing users’ pain points is key. Libraries can accomplish these tasks by creating and deploying a package of intentional marketing tactics, examples of which Ottolenghi discusses in detail throughout the 11 chapters of her book. Each focuses on a different tactic, such as word-of-mouth marketing, social media campaigns, digital projects, exhibits and displays, relationship building, storytelling, content marketing, and more. Snapshots of actual, appropriation-worthy marketing initiatives, created by a variety of libraries, round out the chapters. Also included are lists of additional resources drawn from research and observations in the fields of behavioral and social science, human resources, business and marketing, and information studies. The book concludes with six appendices full of practical tools for helping library marketers develop strategic plans, mission statements, marketing policies, and institutional evaluations.

¶85 The guidance, resources, examples, and tools provided in Intentional Marketing are just what an effective library marketing team needs to implement a unified approach to messaging that will, as Ottolenghi says, help your library “be seen doing good work” (p.2).

*Reviewed by James G. Durham*

¶86 *The Remarkable Rise of Transgender Rights* is a fine addition to the rapidly developing canon of authoritative texts that describe the LGBTIQ legal landscape. In the book’s introduction, the editors describe their premise: “[W]e explore the rise of the transgender rights movement and examine how it is operating so successfully despite its marginalized status within the current political opportunity structure. This book’s central question can be described succinctly as ‘how are they doing that?’” (p.6).

¶87 Importantly, this book is a survey of transgender rights as political and legal phenomena; it does not aspire to be a complete, encompassing history of the transgender community. Noted early activists such as Marsha P. Johnson and Sylvia Rivera are mentioned in passing, but readers largely should look elsewhere for intimate portraits.

¶88 The absence of individual stories is not a shortcoming of this book, which has other goals. Instead, it speaks to the incredible richness and texture of experience in the transgender community that is only beginning to be mined by documentaries, popular memoirs, and scholarly publications. The authors of *The Remarkable Rise of Transgender Rights* aim to educate readers about a societal movement, shifting public opinion, political realities, and the march toward greater legal justice for the transgender minority.

¶89 The book’s four overarching sections and their subordinate chapters follow a logical progression. The first two sections provide the conceptual and social bases for a later in-depth treatment of law- and policymaking. Section I introduces transgender identity and describes how the movement has developed over time, frequently in tandem (and sometimes in conflict) with lesbian and gay advocacy. Section II contains a chapter on public opinions about transgender issues, revealing the results of recent surveys and comparing them to past studies. The subsequent chapter analyzes demographic factors correlated with various opinions.

¶90 With sections I and II providing the foundation, sections III and IV proceed with law- and policymaking considerations. Section III has individual chapters that discuss transgender rights in the three branches of government (legislative, judicial, and executive), followed by a fascinating discourse on the ways that direct democracy has the potential to both speed and hinder reforms. Section IV is a deep dive into transgender policy. Chapters in this section provide explorations of identity documentation on driver’s licenses and birth certificates; nondiscrimination policies in public accommodations and restrooms; health insurance coverage; educational policies related to Title IX and antibullying initiatives; and criminal justice issues like hate crimes and inmate rights.

¶91 The text is both scholarly and inspired. The authors give substantial attention to achieving a unified voice throughout the book, despite combining the efforts of six additional contributors. The tone and format are consistent, giving the

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impression that a single author produced the book. The result of these efforts is a pleasure to read.

¶92 Careful organization lends academic heft and value to the volume. The authors are serious about increasing the utility of their product. They allocate more than 100 pages to a table of contents, appendices, endnotes, references, an index, and biographies for the three authors and six additional contributors. In all, approximately one-quarter of the book is comprised of features that make the contents transparent, accessible, and useful to both the casual, curious reader and the serious gender scholar.

¶93 This book is strongly recommended for academic and law libraries, attorneys with a civil rights practice, government and nonprofit leaders invested in greater equality, and anyone wishing to learn more about gender identity and the law.


Reviewed by Eve Ross*

¶94 *Data-Driven Law* is a collection of 10 essays that give real-world examples of how data analytics can enhance legal services. Here, the term “data analytics” encompasses such hot topics as big data, data mining, artificial intelligence, and machine learning. Essay authors demonstrate how data analytics can apply to contracts, criminal sentencing, e-discovery, employment law and, most of all, law firm decision making on how to market and provide legal services that are both affordable and profitable.

¶95 A great strength of *Data-Driven Law* is that the essay contributors are a dream team pulled from various intersections of law, technology, business, and education. They are innovators actually using data analytics to transform legal services, educators who know how to convey computational concepts, or both. For example, editor Ed Walters is both CEO of the legal research service Fastcase and an adjunct professor teaching a course titled “The Law of Robots”; contributor Maura Grossman is both a research professor in computer science and an e-discovery lawyer/consultant.

¶96 About half the chapters in *Data-Driven Law* are written in a scholarly style. These are chapters 2 and 9 on mining legal service providers’ data, chapter 3 on contracts, chapter 6 on e-discovery, and chapter 10 on intrapreneurship. The remaining five chapters adopt a businesslike, practical style with occasional informality, such as “OK . . .” and “Well, I think . . .” (p.126) and cartoons. Although more vernacular, these chapters are supported by citations to sources such as blog posts, business websites, news and statistical sources, and primary legal documents.

¶97 Three chapters are acknowledged in footnotes to be available for free online and are included in the book by permission. Chapter 4 is adapted from a Littler Mendelson white paper, “The Big Move Toward Big Data in Employment.”3 Chap-

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ter 5 is based on Stephen Wolfram’s October 12, 2016, blog post, “Computational Law, Symbolic Discourse, and the AI Constitution.”

Chapter 8 is adapted from “Uncovering Big Bias with Big Data,” published on Lawyerist by David Colarusso.

Changes from the online originals are very minor but not always for the better. For example, the Venn diagram in the conclusion of chapter 8 is in color on Lawyerist, while the print version shows every circle and intersection in similar shades of gray without clearly delineated borders.

While lacking the detailed instruction necessary to be a how-to guide, most chapters boil down to accounts of “here’s what we did,” including some gems of insight usually only discussed within a law firm, and “how about if you try,” along with realistic considerations of risks and benefits. For example, readers aiming for legal analytics jobs would benefit from understanding the math behind taking a partner off the billable track to work full time on law firm technology. A partner may bring in $500 per hour times 2000 hours per year, totaling $1 million. One partner’s change of role paid off where a single document automation project saved $500 in staff time per deal times 3000 closings per year for a savings of $1.5 million. This profitable equation is tempered by an explanation of why such a full-time commitment is “not easily” replicated: skill sets, personalities, and business models must align (p.208).

The tone of Data-Driven Law is optimistic and encouraging, which fits with its stated goal of convincing lawyers that they should and can increase their reliance on data. Occasional nods are made to privacy and security concerns, but only one chapter focuses in depth on a particular pitfall (chapter 8 on bias). If a collection needs more emphasis on the downsides of data analytics to balance the optimism of Data-Driven Law, a popular choice is Weapons of Math Destruction: How Big Data Increases Inequality and Threatens Democracy by Cathy O’Neil.

Anyone who has been cobbling together an understanding of legal data analytics by hearing a marketing pitch here and reading a tweet there will find that Data-Driven Law provides value. It could be the text for a timely, informative course on the state of legal data analytics. On the other hand, a more standard textbook choice might be Artificial Intelligence and Legal Analytics: New Tools for Law Practice in the Digital Age by Kevin D. Ashley, which has a glossary, a bibliography, and a single author’s style throughout.

Data-Driven Law is recommended for law firm libraries, including those at smaller firms where the profit models and available data may be quite different than at larger firms. The book is also recommended for academic law libraries where technology in law practice is emphasized. Data-Driven Law is part of a series titled “Data Analytics Applications,” edited by Jay Liebowitz. The 12 other books currently in the series consider the effects of data analytics on fields other than law, including cybersecurity, education, knowledge management, and government. These may also be of interest, depending on a library’s collection emphasis.
