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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 and 2019. If you would like to review books for “Keeping Up with New Legal Titles,” please send an email to sazyndar@osu.edu and sdemaine@iupui.edu.

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Reviewed by Eric W. Young*

¶1 In The Right to Be Out: Sexual Orientation and Gender Identity in America’s Public Schools, Stuart Biegel provides a seminal work covering the past, present, and future of the right to “be out” in the public K–12 school setting for students and educators. First published in 2010, this recent edition reflects the many changes in the LGBT landscape since then.

¶2 To me, who came out as gay to family and friends during my senior year of high school, this book’s mere existence is astonishing. In 1988, the only LGBT issues discussed in my K–12 setting related to AIDS, and most of these were based on prejudice or ignorance, not on facts. This book review serves as a reminder of just how far public schools have moved toward supporting their LGBT students and educators.

¶3 Chapter 2, “Marriage Equality and Its Aftermath,” deals exclusively with matters occurring since the first edition. Marriage equality was momentous for the LGBT community, viewed by many LGBT individuals as both a legal and societal victory. But Biegel notes that many people, both in and out of the LGBT community, knew that with marriage equality would come significant backlash. He details this backlash in chapter 2, yet he is fortunately able to conclude the chapter claiming that “the prospects for the continued strengthening . . . [of a K–12 student’s or educator’s right to be out] have never been better” (p.51).

¶4 Chapter 3, “Emerging Rights of LGBT Students,” and chapter 4, “Challenges for LGBT Educators,” discuss the development of the right to be out for both popu-

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lations. Both chapters highlight important court decisions at all levels that have defined and expanded the right. Chapter 4 ends with two interesting case studies. One details a fairly positive reaction by a school and community to an educator’s right to discuss his sexuality and same-sex marriage, and the second tells the unsettling story of a 20-plus-year veteran teacher at Templeton Middle School in Hamilton, Wisconsin, who suffered devastating harassment from students, other teachers, and school administrators. In that case, the Seventh Circuit found that the school had done all that was required of it under the Equal Protection Clause. These two case studies provide sound legal discussions and lend a more real, human narrative that engages readers.

Chapter 5 examines LGBT curriculum, specifically, whether and how it can be taught, as well as the right of students to protest a school’s LGBT-positive environment based on the protesting students’ religious rights. Biegel reviews, among other cases, Harper v. Poway Unified School District, in which the Ninth Circuit held that a student did not have the right to wear a T-shirt condemning homosexuality based on his religious beliefs. Biegel notes this decision was controversial and that many “bemoaned” its alleged blow to First Amendment rights (p. 127). Biegel suggests that a middle ground is possible, one where students can support LGBT rights and, respectfully, oppose homosexuality on religious grounds. Many might find his suggestion controversial, but I appreciate Biegel’s suggestion that a middle ground might exist.

Biegel also addresses school sports culture, describing LGBT issues within sports culture as particularly delicate. He notes that very few professional athletes are out, a situation that hinders the development of a more accepting K–12 sporting environment for LGBT student-athletes. He further notes that the collegiate sports environment is as closeted, if not more so, than the professional sports environment. Biegel argues that as professional and collegiate athletics become more accepting of LGBT athletes, so too will the K–12 athletic setting. As is typical throughout the book, this chapter on sports ends with “reasons for optimism” (p. 209). As more and more individuals come out as LGBT, whatever their profession, the K–12 sporting environment will evolve positively, albeit more slowly.

Biegel’s penultimate chapter is the most timely. Here, he discusses issues that transgender youth face in the K–12 setting. He details some of the horrible experiences that transgender youth have faced, with a prediction that these issues are likely to continue for the foreseeable future. He ends this chapter with helpful policy suggestions that K–12 schools can adopt to better address the difficulties facing transgender youth.

The Right to Be Out is an important work addressing a subject that is becoming more acceptable while acknowledging that struggles remain. Biegel provides commonsense guidance on how to overcome the continued struggles, as well as detailed legal analysis of the court opinions that have shaped this area of the law. It is an interesting read from beginning to end, providing a thorough discussion of the history of a K–12 student or educator’s right to be out, practical discussions on how to keep K–12 schools safe for LGBT youth and their educators, and many words of optimism that the right to be out and surrounding issues will continue to improve.

1. Schroeder v. Hamilton Sch. Dist., 282 F.3d 946 (7th Cir. 2002).
2. 445 F.3d 1116 (9th Cir. 2006).
The book could serve easily as a resource for a K–12 educator/administrator who needs to find specific analysis and guidance on a particular issue, such as transgender student rights or LGBT issues in K–12 athletics. This book is highly recommended for law school and public law libraries as well as for libraries at firms focusing on education law or LGBT rights.


Reviewed by Latia L. Ward*

¶9 Taina Bucher’s informative and timely book, If . . . Then: Algorithmic Power and Politics, focuses on how algorithms affect people in their everyday lives. The book’s interviews with social media users and newspaper editors inform her perspective.

¶10 Bucher thoroughly covers the origins of algorithms and how computer scientists and others have conceptualized them. Drawing on a variety of fields, including media, computer science, and marketing, Bucher gleans multiple definitions for the word “algorithm,” noting that “algorithm” has been described as “a step-by-step instruction of how to solve a task,” “a recipe,” and “magical” (p.19). Of particular interest is Bucher’s assertion that one description often given of algorithms—that of “black box”—is not appropriate because algorithms can be known and understood by the outcomes they produce, even when people may not know the exact code. Bucher asserts that the lack of knowledge regarding algorithms may serve as a “knowledge alibi” to absolve an authority figure of responsibility for a mishap (pp.56–57), an excuse furthered by the black box concept.

¶11 In keeping with her expertise—Bucher is an associate professor of communication and IT at the University of Copenhagen—she focuses on how users of social media platforms perceive and interact with algorithms. In her conversations with a range of social media users—from average people to newspaper editors—she finds that many post their messages at certain times of day or incorporate videos so that Facebook’s algorithms make their posts more visible to people within the posters’ social networks. These interviewees include a musician looking to broaden the audience for his music and a former teacher who used Facebook to communicate with parents. One newspaper editor interviewed asserts that editors must learn to use algorithms to stay current. Another contends that newspapers should have their own platforms for disseminating their news.

¶12 Bucher thoughtfully frames how algorithms and people interact. She recounts the criticism that Facebook received from Espen Egil Hansen, the editor-in-chief of Aftenposten, a Norwegian newspaper, when Facebook censored the Pulitzer Prize–winning photograph entitled “The Terror of War,” which shows a naked girl running in the aftermath of a napalm attack during the Vietnam War. Hansen criticized Facebook’s algorithms and framed Facebook’s controversial censorship of this wartime photograph as the result of algorithms being less able than

humans to determine which photographs are appropriate for posting. It is precisely this frame of “algorithms versus humans” that Bucher believes oversimplifies the issue, and she adopts a more nuanced view. In Bucher’s view, people program algorithms, yet through the process of machine learning, algorithms adapt to their environments. The question to ask, she asserts, is “how the attribution of agency is realized in particular settings” (p.155). In essence, algorithms affect people, and people affect algorithms.

Although Bucher focuses on how social media users and newspaper editors interact with algorithms, she offers plenty of information valuable to the law librarianship profession. Law librarians who use social media to promote their libraries’ resources and services may relate to how Bucher’s interview subjects manage their social media posts to reach the largest audience possible. In addition, throughout the book, Bucher focuses on how people interact with algorithms in their daily lives, an issue of universal concern. The issues that Bucher raises regarding conceptualizing the algorithm as a black box, algorithms misclassifying people in photographs, and algorithms mispredicting a person’s likelihood to commit a crime in the future are all relevant to legal information professionals. In addition, bias within algorithms may interest law librarians who seek information from a variety of sources that rely on algorithms. Bucher briefly mentions the use of algorithms in criminal sentencing; however, a more detailed discussion of the use of algorithms in the context of criminal justice would have been welcome. The book is well researched, and the bibliography includes citations to scholarly journals (including law reviews), news articles, and monographs on topics relevant to algorithms and social media platforms in the fields of computer science and journalism. In addition, the book includes an index of major topics and prominent people discussed within its pages.

If . . . Then is a timely and informative read for law librarians and the people they assist. Therefore, If . . . Then is a worthwhile purchase for any law library.


Reviewed by Melissa M. Hyland*

A news outlet picked up a salacious story about the arrest of a celebrity for committing robbery and using the proceeds to buy drugs. Thanks to technology and the ease of communication, the news piece then spread like wildfire, showing up in both national and local news sources across the country. Unfortunately, the story was a case of mistaken identity. In response, the celebrity sued every news outlet that reprinted the salacious tale, arguing that the libelous story irreparably damaged her reputation. Would it surprise you to learn that this classic example of “fake news” was spread not by social media in 2019 but instead via the telegraph in

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1903 and involved Annie Oakley, the famous member of Buffalo Bill Cody’s Wild West Show?

¶16 Patrick C. File’s *Bad News Travels Fast: The Telegraph, Libel, and Press Freedom in the Progressive Era* recounts the experiences of Annie Oakley, among others, whom File dubs “serial libel plaintiffs” (p.1). At the turn of the 20th century, these plaintiffs filed dozens of libel suits against newspapers across the country after those papers reprinted false news stories spread via the telegraph. In addition to Oakley, who filed at least 55 libel suits, File also explores the libel cases of Juliette C. Smith and Edward Rutherford, two wealthy socialites implicated in an affair by a false news story, and Tyndale Palmer, a successful businessman falsely accused in a news story of having swindled money from his employer. File uses the plaintiffs’ litigation histories to highlight how the advent of the telegraph amplified the tension between traditional libel law and the press. As File observes, “the serial libel suits served as an object lesson in the perils of combining careless sensationalism with industrialized speed and scale. . . .” (p.99).

¶17 Several themes naturally develop through File’s close examination of the serial libel plaintiffs and their lawsuits. Chief among these is the shifting definition of what File terms the “journalistic report” (p.71), a phrase used to describe the type of news reporting both expected by and acceptable to the American public at any moment in time. In the late 1890s, changing societal expectations for the journalistic report required editors to simultaneously balance public demands for speed, scale, accuracy, and sensationalism. Inevitably, this confluence of disparate expectations resulted in the occasional false news story. Newspapers involved in serial libel suits argued that it was their constitutional mandate to deliver stories of public interest to the American people as quickly as possible, and they printed stories from wire services “in good faith and in reliance upon its accuracy and truth” (p.74). Publishers believed that this duty to the public necessitated a more lenient standard in libel suits and advocated for courts to curb the ability of serial libel plaintiffs to seek multiple awards for punitive damages. However, holding fast to traditional libel law, many judges disagreed with their arguments and reiterated the old standard that “talebearers [were] as bad as talemakers” (p.75).

¶18 Legal readers will likely find File’s discussion of the gradual adaptation of libel law to “fake news” the most interesting theme in the book. Indeed, the serial libel cases themselves highlight how the law and its actors grappled with new technology and ultimately adapted to reflect the new realities brought about by increased modes of communication. The first instances of this shift in the application of libel law appeared, oddly enough, with juries, who regularly found in favor of the libel plaintiffs but almost always awarded nominal damages. File argues that these low damage awards indicate that while the application of libel law doctrine remained intractable, juries recognized the need for a different standard for the news media. Later, state legislatures continued this trend toward leniency with the enactment of retraction statutes, which provided defenses for newspapers against libel suits if retractions of false stories were speedily printed. These early attempts to adapt libel law to account for changing technology and societal expectations for news reporting were precursors to more robust protections for the press in the future.

¶19 As the old adage goes, history tends to repeat itself, and *Bad News Travels Fast* is an invaluable read for those interested in understanding how the press and legal actors at the turn of the last century grappled with some of the legal issues
inherent in “fake news.” In the face of rapid technological change, we can draw on the lessons of the past to ensure that the law yet again responds to changing technology and shifting public expectations for news reporting. This book is recommended as an important addition to the shelves of academic law libraries, and it will likely interest patrons of academic and public libraries as well.


Reviewed by Margo Jeske*

¶20 Surrogacy in Canada: Critical Perspectives in Law and Policy contributes to the continuing debate on surrogacy. Inspired by a workshop of the same name held at the University of Ottawa in May 2017, the book brings together eight essays on themes that include commercial surrogacy, parental status, globalization, cross-border surrogacy arrangements, and the need for empirical data.

¶21 This book presents a historical roadmap of the governance of surrogacy in Canada, charting the conflicting opinions underlying its evolution. First, the Ontario Law Reform Commission, in 1985, suggested that the provinces regulate commercial surrogacy since they have jurisdiction over family status, contract law, and regulation of healthcare professionals. Ten years later, the Royal Commission recommended that the federal government criminally prohibit all surrogacy and that provinces make surrogacy arrangements unenforceable. The Assisted Human Reproduction Act introduced a middle ground, criminalizing commercial surrogacy, but permitting altruistic surrogacy. Regulatory gaps related to this act and provincial legislation persist. At the time of the publication of this book, regulations regarding reimbursement were being developed.

¶22 The central legal issues presented and thoroughly covered in this book are the challenges of regulating surrogacy in Canada and elsewhere; the governance of surrogacy to address the health, well-being, and autonomy of surrogates; and internationalization, whether it be Canadians seeking surrogates abroad or foreigners seeking surrogates in Canada.

¶23 This book is well organized and includes a thorough index. Contributors, largely Canadian academics, back up their arguments and analysis with references to legislation, regulations, Royal Commission findings and reports, media articles, and case studies, all serving to situate the reader at the heart of the issues presented. Extensive footnotes and a table of cases reflect this strong foundation in legal and related sources.

¶24 A fascinating read, this book is a welcome addition to existing literature appearing on this topic and will introduce many to the Canadian context. Canada’s proximity to the United States, a factor in the increasing internationalization and interest in Canada as a surrogate-seeking destination, makes this book of interest for legal scholars and practitioners beyond Canada’s borders. Insightful examination of complex questions will ensure this book’s value in relevant courses and research collections.

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Reviewed by Caitlin Hunter*  

¶25 In *A Short History of European Law*, Harvard professor Tamar Herzog provides a compact, readable overview of how common law and civil law developed, diverged, and converged, from Roman law to the European Union. Herzog was inspired to write the book when one of her students returned from Washington, D.C., excited to have seen a copy of Magna Carta, which she believed to be one of the foundational documents of democracy. As Herzog knew, most modern legal historians consider Magna Carta to be no such thing. In *A Short History of European Law*, Herzog seeks to correct such misconceptions and inform nonhistorians of the actual agreements, knowledge gaps, and disputes among historians.

¶26 Throughout the book, Herzog emphasizes that jurists from Rome to the 1800s were themselves historians of earlier eras—but usually biased ones, selecting and shaping historical law to suit contemporary needs. For example, when Roman jurists created the purportedly definitive compilation of Roman law in the 500s CE, they selectively included only about 5 percent of the material that they consulted. In the late Middle Ages, professors at the newly founded European universities reconstructed fragments of this compilation, explaining away its contradictions and reinterpreting it for contemporary legal debates. Although humanists in the 1500s dismantled these anachronistic reconstructions, German jurists in the 1800s knowingly returned to Roman law as a means of structuring German customary norms into a coherent, modern legal code.

¶27 Belying its title, *A Short History of European Law* also provides a globally integrated overview of U.S. legal history. Herzog explains how the American Revolution put into practice Enlightenment ideals first proposed in Europe, allowing those ideas to spread outward to Latin America and then back to Europe. Herzog also shows how the adoption of the New York Field Codes in western U.S. states and French codes in Louisiana paralleled codification efforts in Europe. She demonstrates that these efforts were more strategic and less natural than commonly believed.

¶28 Additionally, as a short introduction, Herzog’s book provides brief, high-level overviews of complex debates. Herzog covers the English Civil War in three paragraphs and spends a little over a page summarizing the contentious debate among historians over why Magna Carta was transformed from an assertion of specific noble privileges into a symbol of all Englishmen’s right to due process. Legal historians already familiar with the modern debates are unlikely to find much new in Herzog’s book, but they will find it a useful introductory text for their classes, as the author intends.

¶29 Readers new to European and U.S. legal history will find in Herzog’s book an enjoyable and thorough overview and starting point for further research. Herzog writes in clear, straightforward language that will be accessible even to undergraduates. At the same time, law professors who do not specialize in legal history will appreciate Herzog’s debunking of commonly held myths about the develop-

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ment of civil and common law. Many readers are likely to be intrigued and will want to learn more; Herzog’s 23-page list of further reading provides the perfect next step. Overall, while likely too theoretical for most public and law firm libraries, A Short History of European Law is a fascinating and readable introduction to the legal history of the western world and is highly recommended for both history and law collections in academic libraries.


Reviewed by Jessica Pierucci*

¶30 In 2007, the United Nations General Assembly adopted the Declaration on the Rights of Indigenous Peoples (UNDRIP, or the Declaration) by a vote of 144 to 4, with 11 abstentions. Published 11 years later, The UN Declaration on the Rights of Indigenous Peoples: A Commentary, comprehensively documents the history of this international instrument as well as related developments in Indigenous peoples law.

¶31 A brief introduction explains the commentary’s aim to provide a thorough history of the UNDRIP, discussing both the achievements and the compromises represented by the final document. In line with other works in the Oxford Commentaries on International Law series, this volume seeks to serve as an authoritative source on the history of the UNDRIP and to connect it to related legal developments. The book ultimately achieves its goals by providing detailed, well-researched, and heavily footnoted chapters allowing the reader to gain an expansive picture of each topic covered in the UNDRIP, including drafting history, relationships to related international instruments, relevant international and domestic cases, and subsequent legal developments facilitated by the UN General Assembly’s adoption of the Declaration.

¶32 Part 1 discusses the relationship between the UNDRIP and international law. This includes fascinating commentary on the lack of a definition for Indigenous peoples in the UNDRIP. One chapter delves into the history of participation of Indigenous peoples in international forums and how increased participation has shifted the discussion away from assimilationist tendencies in the decades leading up to the adoption of the UNDRIP. Other chapters discuss the relationship between the UNDRIP and formation of customary international law and how the UNDRIP could be relevant in investment contexts. The discussions in part 1 provide valuable context for understanding the UNDRIP as it relates to international law in general. This part would be excellent reading for anyone seeking to learn how the UNDRIP has affected Indigenous peoples law and how prior laws and history influenced the Declaration.

¶33 Parts 2–6 turn to the articles in the UNDRIP, organizing them thematically. This organizational choice places each UNDRIP topic within its own chapter, allowing readers to see complete discussions instead of piecing together relationships between articles on their own. Further, chapter authors provide extensive additional information beyond the confines of the UNDRIP that present valuable

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context for each theme. More specifically, each chapter provides historical background, discusses related international instruments and cases, includes drafting history for the articles discussed, and examines subsequent developments. The thematic organization allows readers to more easily absorb this contextual information about related articles and leaves them with a thorough understanding of each theme. In addition, numerous citations to UN documents, related international laws, and secondary sources serve as helpful starting points for further research on any article of the UNDRIP. The articles discussed in each chapter are listed in the table of contents, so readers can still navigate to chapters discussing articles of interest with relative ease while taking advantage of the thematic organization to thoroughly grasp the context surrounding each article.

¶34 Overall, the commentary is a fantastic resource for any reader looking to understand UNDRIP or Indigenous peoples law in the international context in general. The commentary would be a valuable addition to any law library collection with a section on Indigenous peoples law and could also serve as a key resource in an academic law library without an extensive Indigenous peoples collection.


Reviewed by Wanita Scroggs*

¶35 Are you both fascinated and terrified by the thought of sharing the roadway with autonomous vehicles? Even more so of riding in them? Professor Hannah YeeFen Lim presents a thorough and engaging review of the technology of autonomous vehicles, as well as the legal and ethical issues surrounding them. Her in-depth explanation of how autonomous vehicles work is simple enough for nontechnicians to understand while thoroughly addressing legal concerns. The work addresses current legal standards for technical components of autonomous vehicles, drawing from a range of jurisdictions. Lim also suggests some regulatory and ethical approaches but omits discussion of data protection, insurance, intellectual property, or other concerns regarding autonomous vehicles.

¶36 Lim discusses a number of current sensing technologies, including cameras used in conjunction with prebuilt databases of images; lidars (light detection and ranging) that create three dimensional maps to be compared with high-definition digital reference maps; radar systems, which work well on metallic objects but not on nonmetallic objects; infrared sensors to detect humans and animals; and other technologies such as GPS, ultrasonic sensors, inertial measurement units, and wheel encoders to keep track of a vehicle’s location and movements. All of this hardware is, or can be, used in conjunction with artificial intelligence and machine-learning software to cope with the ever-changing environment on public roadways.

¶37 Because products liability and consumer protection laws vary from one jurisdiction to the next, the author approaches the issue of autonomous vehicles using generic standards for negligence. Lim posits an ideal standard that autono-
mous vehicles be equipped with multiple overlapping detection systems and include physical driver controls. If features and technology are considered to be in a beta-test stage, which means the customers are the testers, then arguably an even higher duty of care is owed. She explores the standards of care for hardware components, software, and machine-learning algorithms. She also recommends that regulators consider computer and cybersecurity breaches, as well as terrorism, when determining rules governing this autonomous vehicle technology. The volume concludes with an overview and critique of guidelines for autonomous vehicles presented in June 2017 by the Ethics Commission on Automated Driving, set up by the German Ministry of Transport and Digital Infrastructure.

¶38 Lim’s fairly brief and easily digestible examination of autonomous vehicle concerns would be a good addition to any general collection in a law library or engineering library. It would be particularly good as a beginning reference for academic libraries that serve both law and engineering programs. The footnotes are full of quality references to ethical, technical, legal, regulatory, and automotive engineering sources for further study.


Reviewed by Judy K. Davis*

¶39 Steve Luxenberg, longtime Washington Post senior editor, presents an exhaustively researched history of the events leading to Plessy v. Ferguson, the infamous 1896 Supreme Court case that legalized racial segregation as “separate but equal.” In Separate: The Story of Plessy v. Ferguson, and America’s Journey from Slavery to Segregation, Luxenberg describes the characters and history behind America’s disastrous journey toward state-sanctioned segregation.

¶40 Rather than reciting the dry history of events leading to Plessy, Luxenberg recounts his story primarily through biographies of three important figures: Albion Tourgee, the colorful lead counsel for Plessy; Henry Billings Brown, author of the Court’s majority opinion; and John Marshall Harlan, the lone dissenter in Plessy. The detailed portraits of these and other players on both sides of the 19th century civil rights movement make Separate a compelling read.

¶41 Luxenberg writes in an easy narrative voice that feels more like storytelling than legal history. He reveals surprising facts that bring historical figures to life and portray them as complex individuals. For example, he begins by telling the story of John Harlan, who came from a Kentucky slave-owning family and once gave his bride a slave as a gift. We learn, thanks to Luxenberg’s meticulous research, how Harlan evolved over the years from slave owner who mocked his wife’s antislavery sentiments to author of one of the most searing dissents ever written advocating for the legal rights of people of color.

¶42 The most interesting character in Separate, however, is Albion Tourgee. Tourgee was a lawyer, political novelist, newspaper columnist, and Reconstructionist. Like Harlan, he also fought in the Civil War, eager to help put an end to slavery. Later, he wrote a bestselling novel, A Fool’s Errand, based on his failed efforts to help

* © Judy K. Davis, 2019. Senior Law Librarian and Adjunct Assistant Professor of Law, USC Gould School of Law, Los Angeles, California.
the Reconstruction efforts in North Carolina. Luxenberg calls him “arguably, the best-known white advocate for civil rights in the country” (p.380) at the time. The Comité de Citoyens, a group of prominent mixed-race New Orleans Creoles, led by newspaper editor Louis Martinet, recruited Tourgee to help challenge Louisiana's Separate Car Law, which required whites and people of color to sit in separate railcars.

¶43 Luxenberg explains that the events on which *Plessy v. Ferguson* is based were actually a carefully planned set-up, intended from the beginning to reach the Supreme Court. Homer Plessy, a light-skinned shoemaker with one great-grandparent of color, agreed to participate. Plessy purchased a ticket and sat in a whites-only train car. When the conductor, in on the plan, asked Plessy if he was colored, Plessy replied, “Yes.” Plessy refused to move to a different car and was arrested. Thus began the case.

¶44 Tourgee took a creative legal approach, Luxenberg claims. Instead of arguing that segregation denies equal protection, he asserted that it denies the Fourteenth Amendment’s guarantee of due process. He reasoned that a person’s reputation is property, similar to an inheritance, and “the most precious of all inheritances is the reputation of being white” (p.476). When denied seating in the white car, Plessy was deprived of his property—his reputation of being white—without due process.

¶45 This gambit ultimately backfired, resulting in a ruling that entrenched segregation and laid the foundation for decades of Jim Crow laws. Brown, writing for the *Plessy* majority, stated that separate cars are stigmatizing only if “the colored race chooses to put that construction upon it” (p.479). Harlan, now known as the Great Dissenter, wrote, “in the eye of the law, there is in this country no superior, dominant, ruling class of citizens . . . . Our constitution is color-blind, and neither knows nor tolerates classes among citizens” (p.486). Although he lost that day, Harlan was eventually vindicated, albeit almost 60 years later, when the principle of racial equality was finally upheld in *Brown v. Board of Education*.

¶46 Separate is a well-written and thoroughly researched account of an abhorrent but important part of American history. Luxenberg discusses difficult issues clearly while portraying events and personalities within their historical context. Because of its biographical organization, however, the chronology leaps forward and backward at times. Although some leaps are necessary for continuity in the biographical narratives, the format might prove challenging for some readers.

¶47 This book’s positives far outweigh any minor issues, however. Despite the fact that we know how this story ends, Luxenberg has woven a captivating narrative that will capture your attention, from his description of a train’s “dirt car” (p.3) on the first page, to the compassionate epilogue that brings closure for the characters you have come to know.

¶48 Separate is not just a book about history. The issues that Luxenberg illuminates are as real today as they were more than 100 years ago. Only recently, the Supreme Court struck down much of the Voting Rights Act of 1965, and the current administration has its sights set on eroding additional protections for people of color, such as affirmative action and DACA. Separate reminds us of the ongoing need to stand up for equality, but also gives us hope that we will not be condemned to repeat the worst parts of our own history.

Reviewed by Nicole Downing*

¶49 When I decided to apply to law school 10 years ago, it did not enter my mind that being a woman would be any sort of obstacle to attending law school or pursuing a career as an attorney. I grew up believing that a woman could do anything a man could do, and the evidence of this was all around me. This isn’t to say that I didn’t encounter sexist behavior, particularly from a calculus professor who was very open about his belief that men were naturally better than women at math. I went to law school confident I could succeed and find employment, and nothing I experienced ever interfered with that belief.

¶50 Stories from Trailblazing Women Lawyers made me appreciate how the struggle and perseverance of the first women attorneys allowed me to have that confidence. They not only had to struggle to enter the legal profession, they also had to be smarter and more dedicated than any male attorney to succeed. This book is an inspiring look at the women who fought for the gender equality from which I now benefit.

¶51 Jill Norgren’s account of trailblazing women lawyers draws on 100 oral histories of women attorneys conducted by the American Bar Association’s Women Trailblazers in the Law Project. She links their numerous stories to create one timeline for their journey, beginning with childhood and early influences, moving on to law school experiences, their job searches, and finally balancing successful careers with family. Throughout each chapter, the experiences of the women are woven together to form a snapshot of the topic, while the individual trailblazers’ voices are felt through quotes from their oral histories. These women discuss the specific challenges they faced at each stage in life, including constant demands for an explanation of why a woman deserved a job that could go to a man and judges who refused to have women practice in their courtrooms. Trailblazers went on hundreds of job interviews, only to be turned down repeatedly because there was no place for a woman in law, except as a secretary.

¶52 Norgren uses the quotes from the trailblazers’ oral histories to powerful effect. All the stories, even the heartbreaking ones, are told with heart and, often, levity. These women recount tales of men mocking them or insulting them, but the laughs and smiles of these persistent women are also evident. They do not focus on the men who got them down, but on how they succeeded despite them. And they did succeed, time and time again.

¶53 Some of the smallest stories, such as job offers made at half the salary of male coworkers or the amount of turmoil selecting an outfit could cause, had the most impact on me. Some judges would not let a woman in the courtroom without being properly attired in a hat and gloves, while other judges would insist a woman remove her hat even if it led to ruining her coiffure. It reminded me of being advised to wear a skirt suit to an interview while in law school. It had never occurred to me that even though men could wear pants, I should not. I wore my pantsuit and didn’t think about the moment again until reading this book.

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I cannot even begin to do justice to these stories, so I recommend it as reading for everyone. I have always considered Ruth Bader Ginsburg an inspiration, but now I know the names and stories of other trailblazers to admire: Ruth Abrams, Joanne Garvey, Constance Harvey, Herma Hill Kay, Shirley Hufstedler, Belva Lockwood, Janet Reno, Catherine Roraback, Norma Shapiro, Ada Shen-Jaffe, and so many more.

This is not to say that the work of the trailblazers is finished. Norgren’s epilogue discusses the current gender pay gap in law and the unequal number of women partners at firms, especially minority women. The popular legal blog, Above the Law, features a column written by Staci Zaretsky titled, “The Pink Ghetto: Horror Stories About Sexism in the Law.” From sexual harassment to pregnancy discrimination, Zaretsky has plenty of contemporary stories of the sexism women law students and lawyers still face. Stories from Trailblazing Women Lawyers is not just the story of what women went through to attain their current place in the law, but an empowerment to keep the fight for equality going strong. This book is highly recommended for law school libraries.


Reviewed by Dennis Kim-Prieto

In 2016, three University of Chicago law professors presented an exhaustive case for legal scholars to “conduct a four step systematic review when they are making positive claims about the state of legal doctrine.” Marnix Snel and Janaina de Moraes respond to their call with this enthusiastic, comprehensive, and clearly written monograph. This easy-to-use guide, written for the European law student, is also an essential tool for any academic law librarian in the United States who leads anguished 2Ls through the literature review process preceding their law review note, or counsels any student confounded by a seminar paper.

This brief yet authoritative book is well written enough for competent law students to understand, but they are well advised to think critically while reading it. For example, Snel and de Moraes often use the European term of art “case notes,” which refers to an academic piece similar to the law review note and not, as in the American context, the summary of a case often found in legal newspapers. In my experience, students learn terms of art best when those terms are embedded in a context. The slight differentials in the research and practice terminology between European and American usage provide a profound context for students to fully understand the meanings embedded within these research and practice terms of art. In spite of this minor issue of controlled vocabulary, and as someone who has been thinking a great deal about law student information literacy and research competencies, I find this volume to be quite explicit and quite direct in leading students through the process of a literature review and, ultimately, through the process of learning research itself.

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¶58 One of the perennial issues facing instructional law librarians is the gulf between doctrinal approaches to research and systematic approaches to research: because doctrinal scholars tend to learn research in their field “at the knee” of their mentors and advisors, they naturally rely on the methods and skills unique to their area of expertise. Instructional law librarians have a broader charge than our doctrinal colleagues: we are obliged to lead students into a methodological approach to research. We do not always have the luxury of teaching students how to research within the context of a particular area of law; we need to teach students to acquire legal research skills that apply to as many areas of law as possible. After all, we do not know where our students will end up working, but we must prepare them for their future areas of practice, whatever they may be.

¶59 Snel and de Moraes do a fine job of presenting research methodology within the frame of the literature review. Each chapter is organized according to classic best practices for pedagogy: there is a brief introduction, the authors analyze the chapter’s theme according to sequential components, and then the chapter ends with a thorough yet concise summary of the material presented. Moreover, Snel and de Moraes are attuned to the recursive nature of the research endeavor: they note that the “literature review is not a success if it answers the initial question you had in mind[:] it is a success if it proves that that answer is not yet sufficiently available” (p.22). Within their gestalt view of the research process, the authors present these best practices in clear and direct terms that any student can understand and apply. When discussing the practice that they refer to as “snowballing” (p.52), or what many of us trained in the States have learned as “citation pearl growing,” they offer the following granular advice: “As a rule of thumb, we believe that you may stop scrutinizing the references of the most recently discovered publications when, say, five consecutive ‘key publications’ do not result in the identification of new relevant materials” (p.53). It is precisely Snel and de Moraes’s ability to present metacognitive approaches to research through granular advice that makes this monograph so useful for law students and scholars conducting literature reviews.

¶60 I strongly recommend that every academic library acquire this volume, and perhaps two copies. It will not only be useful in the general collection, but also a likely popular reserve item once brought to the attention of law review editors and professors teaching writing-intensive seminars.


Reviewed by Patrick Charles*

¶61 I grew up in South Florida during the 1970s and 1980s. Marijuana was illegal, and the smuggling of it was commonplace. I remember seeing bales of marijuana washing ashore in Palm Beach County after smugglers dumped their illicit cargo while being pursued by the U.S. Coast Guard. I now live in the state of Washington where, in 2012, voters approved Initiative 502 by 55.7 percent to 44.3 percent, allowing possession of up to 1 ounce of marijuana for recreational use. I have gone into marijuana shops, and I now regularly see billboards advertising mari-
juana in Spokane. It is a surreal change for someone who grew up during the “Just Say No” era and has worked in the criminal justice system, in which countless people have been convicted of marijuana possession and distribution crimes.

¶62 This shift is not simply cultural: 10 states have legalized recreational use marijuana, and 33 states have legalized medical marijuana. More states will likely follow, and eventually the federal government will lift its prohibition on recreational use marijuana. The important question now is how the federal and state governments will regulate the recreational use marijuana industry and how those regulations will affect growers, the environment, local economies, and consumers.

¶63 Ryan Stoa focuses on natural resources law, agriculture law, water law, and environmental law. He has written many articles about marijuana cultivation and the burgeoning marijuana industry, and this book is a culmination of his scholarship in the field. The book covers much terrain: the history of legal and illegal marijuana cultivation in the United States, marijuana genetics, the environmental impact of marijuana cultivation, the economic impact in rural communities, and solutions to improving the quality and variety of marijuana that are environmentally and financially sustainable.

¶64 The overall theme of the book is that legalization of marijuana has created an opportunity for states to create regulatory systems that encourage environmentally and economically sustainable marijuana cultivation. Stoa advocates for a regulatory system that supports small-scale, locally owned “craft marijuana” farms that focus on quality and environmental sustainability instead of industrial, high-volume agricultural operations that generally produce an inferior monoculture crop and exact a high environmental cost.

¶65 Stoa argues that the best way to categorize marijuana farmers is an appellation of origin model, similar to that of the wine industry. Appellations of origin are “a special kind of geographical indication generally consisting of a geographical name or a traditional designation used on products which have a specific quality or characteristics that are essentially due to the geographical environment in which they are produced.” Under the appellation of origin system, each step in cultivation and production is closely monitored and controlled, yielding a local and sustainable industry focused on providing consumers with more variety and quality, while also providing marijuana farmers with potentially higher profits. In addition, an appellation of origin system would provide more transparency and product information to consumers.

¶66 Stoa discusses the advantages and disadvantages of both the outdoor and indoor cultivation of marijuana, ultimately concluding that state regulatory regimes should encourage both types of cultivation. The book also informatively addresses the environmental impact of marijuana cultivation, from water rights to energy consumption, as well as the relationship between the hemp industry and marijuana cultivation.

¶67 In all, Craft Weed: Family Farming and the Future of the Marijuana Industry is a well-written and researched book. It is thoughtful and worthwhile for every politician, activist, academic, and concerned citizen interested in the complexities of marijuana legalization and its impact on agricultural policy, the environment, local economies, and land use. This book is highly recommended for all library types.


 Reviewed by Susan David deMaine*

 §68 The fundamental question Judge Jeffrey Sutton, United States Court of Appeals for the Sixth Circuit, asks in *51 Imperfect Solutions: States and the Making of American Constitutional Law* is this: why are we throwing away our second shot? (Sutton refers to basketball while I think *Hamilton*, but it works either way.) Why are lawyers and judges looking only to the federal constitution for individual rights protections when the state constitutions offer another shot? Why are judges interpreting state constitutions to mean the same thing as the federal constitution, as interpreted by the U.S. Supreme Court, when doing so is unnecessary as well as unavailing as to the purposes and benefits of federalism? In Short, Sutton argues that state constitutions have much to offer in terms of protecting individual rights, that the states are effective and appropriate forums for experimentation with constitutional decisions, and that lawyers and judges ignore state constitutions in favor of our national constitution and its jurisprudence to our own detriment.

 §69 Sutton provides several reasons for favoring more exploration of state constitutional law over federal constitutional law. For one, it is more in keeping with the federalist nature of the United States to use state law first and turn to national law only when it would provide greater protection for the individual than state law. In addition, the states are more manageable petri dishes in which to be innovative and experiment with new constitutional protections. It is far easier to make changes in the law across a smaller population and geographic area than across the entire nation. Doing so also allows smaller-scale results to be evaluated before being nationalized, and comparisons become possible when states have chosen to move in different directions. Given the smaller scale, mistakes are easier to fix, too. State courts also have more freedom to be sensitive to local conditions and traditions when making decisions under the state constitution, and state constitutions often have unique language that offers opportunities for state-specific interpretations. Finally, state judges and justices are generally more answerable to the people they serve than federal judges are, and state constitutions are easier to change than our national constitution.

 §70 Sutton explores his thesis using four examples: equal protection and questions of school funding; the exclusionary rule and its subsequent exceptions in search and seizure cases; compelled sterilization with a particular emphasis on the infamous decision in *Buck v. Bell*; and flag-saluting laws, free speech, and freedom of religion. These examples illustrate different ways in which the state constitutions and courts have been or could have been used to effect change more productively than at the federal level. In some instances, what seems like a loss in the U.S. Supreme Court prompts states to act. In others, federal decisions come too early, experimentation at the state level is cut off, and the states all fall into lockstep with the federal interpretation. And in the tragic *Buck v. Bell*, the U.S. Supreme Court’s decision to uphold compelled sterilization rekindled a eugenics movement that had been dying out under the state constitutions.


¶71 Imperfect Solutions is a pleasure to read. Not only does Sutton make a radical and intriguing departure from the usual constitutional fare, but he also writes for readability. He tells a story well, with a good ear for the characters involved and an appropriate amount of detail and background for the reader. This book might be a bit challenging for readers without some legal knowledge, but not nearly as inaccessible as many books on constitutional law.

¶72 Sutton also provides a satisfying conclusion that offers real suggestions as to what the courts, both state and federal, and the legal community can do to elevate state constitutional law. Examples include bringing meaningful state constitutional decisions before the state supreme courts; briefing, arguing, and deciding state constitutional law issues first, and then moving to the national constitution only if necessary (instead of the other way around, as is often done now); choosing not to interpret state constitutions in lockstep with the U.S. Supreme Court’s interpretation of the U.S. Constitution; and teaching state constitutional law in law schools and testing it on bar exams. These suggestions are easily within the reach of the many attorneys and judges whose work is done in the state courts.

¶73 This book is highly recommended for all academic law libraries and court or government libraries. Midsized to large law firms would also benefit from buying Imperfect Solutions even though it leans toward the theoretical. Most lawyers will enjoy reading it, and it will open their eyes to a new way of thinking about our 51 constitutions and their relative importance in our federalist system.