

AMERICAN
CASEBOOK
SERIES

LAW AND JURISPRUDENCE
IN AMERICAN HISTORY
CASES AND MATERIALS

Eighth Edition



Stephen B. Presser, Jamil S. Zainaldin

WEST

**LAW AND
JURISPRUDENCE
IN AMERICAN
HISTORY
CASES AND MATERIALS**

Eighth Edition



By

Stephen B. Presser

*Raoul Berger Professor of Legal History
Northwestern University School of Law,
Professor of Business Law, Kellogg School of Management
Northwestern University*

Jamil S. Zainaldin

*President, Georgia Humanities Council
Adjunct Faculty, Department of History, Emory University*

AMERICAN CASEBOOK SERIES®

WEST®

This publication was created to provide you with accurate and authoritative information concerning the subject matter covered; however, this publication was not necessarily prepared by persons licensed to practice law in a particular jurisdiction. The publisher is not engaged in rendering legal or other professional advice and this publication is not a substitute for the advice of an attorney. If you require legal or other expert advice, you should seek the services of a competent attorney or other professional.

Nothing contained herein is intended or written to be used for the purpose of 1) avoiding penalties imposed under the federal Internal Revenue Code, or 2) promoting, marketing or recommending to another party any transaction or matter addressed herein.

American Casebook Series is a trademark registered in the U.S. Patent and Trademark Office.

COPYRIGHT © 1980, 1989, 1995 WEST PUBLISHING CO.

© West, a Thomson business, 2000, 2003, 2006

© 2009 Thomson Reuters

© 2013 LEG, Inc. d/b/a West Academic Publishing

610 Opperman Drive

St. Paul, MN 55123

1-800-313-9378

Printed in the United States of America

ISBN: 978-0-314-27857-9

PREFACE TO THE EIGHTH EDITION

There were two principal aims of this casebook when it first appeared 32 years ago. The first aim, recognizing the sad fact that most undergraduates and law students in America are woefully uninformed about general U.S. history, was for us to try to give them a basic outline, including the English background of the common law, the struggle between the Hamiltonian Federalists and the Jeffersonian Republicans in the Early Republic, the commercial expansion of the country in the beginning of the Nineteenth Century, the Civil War, the Gilded Age, the Progressive Era, the New Deal, the Warren Court Era, and the current struggle between the advocates of a living constitution and the proponents of original understanding. The course begins with the battle between Sir Edward Coke and James I over the question whether the common law should limit the King's prerogative and ends (more or less) with the impeachment of Bill Clinton, *Bush v. Gore*, and a brief peek at *NFIB v. Sebelius*, where the questions are whether the President is above the law and whether the Supreme Court is above politics. We have tried to craft a book that can be used either in undergraduate or law school courses, but, as a second special aim for the law students, we made an attempt to suggest that the basic doctrines studied in the first year of law school (contracts, torts, property, business organizations) have common themes and are linked as reflections of political, economic, social, intellectual, and cultural developments in American society.

For both undergraduates and law students, we also sought to demonstrate that the law is a means of articulating and enforcing the primary values of American society, including, in particular, restraining arbitrary power, implementing popular sovereignty, promoting economic advancement, and maintaining a separation of public and private spheres. We recognize that these four primary values are in tension, and together they contribute to a sort of schizophrenic quality in American legal institutions. This last insight also makes the book useful for teaching to foreign LLM students, particularly those from civil law countries. We stress the common law approach to legal matters, and we seek to illuminate the unique characteristics of the American common law system, which is often difficult for those trained in the civil law to fathom. Our aim for them is to suggest the greater role U.S. law and legal institutions play in the articulation of social values in America than is the case in civil law countries, as well as exploring the greater opportunity that courts have for formulating policy in our polity. Thus, we seek to make clearer why it is that in civil law countries judges are regarded essentially as bureaucratic functionaries, but in our common law country judges are inevitably rec-

ognized as creative actors with discretion to accommodate the law to changing social circumstances. Hence our occasional emphasis on judicial biography.

This casebook was strongly influenced by Presser's work with Morton Horwitz at Harvard and Zainaldin's study with Stanley Katz at Chicago. We were taught by these two titans that ideology had an important influence on law, and that law both responded to and shaped the social situation of Americans. The two of us are products of the sixties and seventies when revolution was in the air, and when idealism reigned on the campus. There is a tension in our book because one of us is a Burkean conservative, and the other is a mainstream liberal, but what we strived for in the casebook was a teaching tool that could be wielded by anyone subscribing to any political, social, economic, or ideological view. As one early reviewer of our casebook, William Nelson, noted, we were also rather profoundly influenced by Critical Legal Studies, and its understanding that politics played an important if not the most important role in the formation of American law. We also understood (and still understand) that similar themes are to be found in the development of public and private law, and that profound Constitutional change (for example that which was manifest in the early years of the republic, in the Civil War, and in the New Deal) is followed by sweeping changes in private law (the formative era of American common law in the early nineteenth century, the laissez-faire doctrines of the late nineteenth and early twentieth centuries, and the redistributive private law doctrines of the late twentieth and early twenty-first centuries).

As already indicated, we pay a great amount of attention to important judges, including Sir Edward Coke, John Marshall, Samuel Chase, Oliver Wendell Holmes, Jr., Earl Warren, Skelly Wright, Sandra Day O'Connor, Anthony Kennedy, and Antonin Scalia, but we have also tried to suggest that the law is also formed and influenced by executives, such as Alexander Hamilton, Thomas Jefferson, Abraham Lincoln and Franklin Roosevelt and by lawyer-activists and lawyer-scholars such as Andrew Hamilton, Robert Rantoul, David Dudley Field, Herbert Wechsler, Alexander Bickel, Arthur Allen Leff, and Cass Sunstein. Accordingly we have our students read not only great cases (e.g. *Dartmouth College*, *Schechter Poultry*, *Jones & Laughlin*, *Planned Parenthood v. Casey*, *Lee v. Weisman*, *Williams v. Walker-Thomas*, *Bush v. Gore*), but also law review articles (Wechsler's "Neutral Principles," Llewellyn's "Some Realism about Realism," Leff's "Some Realism about Nominalism" etc.) and some key documents (for example, the Declaration of Independence, The Pennsylvania Constitution of 1776, the Massachusetts Constitution of 1780, The Federal Constitution, and The Seneca Falls Resolutions, and the articles of Impeachment brought against Samuel Chase and the report of the special prosecutor in the impeachment proceedings against William Jefferson Clinton).

Early editions of the casebook were somewhat traditional in outlook, emphasizing the evolution of public and private law doctrines, but subsequent revisions have tried to come to grips with controversial issues involving gender, race, liberty, privacy, and redistribution. The last Chapter of the casebook, for example, called "The Battle for the Soul of the Legal Academy," is an exploration of law and economics, critical legal studies, law and literature and feminism, and how these academic meta-theories may have contributed to Constitutional developments involving race, religion, and abortion, to mention just the most salient topics. The casebook, then, seeks to limn not only doctrinal and constitutional change, but also the issues that have dominated legal education, and to illuminate some of the struggles in legal practice and in the courts.

Accordingly, since the second edition we have called the casebook "Law and Jurisprudence in American History" to emphasize that the course is not just about the development of doctrine, but is also about the manner in which Americans have disagreed on the nature of law itself. The materials tell the story of a movement from the traditional English way of thinking about law as a reflection of a divinely-ordained order to the modern American Holmesian notion of law as what is currently regarded as convenient. While much of the course addresses transformations in American law and jurisprudence, there is still an effort to suggest that ways of thinking about the law, and legal doctrines, characteristically endure, so that even today, one can find traces of natural law thinking, and one can find echoes of the laissez-faire doctrines that dominated in the late nineteenth and early twentieth century jurisprudence. Less explicitly, but still emphatically, we try to present law as a discipline with a strong moral dimension, and there is within this book what Paul Carrington called a "romantic" element of the law, the fond belief that there is such a thing as the rule of law, and that even though Thrasymachus may not have gotten it completely wrong, there is still, in American law and jurisprudence, the ability to restrain the lash of power in the interest of the whole society.

This eighth edition eliminates the previous seven prefaces, and adds to the seventh edition additional materials on the Constitution and Slavery, a long note on *NFIB v. Sebelius* (the ACA or "Obamacare" decision), and references to many new monographs on legal and constitutional history which will be found in expanded notes and comments on many topics. We have also sought to correct some of the inevitable minor glitches which creep into a text after several decades. We are grateful to all of our colleagues who made suggestions for changes, and, in particular to Bret Boyce, a professor at the University of Detroit Mercy School of Law (and a former student of Presser's) who very graciously combed virtually the entire text for errors and omissions. Presser's three law school research assistants, Cheryl Friedman, Kelly Hamren-Anderson, and Andrew Hess, also reviewed the manuscript, and performed many other helpful tasks to

bring this edition to publication. We remain grateful to a succession of wonderful editors and officials at West, including, in particular, Louis Higgins, Bonnie Karlan, and Roxanne Birkel, and, for this edition, Greg Olson.

As is true for most of our fellows who toil in the vineyards of American Legal History, it is our belief that American law and American society are inseparably intertwined. Tocqueville got it right when he claimed that sooner or later every important American political issue ends up in the courts. The strengths and weaknesses, the nobility and shame, the high aspirations and the immediacy of self-interested actors work their way through our national history equally as through law. We make, actually, grander claims for this book and for our discipline. Accordingly, it should come as no surprise that here and there in this book we sprinkle our commentary with citations to the ancients of Greece and Rome—deep thinkers whose illumination of the human condition is never out of date. Our work is based on a confidence in our American Constitutional system, one that seeks justice for the whole society even as it promotes the rights of individuals. In American history, as it was with the ancients, this is never quite done with the purity of ideas and consistency of thought that some might wish for. True to Plato’s allegory of the cave and St. Paul’s articulation of the thought that we see but “through a glass, darkly,” we think the record of history is one of grasping at thoughts and ideas, of imperfectly achieved goals and aspirations. Perfection and perfect consistency cannot be attained on this orb, and this is as it must be. For us Americans, in particular, when we cease changing, we cease living. Our law is for our lives, but it is also part of a conversation stretching back thousands of years and across many civilizations. This humbling and yet ennobling aspect of American jurisprudence is what we seek to impart to the users of this text.

STEPHEN B. PRESSER

JAMIL S. ZAINALDIN

Chicago, Illinois
Atlanta, Georgia
December 2012

TABLE OF CASES

The principal cases are in bold type.

Cases

A.L.A. Schechter Poultry Corp.	
v. United States -----	968
Ableman v. Booth-----	513
Addyston Pipe & Steel Co. v. United	
States-----	891
Addyston Pipe and Steel Co. v.	
United States-----	891
Adkins v. Children's Hospital of	
Dist. of Columbia-----	979
Allgeyer v. Louisiana-----	618
Almy v. Harris-----	784
Andover and Medford Turnpike	
Corp. v. Abraham Gould -----	409
Arthur Andersen LLP v. United	
States-----	1397
Berea College v. Kentucky-----	619
Black & White Taxicab & Transfer Co.	
v. Brown & Yellow Taxicab &	
Transfer Co.-----	426
Boston Glass Manufactory v. Binney	
-----	828
Boyles v. Kerr-----	1119
Bradwell v. Illinois -----	752
Britton v. Turner-----	838
Brown v. Board of Educ. -----	1028
Callender v. Marsh-----	375
Carey v. Berkshire Railroad Co.---	838
Chisom v. Roemer-----	449
Civil Rights Cases-----	618
Commissioners of Brown County v.	
Butt-----	365
Commonwealth v. Aves -----	504
Commonwealth v. Hunt -----	839
Croton Turnpike Road Co. v. Ryder	794
Cucullu v. Union Ins. Co.-----	413
Currie's Administrators v. The	
Mutual Assurance Society ----	384
Dartmouth College v.	
Woodward -----	389, 398
Dillon v. Legg-----	1118
Doe v. Bolton-----	1310
Donelly v. Vandenberg -----	782
Dudgeon v. United Kingdom-----	1394
Edwards v. Aguillard-----	890
Ellis v. Marshall -----	406
Embs v. Pepsi-Cola Bottling Co.---	1117
Erie Railroad Co. v. Tompkins-----	426
Farwell v. Boston and Worcester	
Rail Road Corp. -----	830
Gates v. Jensen-----	1121

George W. Bush and Richard	
Cheney, Petitioners v. Albert	
Gore, Jr., et al. -----	1360
Gibbons v. Ogden-----	794
Gonzales v. Raich-----	1397
Goulding v. Skinner -----	339
Gratz v. Bollinger-----	1392
Griswold v. Connecticut-----	1313
Grutter v. Bollinger-----	1392
Hawkins v. Bleakly-----	927
Hayward v. Leonard-----	838
Helling v. Carey-----	1120
Hentz v. The Long Island	
Railroad Co. -----	376
Holden v. Hardy-----	964
Hollingsworth v. The Betsey-----	187
In re Debs -----	900
Ingraham v. Hutchinson-----	358
Ives v. South Buffalo Ry. Co.-----	927
Javins v. First Nat. Realty Corp.---	1122
Kelo v. New London-----	382, 1123, 1397
Kirksey v. Kirksey -----	1085
Kline v. 1500 Massachusetts Ave.	
Apt. Corp.-----	1121
Lawrence v. Texas-----	718, 1394
Lee v. Weisman -----	1316
Lexington & Ohio Railroad Co. v.	
Applegate-----	379
Livingston v. Van Ingen -----	785
Lochner v. New York-----	618, 964
Lovelace v. Astra Trading	
Corp. -----	1110
MacPherson v. Buick Motor Co.	
-----	1104
Marbury v. Madison-----	398
Maria v. Surbaugh-----	499
McCreary County v. ACLU-----	1397
Mercein v. People ex rel. Barry----	722
Minor v. Happersett-----	767
Monell v. Department of Social	
Services of the City of New York	
-----	1118
Monroe v. Pape-----	1118
Morehead v. People of State of New	
York ex rel. Tipaldo-----	981
Morrison v. Olson-----	1360
Muller v. Oregon-----	965
National Labor Relations Bd. v.	
Jones & Laughlin Steel	
Corp. -----	983
New York Cent. R. Co. v. White----	927
Newburgh & C. Turnpike Road	
Co. v. Miller-----	794
NFIB v. Sebelius-----	1398

Panama Refining Co. v. Ryan-----	976	Van Ness v. Pacard-----	348
Parker v. Foote -----	353	Van Orden v. Perry -----	1397
Patten v. Halsted-----	361	Weisz v. Parke-Bernet Galleries	
Patterson v. Walker-Thomas		-----	1094, 1099
Furniture Co.-----	1090	West Coast Hotel Co. v. Parrish ---	979
People ex rel. Barry v. Mercein----	717	West Virginia State Board of	
Planned Parenthood of		Education v. Barnette-----	1334
Southeastern Pennsylvania v.		White v. Flora and Cherry -----	333
Casey -----	1289	Williams v. Walker-Thomas	
Plessy v. Ferguson-----	619	Furniture Co.-----	1087
Prigg v. Pennsylvania -----	541	Willings et al. v. Blight -----	184
Proprietors of Charles River		Wilson v. New-----	965
Bridge v. Proprietors of			
Warren Bridge -----	795		
Railroad Retirement Bd. v. Alton			
R. Co. -----	976		
Rice et al. v. The Polly & Kitty-	179		
Richardson v. Spencer-----	366		
Scott v. Sandford-----	552		
Searight v. Calbraith-----	330		
Selma and Tennessee Rail Road			
Co. v. Tipton-----	414		
Seymour v. Delancey -----	337, 338		
Shaw v. Reno-----	449		
Slaughter-House Cases -----	617		
Standard Oil Co. v. United States-	891		
Stark v. Parker -----	838		
State v. Mann -----	499		
Stell v. Savannah-Chatham			
County Bd. of Educ.-----	1034		
Stenberg v. Carhart-----	1310		
Swift v. Tyson-----	422		
Texas & Pac. Ry. v. Behymer -----	1120		
The People ex rel. Barry v.			
Mercein-----	724		
The T.J. Hooper -----	1120		
The United States v. Mitchell --	189		
The United States v. Vigol -----	188		
Thomas v. Winchester -----	1099		
Thompson et al. v. The			
Catharina-----	181		
U.S. v. Taylor -----	766		
United States v. Anthony-----	759		
United States v. Butler -----	978		
United States v. Coolidge -----	406		
United States v. E.C. Knight			
Co.-----	868		
United States v. Henfield-----	221		
United States v. Hudson &			
Goodwin-----	239		
United States v. Insurgents -----	195		
United States v. James			
Thompson Callender -----	253		
United States v. John Fries ----	204		
United States v. Lopez-----	993		
United States v. Matthew Lyon	243		
United States v. Porter -----	194		
United States v. Ravara -----	228		
United States v. Robert Worrall			
-----	229		
United States v. Thomas Cooper			
-----	246		
United States v. Trans-Missouri			
Freight Ass'n-----	881		

TABLE OF AUTHORITIES

Other Authorities

Abel, Richard, <i>American Lawyers</i> (1989)-----	302
Ackerman, Bruce A., <i>Law, Economics, and the Problem of Legal Culture</i> , 1986 <i>Duke L.J.</i> 929 (1986)-----	1175
Ackerman, Bruce A., <i>We the People: Foundations</i> 81–104 (1991)-----	176
Ackerman, Bruce, <i>We the People: Foundations</i> 81–104 (1991)-----	968
Aichele, Gary J., <i>Legal Realism and Twentieth Century American Jurisprudence</i> (1990)-----	1014
Aleinikoff, T. Alexander, <i>Constitutional Law in the Age of Balancing</i> , 96 <i>Yale L.J.</i> 943–944 (1987)-----	1313
Alexander, G., <i>The Dead Hand and the Law of Trusts in the Nineteenth Century</i> , 37 <i>Stan.L.Rev.</i> 1189 (1985)-----	1207
Alexander, Gregory S., <i>Time and Property in the American Republican Legal Culture</i> , 66 <i>N.Y.U. L.Rev.</i> 273 (1991)-----	359
Alexander, James, <i>A Brief Narrative of the Case and Trial of John Peter Zenger Printer of the New York Weekly Journal</i> (1735)-----	44
Allit, Patrick, <i>Catholic Intellectuals and Conservative Politics in America, 1950–1985</i> , 1993-----	937
Alschuler, Albert W. and Deiss, Andrew G., <i>A Brief History of the Criminal Jury in the United States</i> , 61 <i>U.Chi.L.Rev.</i> 867 (1994)-----	267
Alschuler, Albert W., <i>Law Without Values: The Life, Work and Legacy of Oliver Wendell Holmes</i> (2000)	963
Amar, Akhil Reed, <i>Philadelphia Revisited: Amending the Constitution Outside Article V</i> , 55 <i>U.Chi.L.Rev.</i> 1043 (1988)-----	134
Anastaplo, George, <i>Law and Popular Culture: Nature and Convention in Blackstone's Commentaries: The Beginning of an Inquiry</i> , 22 <i>Legal Stud. Forum</i> 161 (1998)-----	347
Andrews, William S., <i>Critical Essays on Frederick Douglass (Critical Essays on American Literature Series, 1991)</i> -----	482

Arieli, Yehoshua, <i>Individualism and Nationalism in American Ideology</i> , 1964-----	780
Ariens, Michael, <i>A Thrice-Told Tale, or Felix the Cat</i> , 107 <i>Harv.L.Rev.</i> 620-----	982
Aries, Philippe, <i>Centuries of Childhood: A Social History of Family Life</i> , 1962-----	688
Armitage, Kelley, <i>Denial Ain't Just a River in Egypt: A Thorough Review of Judicial Elections, Merit Selection and the Role of State Judges in Society</i> , 29 <i>Cap. U.L.Rev.</i> 625 (2002)-----	450
Armstrong, George M. Jr., <i>From the Fetishism of Commodities to the Regulated Market: The Rise and Decline of Property</i> , 82 <i>Nw.U.L.Rev.</i> 79 (1988)-----	1121
Arner, Douglas, <i>Article in Tribute: Development of the American Law of Corporations to 1832</i> , 55 <i>SMU L.Rev.</i> 23 (2002)-----	405
Arnold, Morris S., <i>Introduction to Select Cases of Trespass from The King's Courts, 1307–1399</i> (Morris S. Arnold ed., 1985)-----	375
Arrow, Dennis R., <i>Pomobabble: Postmodern Newspeak and Constitutional Meaning for the Uninitiated</i> , 96 <i>Mich. L. Rev.</i> 461 (1997)-----	1288
Arrow, Dennis W., <i>Spaceball (Or, Not Everything That's Left Is Postmodern)</i> , 54 <i>Vand. L. Rev.</i> 2381 (2001)-----	1288
Atleson, J., <i>Values and Assumptions in American Labor Law</i> (1983) -	1207
Auerbach, Jerold S., <i>Unequal Justice: Lawyers and Social Change in Modern America</i> (1976)-----	302
Avery, Dianne and Konefsky, Alfred S., <i>The Daughters of Job: Property Rights and Women's Lives in Mid-Nineteenth-Century Massachusetts</i> , 10 <i>Law & History Rev.</i> 323 (1992)-----	714
Ayers, Edward L., <i>Vengeance and Justice: Crime and Punishment in the 19th Century American South</i> , 19–20, 182–186, 191–195, 218–222 (1984)-----	633, 636
Ayers, Edward, <i>The Promise of the New South</i> , 1992-----	780

Aynes, Richard L., <i>Bradwell v. Illinois</i> : Chief Justice Chase's Dissent and the Sphere of Women's Work, 59 La.L.Rev. 521 (1999)-----	758	Baker, Kara, Is Justice For Sale in Ohio? An Examination of Ohio Judicial Elections and Suggestions for Reform Focusing on the 2000 Race for the Ohio Supreme Court, 35 Akron L.Rev. 159 (2001)-----	450
Aynes, Richard L., Constricting the Law of Freedom: Justice Miller, The Fourteenth Amendment, and the <i>Slaughter-House</i> Cases, 70 Chicago-Kent L.Rev. 627 (1994)-----	646	Balkin, Jack M. and Levinson, Sanford, Legal Historicism and Legal Academics: The Role of Law Professors in the Wake of <i>Bush v. Gore</i> , 90 Geo. L.J. 173 (2001)----	1383
Aynes, Richard L., On Misreading John Bingham and the Fourteenth Amendment, 103 Yale L.J. 57 (1993)-----	646	Balkin, Jack M. and Levinson, Sanford, Understanding the Constitutional Revolution, 87 Va. L. Rev. 1045, 1067 (2001)-----	1385
Ayres, Ian and Gertner, Robert, Filling Gaps in Incomplete Contracts: An Economic Theory of Default Rules, 99 Yale L.J. 87 (1989)-----	1085	Balkin, Jack M., <i>Bush v. Gore</i> and the Boundary Between Law and Politics, 110 Yale L.J. 1407, 1427 (2001)-----	1381, 1382
Baade, Hans W., Original Intent in Historical Perspective: Some Critical Glosses, 69 Tex.L.Rev. 1001 (1991)-----	176	Balkin, Jack M., ed., <i>What Brown v. Board of Education Should Have Said</i> (2001)-----	1043
Babcock, Barbara Allen, Clara Shortridge Foltz: Constitution-Maker, 66 Ind.L.J. (1991)-----	759	Balkin, Jack M., The Use that the Future Makes of the Past: John Marshall's Greatness and Its Lessons for Today's Supreme Court Justices, 43 Wm and Mary L. Rev. 1321 (2002)-----	398
Babcock, Barbara Allen, Clara Shortridge Foltz: First Woman, 30 Ariz.L.Rev. 673 (1988)-----	759	Bannister, Robert C., Social Darwinism: Science and Myth in Anglo-American Social Thought, 1988-----	780
Babcock, Barbara Allen, Reconstructing the Person: The Case of Clara Shortridge Foltz, in <i>Revealing Lives: Autobiography, Biography, and Gender</i> 131 (Susan Groag Bell & Marilyn Yalom eds., 1990)-----	759	Barnett, Randy E., The Original Meaning of the Commerce Clause, 68 U.Chi.L.Rev. 101 (2001)-----	993
Bailyn, Bernard, comments, in 1 Pamphlets of the American Revolution 411-13 (1965)-----	81	Baron, Jane B., Resistance to Stories, 67 S.Cal.L.Rev. 255 (1994)-----	1252
Bailyn, Bernard, ed., 1 Pamphlets of the American Revolution 487 (1965)-----	118	Baron, Jane B., The Many Promises of Storytelling in Law, 23 Rutgers L.J. 79 (1991)-----	1252
Bailyn, Bernard, The Debate on the Constitution (2 vols., 1993)-----	168	Barry, Kathleen, Susan B. Anthony: A Biography of a Singular Feminist (1988)-----	688, 768
Bailyn, Bernard, The Ideological Origins of the American Revolution (1967)-----	43, 539, 540	Bartlett, Irving H., John C. Calhoun: A Biography (New York, 1993) --	532
Bailyn, Bernard, The Ordeal of Thomas Hutchinson 70-107-----	98	Bartlett, Katherine T., Feminist Legal Scholarship: A History through the Lens of the California Law Review, 100 Cal. L. Rev. 381 (2012)-----	1284
Bailyn, Bernard, The Ordeal of Thomas Hutchinson 70-107 (1974)-----	43	Basch, Norma, In the Eyes of the Law: Women, Marriage, and Property in Nineteenth Century New York 168 (1982)-----	695, 742
Bailyn, Bernard, The Origins of American Politics (1965)-----	43	Beard, Charles, Economic Interpretation of the Constitution of the United States (1913)-----	539
Baker, John H., An Introduction to English Legal History (2002)-----	10	Beccaria, Cesare, On Crimes and Punishments and Other Writings, translated by Richard Davies, edited by Richard Bellamy (Cambridge Texts in the History of Political Thought, 1995)-----	150
Baker, John H., An Introduction to English Legal History 456-59 (3d ed. 1990)-----	375	Becker, Carl, The Declaration of Independence (1922)-----	121
Baker, John H., The Common Law Tradition: Lawyers, Books, and the Law (2003)-----	5		
Baker, John H., The Legal Profession and the Common Law. Historical Essays (1986)-----	5, 302		

Behrens, Mark A. & Silverman, Cary, The Case for Adopting Appointive Judicial Selection Systems for State Court Judges, 11 Cornell J. L. & Pub. Pol'y 273 (2002) -----	450	Great Depression: A History of the American Worker, 1933–1941, 1985 -----	937
Belknap, Michael R., editor, American Political Trials 119 (Revised, Expanded Edition, 1994) -----	918	Bernstein, Morris D., Learning From Experience: Montaigne, Jerome Frank and the Clinical Habit of Mind, 25 Cap.U.L.Rev. 517 (1996) -----	1006
Belknap, Michael R., Federal Law and Southern Order: Racial Violence and Constitutional Conflict in the Post- <i>Brown</i> South (1987)-----	1034	Bernstein, Richard B., Wrestling with Jefferson: The Struggles of a Biographer, 46 N.Y.L.Sch.L.Rev. 757 (2003)-----	150
Bellah, Robert N., et al., Habits of the Heart: Individualism and Commitment in American Life, 1985 -----	937	Beth, Loren P., John Marshall Harlan: The Last Whig Justice (1992)----	880
Bender, Thomas, ed., Capitalism and Abolitionism as a Problem in Historical Interpretation (1992)-	468	Bickel, Alexander, The Supreme Court and the Idea of Progress (1970) 1032	
Berg, Thomas, Religious Liberty in America at the End of the Century, 16 J. Law & Religion 187 (2001) -----	1335	Bienen, Leigh B. and Rottinghaus, Brandon, Learning from the Past, Living in the Present: Understanding Homicide in Chicago, 1870–1930, 92 J.Crim.L. & Criminology 437 (2003) -----	682
Berger, Raoul, Federalism: The Founders' Design (1987)-----	176	Binder, Guyora & Weisberg, Robert, Literary Criticisms of Law (2000) -----	1249
Berger, Raoul, Government by Judiciary: The Transformation of the Fourteenth Amendment (1977) -----	646	Binder, Guyora, Did the Slaves Author the Thirteenth Amendment? An Essay in Redemptive History, 5 Yale J.L. & Human. 471 (1993) -----	475
Berger, Raoul, Impeachment: The Constitutional Problems 53–102 (1973)-----	293	Binder, Guyora, The Poetics of the Pragmatic: What <i>Literary Criticisms of Law</i> Offers Posner, 53 Stan.L.Rev. 1509 (2001) -----	1249
Berger, Raoul, The Transfiguration of Samuel Chase: A Rebuttal, 1992 Brigham Young U.L.Rev. 559----	216	Blackmon, Douglas A., Slavery By Another Name: The Re- Enslavement of Black Americans From the Civil War to World War II (New York, 2008) -----	603
Berlin, Ira, et. al, Slaves No More: Three Essays on Emancipation and the Civil War (New York, 1992)-	602	Blacks, Thomas Jefferson: An Intimate History (1974)-----	149
Berlin, Ira, Favreau, Marc, and Miller, Steven F., eds. Remembering Slavery (New Press, in association with the Library of Congress, 1998) -----	477	Blackstone, William, Commentaries on the Laws of England 165–166 (1768)-----	359
Berlin, Ira, Many Thousands Gone: The First Two Centuries of Slavery in North America (1998)-----	458, 468	Blight, David W., Race and Reunion: The Civil War in American Memory (Cambridge, MA, 2001) -----	603
Berman, Harold J., Law and Revolution: The Formation of the Western Legal Tradition (1983)---	10	Blinka, Daniel D., The Germ of Rottedness: Federal Trials in the New Republic 1789–1807, 36 Creighton L.Rev. 135 (2003)-----	216
Bernstein, David E., Rehabilitating Lochner: Defending Individual Rights against Progressive Reform (2011)-----	967	Bloom, Allan, The Closing of the American Mind (1986) -----	1170
Bernstein, David E., Rehabilitating Lochner: Defending Individual Rights against Progressive Reform 46 (2011)-----	618, 965	Bloomfield, Maxwell, American Lawyers in a Changing Society, 92– 99, 104–108, 112–122 (1976)----	697
Bernstein, David E., Roots of the Underclass: The Decline of Laissez- Faire Jurisprudence and the Rise of Racist Labor Legislation, 43 Am.U.L.Rev. 85 (1993)-----	995	Blumrosen, Alfred W. and Blumrosen, Ruth G., Slave Nation: How Slavery United the Colonies and Sparked the American Revolution (2005)	540
Bernstein, Irving, A Caring Society: The New Deal, the Worker, and the		Bodnar, John, The Transplanted (1985)-----	909
		Boorstin, Daniel, The Lost World of Thomas Jefferson (1948) -----	149

Boorstin, Daniel, <i>The Mysterious Science of the Law</i> iii (Peter Smith, ed. 1973) -----	347	Brisbin, Richard A., <i>Justice Antonin Scalia & the Conservative Revival</i> (1997)-----	1335
Boorstin, Daniel, <i>The Mysterious Science of the Law: An Essay on Blackstone's Commentaries</i> (1941) -----	329	Broder, David S., <i>A Party Split, The Washington Post</i> , August 7, 1996 -----	737
Bork, Robert, <i>The Tempting of America: The Political Seduction of the Law</i> (1990)-----	176, 1059	Brophy, Alfred L., <i>A Revolution which Seeks to Abolish Law, Must End Necessarily in Despotism: Louisa McCord and Antebellum Southern Legal Thought</i> , 5 <i>Cardozo Women's L.J.</i> 33 (1998)-----	571
Bowen, Catherine Drinker, <i>The Lion and the Throne</i> 291-306 (1956) ---	10	Brophy, Alfred L., <i>Humanity, Utility and Logic in Southern Legal Thought: Harriet Beecher Stowe's Vision in Dred: A Tale of the Great Dismal Swamp</i> , 78 <i>Boston U.L.Rev.</i> 113 (1998) -----	503
Bowman, Cynthia Grant and Schneider, Elizabeth M., <i>Feminist Legal Theory, Feminist Law-Making, and the Legal Profession</i> , 67 <i>Fordham L.Rev.</i> 249 (1998) -	1287	Brophy, Alfred L., <i>Let Us Go Back and Stand upon the Constitution: Federal-State Relations in Scott v. Sandford</i> , 90 <i>Col. L.Rev.</i> 192 (1990) -----	571
Bowman, Cynthia Grant, <i>Bibliographical Essay: Women and the Legal Profession</i> , 7 <i>J.of Gender, Social Policy & the Law</i> 149 (1998-1999) -----	759	Brophy, Alfred L., <i>Over and Above . . . There Broods a Portentous Shadow,—the Shadow of Law: Harriett Beecher Stowe's Critique of Slave Law in Uncle Tom's Cabin</i> , 12 <i>J. Law & Religion</i> 457 (1996) ----	503
Bowman, Cynthia Grant, <i>Street Harassment and the Informal Ghettoization of Women</i> , 106 <i>Harv.L.Rev.</i> 517 (1993) -----	1314	Brophy, Alfred L., <i>The Rule of Law in Antebellum College Literary Addresses: The Case of William Greene</i> , 31 <i>Cumb.L.Rev.</i> 231 (2001) -----	571
Boyd, S., ed., <i>The Whiskey Rebellion: Past and Present Perspectives</i> (1985)-----	196	Brown, Gillian, <i>Domestic Individualism: Imagining Self in Nineteenth-Century America</i> , 1990 -----	780
Boyer, Allen D., ed., <i>Law Liberty and Parliament: Selected Essays on the Writings of Sir Edward Coke</i> (2004) -----	10	Brown, John R., <i>Tribute: Admiralty Judges: Flotsam on the Sea of Maritime Law?</i> , 25 <i>Hous.J.Int.L.</i> 257 (2003) -----	186
Boyer, Allen D., <i>Sir Edward Coke and the Elizabethan Age</i> (2003)-----	5, 10	Bruchey, Stuart, <i>Enterprise: The Dynamic Economy of a Free People</i> , 1990 -----	780
Boyer, Paul, <i>Urban Masses and Moral Order in America, 1820-1920</i> (1978) -----	421	Bruchey, Stuart, <i>The Roots of American Economic Growth 1607-1861</i> (1965) -----	333
Boyle, <i>The Politics of Reason: Critical Legal Theory and Local Social Thought</i> , 133 <i>U.Pa.L.Rev.</i> 685 (1985)-----	1208	Buckley, F.H. and Ribstein, Larry E., <i>Calling a Truce in the Marriage Wars</i> , 2001 <i>U. Ill.L.Rev.</i> 561 ----	719
Breyer, Stephen, <i>Madison Lecture: Our Democratic Constitution</i> , 77 <i>N.Y.U.L.Rev.</i> 245 (2002)-----	1335	Buckley, F.H., ed., <i>The Fall and Rise of Freedom of Contract</i> (1999) --	1075
Bridwell, R. and Whitten, R., <i>The Constitution and the Common Law</i> (1977)-----	435	Buckley, William F. Jr., ed., <i>American Conservative Thought in the Twentieth Century</i> , 1970-----	938
Bridwell, R. Randall, <i>Theme v. Reality in American Legal History</i> , 53 <i>Ind.L.J.</i> 450, 473 -----	430	Burns, Robert P., <i>A Theory of the Trial</i> 9 (1999)-----	66
Brinig, Margaret F. and Allen, Douglas W., <i>These Boots are Made for Walking: Why Most Divorce Filers are Women</i> , 2 <i>Am. L. & Econ. Rev.</i> 126 (2000) -----	720	Butler, Jon, <i>Becoming America: The Revolution before 1776</i> (2000) ---	329
Brinkley, Alan, Polsby, Nelson W., and Sullivan, Kathleen M., <i>New Federalist Papers: Essays in Defense of the Constitution</i> (1997) -----	179	Calhoun, Charles W., ed., <i>The Gilded Age: Essays on the Origins of Modern America</i> , 1996 -----	780
Brinkley, Alan, <i>The End of Reform: New Deal Liberalism in Recession and War</i> , 1995 -----	937		

Calhoun, John C., The Marx of the Master Class, Chapter IV of Richard Hofstadter, <i>The American Political Tradition and The Men Who Made It</i> (Vintage Books ed., 1974) -----	465
Calhoun, John C., Works 630–632 (R.K. Cralle, ed. 1853–1855, repr. 1968)-----	465
Campbell, Bruce, Dartmouth College as a Civil Liberties Case: The Formation of Constitutional Policy, 70 Ky.L.J. 643 (1982)-----	397
Carp, E. Wayne, ed., <i>Adoption in America: Historical Perspectives</i> (2002)-----	720
Carp, E. Wayne, <i>Family Matters: Secrecy and Disclosure in the History of Adoption</i> (1998)-----	720
Carrington, Paul D. & Long, Adam R., The Federalist Society Judicial Selection White Paper Task Forces, <i>Judicial Selection White Papers: The Case for Judicial Appointments and the Case for Partisan Judicial Elections</i> , 22 U. Tol. L. Rev. 353, 393 (2002)-----	450
Carrington, Paul D. & Long, Adam R., The Independence and Democratic Accountability of the Supreme Court of Ohio, 30 Cap.U.L.Rev. 455 (2002)-----	450
Carrington, Paul D., <i>Diversity!</i> , 1992 Utah L.Rev. 1105-----	1229
Carrington, Paul D., Law and Economics in the Creation of Federal Administrative Law: Thomas Cooley [the first chairman of the ICC], <i>Elder to the Republic</i> , 83 Iowa L.Rev. 363 (1998)-----	890
Carrington, Paul D., <i>Of Law and the River</i> , 34 J.Legal Ed. 222 (1984)-----	1212
Carrington, Paul D., To Robert Gordon, 35 J.Legal Ed. 9 (1985)-----	1229
Carter, Lief, Book Review, 12 <i>The Law and Politics Book Review</i> 102 (2002)-----	66
Carwardine, William H., <i>The Pullman Strike</i> , 118–125 (1894)-----	898
Casebeer, Kenneth, Aliquippa: The Company Town and Contested Power in the Construction of Law, 43 Buff.L.Rev. 617 (1995)-----	995
Casto, William R., The Early Supreme Court Justices' Most Significant Opinion, 29 Ohio N.U.L.Rev. 173 (2002)-----	216
Casto, William R., The Erie Doctrine and the Structure of Constitutional Revolutions, 62 Tul.L.Rev. 907 (1998)-----	426
Casto, William R., <i>The Origins of Federal Admiralty Jurisdiction in an Age of Privateers, Smugglers, and Pirates</i> , 27 Am.J.Leg.Hist. 117 (1993)-----	186
Casto, William R., <i>The Supreme Court in the Early Republic: The Chief Justiceships of John Jay and Oliver Ellsworth</i> (1995)-----	216
Chandler, Alfred D., <i>Scale and Scope: The Dynamics of Industrial Capitalism</i> (1990)-----	421
Chandler, Alfred, <i>The Visible Hand: The Managerial Revolution in American Business</i> , 1977-----	781
Chase, Anthony, <i>American Legal Education Since 1885: The Case of the Missing Modern</i> , 30 N.Y.L.S.L.Rev. 519 (1985)-----	950
Chase, Anthony, <i>Origins of Modern Professional Education: The Harvard Case Method Conceived as Clinical Instruction in Law</i> , 5 Nova Law Journal 323 (1981)-----	950
Chase, Anthony, <i>The Birth of the Modern Law School</i> , 23 Am.J.Legal History 329 (1979)-----	950
Chernow, Ron, <i>Titan: The Life of John D. Rockefeller, Sr.</i> , 2004-----	781
Chused, Richard H., <i>Late Nineteenth Century Married Women's Property Law: Reception of the Early Married Women's Property Acts by Courts and Legislatures</i> , 29 Am.J.Leg.Hist. 3 (1985)-----	695
Chused, Richard H., <i>Married Women's Property Law: 1800–1850</i> , 71 Georgetown Law Journal 1359 (1983)-----	695
Clark, John, <i>The Social Psychology of Jury Nullification</i> , 24 Law & Psychol. Rev. 39 (2000)-----	66
Cmiel, Kenneth, <i>In retrospect: Destiny and Amnesia: The Vision of Modernity in Robert Wiebe's The Search for Order</i> , 21 <i>Reviews in American History</i> 352 (1993)----	852
Cochran, Thomas C., <i>Frontiers of Change: Early Industrialism in America</i> (1981)-----	421
Cohen, Elizabeth, <i>A Consumers' Republic: The Politics of Mass Consumption in Postwar America</i> , 2003-----	938
Colby, Eben, Note: What did the Doctrine of Unconscionability Do to the Walker–Thomas Furniture Company?, 34 Conn.L.Rev. 625 (2002)-----	1094
Comiskey, Michael, <i>Can a President Pack—or Draft—The Supreme Court? FDR and the Court in the Great Depression and World War II</i> , 57 Alb.L.Rev. 1043 (1994)-----	996
Commager, Henry Steele, <i>The Empire of Reason</i> (1977)-----	115

Conant, Michael, Federal Common-Law Crimes and Non-Statutory Crimes Against the Law of Nations, 4 Anglo-American L. Rev. 456 (1995)-----	241	Cox, Archibald, The Warren Court (1968)-----	1060
Conkin, Paul, Prophets of Prosperity: America's First Political Economists, 1980-----	780	Crawford, Jan, Roberts Switched Views to Uphold Health Care Law (July 1, 2012)-----	1399
Conrad, Stephen A., The Constitutionalism of the Common-law Mind, 13 Law & Social Inquiry 619 (1988)-----	83	Cripps, Thomas, Slow Fade to Black: The Negro in American Film, 1900-1942 (New York, 1977)-----	603
Consovoy, William S., The Rehnquist Court and End of Constitutional Stare Decisis: <i>Casey</i> , <i>Dickerson</i> and the Consequences of Pragmatic Adjudication, 2002 Utah L.Rev. 53-----	1315	Crofts, Donald W., Reluctant Confederates: Upper South Unionists in the Secessionist Crisis (Chapel Hill, 1989)-----	532
Cook, Charles M., The American Codification Movement, A Study of Antebellum Legal Reform (1981) 715		Crosskey, W.W., Politics and the Constitution 767 (1953)-----	266
Cook, Douglas H., Sir William Blackstone: A Life and Legacy Set Apart for God's Work, 13 Regent U.L. Rev. 169 (2001)-----	347	Culp, Jerome McCristal Jr., Response: Telling a Black Legal Story: Privilege, Authenticity, Blunders, and Transformation in Outsider Narratives, 82 Va. L. Rev. 69 (1994)-----	475
Cook, Nancy L., Symposium on Law, Literature and the Humanities: Outside the Tradition: Literature as Legal Scholarship: The Call to Stories: Speaking In and About Stories, 63 U. Cin. L. Rev. 95, 99 (1994)-----	475	Current, Richard N., Lincoln and the First Shot (Philadelphia, 1963)--	532
Coolidge, An Old-Fashioned Senator: Orville H. Platt 444 (1910)-----	865	Curtis, Michael Kent, Free Speech, The People's Darling Privilege: Struggles for Freedom of Expression in American History (2000)-----	268
Coontz, Stephanie, The Way We Never Were: American Families and the Nostalgia Trap, 1992-----	688	Curtis, Michael Kent, No State Shall Abridge: The Fourteenth Amendment and the Bill of Rights (1986)-----	646
Cooper, William J., Jefferson Davis: American (New York, 2001)-----	603	Cushman, Barry, A Stream of Legal Consciousness: The Current of Commerce Doctrine from <i>Swift</i> to <i>Jones & Laughlin</i> , 61 Fordham Law Rev. 105 (1992)-----	993
Cooter, Robert D., The Best Right Laws: Value Foundations of the Economic Analysis of Law, 64 Notre Dame L.Rev. 817 (1989)-----	1175	Cushman, Barry, Continuity and Change in Commerce Clause Jurisprudence, 55 Ark. L.Rev. 1009 (2003)-----	993
Cortner, Richard C., Civil Rights and Public Accommodations: The <i>Heart of Atlanta Motel</i> and <i>McClung</i> Cases (2001)-----	1033	Cushman, Barry, Rethinking the New Deal Court: the Structure of A Constitutional Revolution (1998) 982	
Cott, Nancy F., The Bonds of Womanhood: Woman's Sphere in New England, 1780-1835-----	688	Cushman, Barry, Small Differences?, 55 Ark. L. Rev. 1097 (2003)-----	994
Cottrol, Robert J., The Long, Lingering Shadow: Law, Liberalism, and Cultures of Racial Hierarchy and Identity in the Americas, 76 Tulane L. Rev. 11 (2001)-----	468	Cushman, Barry, The Secret Lives of the Four Horsemen, 83 Va.L.Rev. 559 (1997)-----	980
Cover, Robert M., Justice Accused 67-75 (1975)-----	494	Dalton, An Essay on the Deconstruction of Contract Law, 94 Yale L.J. 997 (1985)-----	1207
Cover, Robert M., Justice Accused: Antislavery and the Judicial Process 77n, 240-241 (1975)-----	503, 551	Damrosch, Leo, Tocqueville's Discovery of America (2010)-----	324
Cox, Archibald, The Role of The Supreme Court in American Government (1976)-----	1060	Daniels, Roger, Coming to America: Immigration and Ethnicity in American Life (2002)-----	421
		Daniels, Roger, Coming to America: Immigration and Ethnicity in American Life, 2002-----	781
		Davis, Allen, Spearheads for Reform: The Social Settlements and the Progressive Movement, 1890-1924, 1985-----	938

Davis, David Brion, <i>The Problem of Slavery in Western Culture</i> (1966) -----	467	Court's Anti-Congress Crusade, 51 Duke L. J. 435 (2001)-----	994
Davis, David Brion, <i>The Problem of Slavery in Western Culture</i> (1996) -----	458	Dew, Charles B., <i>Apostles of Disunion: Southern Secession Commissioners and the Causes of the Civil War</i> (Charlottesville, 2002)-----	533
Dawley, Alan, <i>Struggles for Justice: Social Responsibility and the Liberal State</i> , 1991-----	938	Diggins, John Patrick, <i>The Promise of Pragmatism: Modernism and the Crisis of Knowledge and Authority</i> , 1994-----	938
Days, Drew S. III, <i>Brown Blues: Rethinking the Integrative Ideal</i> , 34 Wm. & Mary L.Rev. 53 (1992) --	1032	Dimock, Wai Chee, <i>Deploying Law and Legal Ideas in Culture and Society: Rules of Law, Laws of Science</i> , 13 Yale J.L. & Human. 203 (2001)-----	950
De Tocqueville, Alexis, <i>Democracy in America</i> (1840) -----	308	Dionne, E.J. Jr. & Kristol, William, eds., <i>Bush v. Gore: The Court Cases and the Commentary</i> (2001)-----	1381
Dean, Eric T. Jr., <i>Reassessing Dred Scott: The Possibilities of Federal Power in the Antebellum Context</i> , 60 Conn.L.Rev. 713 (1992)-----	567	Donald, David H., <i>Charles Sumner and the Coming of the Civil War</i> (New York, 1960) -----	533
Degler, Carl N., <i>At Odds: Women and the Family in America from the Revolution to the Present</i> , 1980- 688		Donald, David H., <i>Lincoln</i> (New York, 1995)-----	533
Degler, Carl N., <i>In Search of Human Nature: The Decline and Revival of Darwinism in American Social Thought</i> , 1991 -----	938	Donohue and Ayres, <i>Posner's Symphony No. 3: Thinking About the Unthinkable</i> , 39 Stanford Law Review 791 (1987) -----	1175
Degnan, Daniel A., <i>Justice William Paterson—Founder</i> , 16 Seton Hall L.Rev. 313 (1986) -----	197	Donohue, John J. III, <i>The Law and Economics of Tort Law: The Profound Revolution</i> , 102 Harv.L.Rev. 1047 (1989)-----	1123
Delgado, Richard and Stefancic, Jean, <i>Critical Race Theory: An Annotated Bibliography</i> , 79 Va.L.Rev. 461 (1993)-----	1251	Donzelot, Jacques, <i>The Policing of Families</i> , 1979 -----	688
Delgado, Richard, <i>Storytelling for Oppositionists and Others: A Plea for Narrative</i> , 87 Mich.L.Rev. 2411 (1989)-----	1252	Dorf, Michael C. and Issacharoff, Samuel, <i>The 2001 Presidential Election Part I: Can Process Theory Constrain Courts?</i> 72 U. Colo. L. Rev. 923 (2001) -----	1384
Demos, John, <i>A Little Commonwealth: Family Life in Plymouth Colony</i> , 1970-----	688	Dos Passos, John, <i>The American Lawyer: As He Was—As He Is—As He Can Be</i> (1907) -----	302
Demos, John, <i>Past, Personal, and Present: The Family and Life Course in American History</i> , 1988 -----	688	Douglas, Davison M., <i>The Rhetorical Uses of Marbury v. Madison: The Emergence of a Great Case</i> , 38 Wake Forest L. Rev. 375 (2003) -	398
Denning, Brannon P. and Reynolds, Glenn H., <i>Lower Court Readings of Lopez, or What if the Supreme Court Held A Constitutional Revolution and Nobody Came?</i> , 2000 Wisc.L.Rev. 369 -----	993	Douglass, Frederick, <i>Autobiographies</i> (Modern Library Edition, Henry Louis Gates, ed., 1994) -----	482
Denning, Brannon P. and Reynolds, Glenn H., <i>Rulings and Resistance: The New Commerce Clause Jurisprudence Encounters the Lower Courts</i> , 55 Ark. L. Rev. 1253 (2003)-----	993	Douglass, Frederick, <i>The Oxford Frederick Douglass Reader</i> (William S. Andrews, ed. 1997) -----	482
Denning, Brannon P., <i>Book Review [of Civil Rights and Public Accommodations]</i> , 94 Law Lib. J. 141 (2002) -----	1033	Downey, Michael P., <i>Note: The Jeffersonian Myth in Supreme Court Sedition Jurisprudence</i> , 76 Wash. U.L.Q. 683 (1998) -----	268
Derber, Milton, <i>The American Ideal of Industrial Democracy, 1865–1965</i> (1970)-----	421	Dray, Philip, <i>Capitol Men: The Epic Story of Reconstruction Through the Lives of the First Black Congressmen</i> (New York, 2008)-	603
Devins, Neal, <i>Congress as Culprit: How Lawmakers Spurred on the</i>		Dreisbach, Daniel L., <i>Thomas Jefferson and the Wall of Separation between Church and State</i> (2002) -----	1335

Dubler, Ariela R., Governing through Contract: Common Law Marriage in the Nineteenth Century, 107 Yale L.J. 1885 (1998) -----	712	Limits: Railroads and Interstate Commerce 1830–1920, 55 Ark. L. Rev. 933 (2003) -----	890
DuBois, W.E.B., The Souls of Black Folk (1903, Boston reprint, 1997)603		Ely, James W. Jr., Judicial Liberalism in the Gilded Age: Appraising John Marshall Harlan, 21 Reviews in American History 57 (1993) -----	881
Dudziak, Mary L., Cold War Civil Rights: Race and the Image of American Democracy (2000) ----	1032	Ely, James W. Jr., Property Rights and Judicial Activism, 1 Geo. J. of Law & Pub. Pol. 125 (2002)-----	405
Dugdale, Robert L., The Jukes: A Study in Crime, Pauperism, Disease, and Heredity (1877) ----	678	Ely, James W. Jr., Property Rights in American History (1997) -----	1123
Dumbauld, Edward, Thomas Jefferson and the Law (1978)-----	149	Ely, James W. Jr., That due satisfaction may be made: The Fifth Amendment and the Origins of the Compensation Principle, 26 Am.J.Leg.Hist. 1 (1992)-----	359
Dumbauld, Edward, Thomas Jefferson and the Law (1979)-----	347	Ely, James W. Jr., The Chief Justiceship of Melville W. Fuller, 1888–1910 (1995) -----	910
Dumond, Dwight L., The Secessionist Movement, 1860–1861 (New York, 1931)-----	533	Ely, James W. Jr., The Guardian of Every Other Right: A Constitutional History of Property Rights (3d ed., 2007)-----	359
Dunne, Gerald, Justice Joseph Story and the Rise of the Supreme Court 180 (1970) -----	406	Engerman, Stanley L. and Gallman, Robert E., The Cambridge Economic History of the United States ----	781
Duxbury, Neil, Patterns of American Jurisprudence (1995) -----	1014	Epstein, Richard E., In Such Manner as the Legislature Thereof May Direct, The Outcome in <i>Bush v. Gore</i> Defended, 68 U. Chi. L. Rev. 613, 614 (2001) -----	1389
Duxbury, Neil, The Reinvention of American Legal Realism, 12 Legal Studies 137 (1992)-----	1028	Epstein, Richard E., The Proper Scope of the Commerce Power, 73 Va. L. Rev. 1387 (1987) -----	994
Dworkin, Ronald, Life's Dominion: An Argument about Abortion, Euthanasia, and Individual Freedom (1993)-----	1186	Erikson, Paul, The Poetry of Events (1986) -----	397
Dworkin, Ronald, The Law of the Slavecatchers, Times Literary Supplement 1427 (December 5, 1975)-----	551	Ernst, Daniel R., The New Antitrust History, 35 N.Y.L.S.L.Rev. 879 (1990) -----	865
Easterbrook, Frank H. and Fischel, Daniel R., The Economic Structure of Corporate Law 40–62 (1991)--	415	Eskridge, William N. Jr., Gaylegal Narratives, 46 Stan.L.Rev. 607 (1994)-----	1252
Edwards, Harry T., The Growing Disjunction Between Legal Education and the Legal Profession, 91 Mich.L.Rev. 34 (1992) -----	1288	Eskridge, William N. Jr., The Case for Same-Sex Marriage: From Sexual Liberty to Civilized Commitment (1996)-----	719
Elliot, E. Donald, The Ages of American Law (1977)-----	945	Ewen, Stuart, Captains of Consciousness: Advertising and the Social Roots of Consumer Culture, 1976-----	938
Elliot, E. Donald, The Evolutionary Tradition in Jurisprudence, 85 Col.L.Rev. 38 (1985) -----	945	Fairman, Charles, VI History of the Supreme Court of the United States: Reconstruction and Reunion 1864–88, Part One 1364 (1971)-----	757
Ellis, Joseph J., American Sphinx: The Character of Thomas Jefferson (1997)-----	150	Farber, Daniel A. & Sherry, Suzanna, Telling Stories Out of School: An Essay on Legal Narratives, 45 Stan.L.Rev. 807 (1993)-----	1252
Ellis, R., The Jeffersonian Crisis: Courts and Politics in the Young Republic (1971)-----	824	Farnam, H.W., Chapters in the History of Social Legislation in the United States to 1860 173–174 (1938)-----	465
Ellis, Richard E., The Jeffersonian Crisis: Courts and Politics in the Young Republic 76–82, 190–191, 198 (1971) -----	272, 332, 333		
Ellis, Richard, The Impeachment of Samuel Chase, in Michael Belknap, ed., American Political Trials 57–76 (Revised, Expanded Edition, 1994) -----	293		
Ely, James W. Jr. The Railroad System Has Burst Through State			