

**Books for Lawyers from 2006
A Very Subjective View of the Scribes Prize Nominees**

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Introduction

In 2006, I shared my notes on the prize nominees for the national Scribes Prize for the best legal book of 2005. No one complained, and I'm doing it again.

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

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

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

Details of that award and its recipients over the last six decades can be found at www.scribes.org/awards.html. The gist of this award is to celebrate the best writing about the law each year. Since the nomination process is so extensive, and the books nominated are so wide-ranging, the list presents a wonderful opportunity for reviewing some of the better law books of the year.

¹My thanks to the Scribes Prize Committee for 2007 and to Professors Otto Stockmeyer and Joseph Kimble of Scribes, for their support and comments.

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

The Assessments

A First Caveat

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

The Criteria

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

- Importance. This represents a best guess at how important this argument is to the book’s field. If a book in, say, contracts, is likely to redefine how we all think about a contract or its enforcement, then it is quite important. This is not to say that it is more or less important than a book that is important in another field.
- Writing: Some of these books are written in beautiful and clear prose that illustrates the problems they consider better than anyone would have expected them to do.
- Reading: Despite being well written, a book might or might not grab a reader and pull the reader along. This measures how likely you are to finish the book after you start it, its other merits notwithstanding.
- Practitioner Utility: Some books are valuable for the professional in the field. You read them and learn tricks you can use. Some are really absorbing but still not that helpful.
- Fun Quotient: All things being equal, is this a book you might really want to read, even if you don’t have to?

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

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

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

- I use “Worthy” for something worth reading by, though not essential to, all lawyers
- “Interesting” marks out a book for someone with a particular interest in the topic, especially if that person has sufficient understanding of it to assess its strengths in the field.

A Further Caveat

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

The Books

There are some interesting differences between the books nominated this year and those from last year. There are fewer books about the traditional arenas of legal practice. The 2006 list of books nominated from 2005 had books in contracts, torts, corporate law and bankruptcy, categories with no nominees this year. Rather, there are more books on the status of gay couples and people, more on presidential power, judicial power, and the rule of law. To some extent, the shift in publishers’ emphases may reflect what they believe the committee will be interested in, but to some extent they reflect what authors are interested in and what the public might buy.

Books are listed by category, and within each category by relatively arbitrary order. The categories are a bit unfair, as many books would rightly be copied in a half-dozen or more pigeonholes, yet they are each given only one slot here. They are also idiosyncratic, dictated more by what I thought of the book than what a librarian or the author might have thought its genus.

All books were published initially in 2006, unless they are otherwise noted. Also, the suggested retail price is given for each book, although the books may be available at discounts from these prices.

The categories are these:

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|--------------------------------|--------------------------------------|
| Criminal Law | Trusts |
| Criminal Procedure | Anti-Trust |
| Constitutional Law | Family Law and the Law of Children |
| Civil Rights | Feminist Theory |
| The Courts | Gay Marriage and Gay Status |
| Communication and the Internet | Race and Law |
| The Wars on Terror | Immigration and Citizenship |
| Presidential Power | The Idea of Law and Legal Philosophy |
| American Legal History | Lawyering |
| Global Legal History | |

Criminal Law

Liberty for All: Reclaiming Individual Privacy in a New Era of Public Morality, by Elizabeth Prize Foley (304 pages, Yale University Press, 2006 \$35.00).

A voice for liberty from an intrusive moral state, Foley applies John Locke and Jeremy Bentham to the Founders, to find the Constitution requires the government to ignore conduct that doesn't harm another. She argues our founding ideals have been squandered amidst regulations of marriage, sex, reproduction, medical treatment, drugs, food, booze, and related personal choices. Oddly, Foley seems uninterested in the rich array of Founding-era state and local laws on moral issues, so her historical argument is a bit limited, but her point against Congress is strongly made.

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

Worthy

Criminal Procedure

Failure To Protect: America's Sexual Predator Laws and the Rise of the Preventive State, by Eric S. Janus (248 pages, Cornell University Press, 2006 \$35.00).

Sexual predator laws, like Megan's law and Dru's law and calls for indefinite civil commitment of predators, are popular with politicians and voters, but there is the unfortunate question of whether they work. In this study of the laws on sexual offenders, Janus argues that these approaches not only mischaracterize the nature the threat (assaults are rarely by repeat offenders or by strangers, as Megan's law suggests), but also lack the psychological fit to the offenders necessary to predict future dangers, and so they both over-punish and under-restrain. The result is a feel-good answer that will consistently deprive some of liberty without reason and leave others needlessly exposed to danger. Looking to the psychological literature, he believes more careful sentencing, better treatment, and more careful supervision following release.

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

Worthy

Constitutional Law

Before the Next Attack: Preserving Civil Liberties in an Age of Terrorism, by Bruce Ackerman (240 pages, Yale University Press, 2006 \$26.00).

Bruce Ackerman is a visionary, and visionaries can be as useful as they are unloved. Here, he takes a clear-eyed view of the dangers of a successful attack on America, one that disrupts the government, and asks how our constitution could respond. Seeing shortcomings made clear after September 11, 2001, and reasonable foreseeing others, he calls for emergency provisions to be created before they are needed and sets a balanced agenda for discussion of how such provisions should work.

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

Tops

Reflections on Constitutional Law, by George Anastaplo (269 pages, The University Press of Kentucky, 2006 \$65.00).

This is a handy review of major moments in the development of constitutionalism in America, from one of the more thoughtful minds in the field. Anastaplo throws a wider net than some might, to include Magna Carta and the Confederacy, along with many conflicts in the Supreme Court.

Anastaplo's brief, and weirdly rhythmic notes on each moment reflect his Straussian republicanism. They are sometimes challenging, often memorable, and always useful.

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

Worthy

Our Undemocratic Constitution: Where the Constitution Goes Wrong (And How We the People Can Correct It), by Sanford Levinson (248 pages, Oxford University Press, 2006 \$28.00).

In a timely corrective for the ongoing veneration of the Constitution of 1789, Levinson argues clearly that the document and its ideas have deep flaws that not only harm democracy but imperil the rule of law. Levinson argues that the perils and problems of a powerful Senate, of an unfettered President, of the Electoral College, lame ducks, and life tenured justices, among others justify a national referendum on constitutional reform.

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

Worthy

The *Insular Cases* and the Emergence of American Empire (Landmark Law Cases and American Society), by Bartholomew H. Sparrow (300 pages, University Press of Kansas, 2006 \$35.00).

Between 1898 and 1922, the U.S. Supreme Court was confronted with a parade of cases arising from America's conquests in the Spanish-American War. How were the new territories American had acquired in the Caribbean and the Pacific to be administered? What was the status of their people? What was the power of the President, or the Congress, or the Courts over these new areas? The Constitution's relative silence required a voice, and these cases, dividing new lands into continental territories incorporated into the United States from extra continental and unincorporated lands set the stage for the limited constitutional protections of American imperial possessions. Sparrow gives here an important story very rarely told, well researched, and presented with clarity of the past but with an eye toward its implications for the future.

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

Worthy

When Courts and Congress Collide: The Struggle for Control of America's Judicial System, by Charles Gardner Geyh (334 pages, The University of Michigan Press, 2006 \$29.95).

Geyh's thoughtful contribution to the literature on the tension between the Congress and the courts, which he describes as a "dynamic equilibrium" threatened by more direct legislative assaults on the courts. Oddly, Geyh seems unaware of earlier employments of this metaphor for stressed separation of powers, such as by Cynthia Farina, yet his analysis is interesting nonetheless.

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

Interesting

The Most Democratic Branch: How the Courts Serve America (Annenberg Foundation Trust at Sunnylands' Institutions of American Democracy Series), by Jeffrey Rosen (256 pages, Oxford University Press, 2006 \$25.00).

Judicial review isn't countermajoritarian at all, according to Jeffrey Rosen, who argues that most of the Court's opinions reflect the mainstream of opinion at the time, but the most controversial were mistaken rulings made in the absence of a consensus. So, the court cannot lead the public, but it can follow. Rosen's evidence of public opinion might not satisfy political scientists, but his question is important: how should the court decide cases? He says by deferring to the political branches, which is fine, and yet it rather minimizes the idea that they should decide according to the law.

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

Interesting

Civil Rights

***San Antonio v. Rodriguez* and the Pursuit of Equal Education: The Debate over Discrimination and School Funding (Landmark Law Cases and American Society)**, by Paul A. Sracic (169 pages, University Press of Kansas, 2006 \$29.95).

A nicely researched study of the case that attempted to bring equal education to the poor. Not only does Sracic mine the archives of the case and its background but also he considers the case's influence and the limitations of the opinion. An essential study both in equal protection and for the many cases under state law considering school funding.

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

Interesting

Enforcing Equality: Congress, The Constitution, and the Protection of Individual Rights, by Rebecca E. Zietlow (288 pages, New York University Press, 2006 \$45.00).

Most constitutional law histories study the courts, neglecting the essential role of the Congress in constitutional and statutory drafting to create and enforce civil rights. Here emphasizing rights of "belonging," Zietlow shows why Congress's efforts to define rights in a community greatly improved America and provided a more consistent and progressive agenda for rights discourse than a judicial emphasis on individual rights.

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

Interesting

Dirt for Art's Sake: Books on Trial from Madame Bovary to Lolita, by Elisabeth Ladenson (272 pages, Cornell University Press, 2006 \$29.95).

This is a lovely survey of banned books and why we love them. With a playfulness that informs, Ladenson deconstructs and reconstructs the obscene expressed first in books and then manifest in the many media of the modern U.S., chronicling the growing importance of the twin arguments of *ars gratia artis* and the value of realism as art.

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

Interesting

***Mapp v. Ohio*: Guarding Against Unreasonable Searches and Seizures (Landmark Law Cases and American Society)**, by Carolyn N. Long (228 pages, University Press of Kansas, 2006 \$35.00).

When the Cleveland police barged into Ms. Dollree Mapp's house in 1957, they did what they always did, entered and took what they wanted, finding a case to be made from whatever they found. Her complaints, then and later, led the Supreme Court to ban from court evidence acquired by the police in violation of the Fourth Amendment. This basic case of criminal procedure is told here with the benefit of Tom Clark's paper's and Ms. Mapp's recollections in a colorful but careful tale, all the more compelling in the light of the present national debate on the limits on the investigations allowed of people accused of terrorist connections.

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

Worthy

Justice in Mississippi: The Murder Trial of Edgar Ray Killen, by Howard Ball (254 pages, University Press of Kansas, 2006 \$29.95).

Edgar Ray Killen was convicted in 2005 of the murder of James Chaney, Andrew Goodman, and Michael Schwerner, young civil rights workers killed in Mississippi in 1964. This book tells the story of the decision to reopen the case and to indict Killen, as well as of the trial itself. It is a well researched and nicely drawn story of justice delayed being justice still.

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

Interesting

The Making of a Civil Rights Lawyer, by Michael Meltsner (309 pages, University of Virginia Press, 2006 \$34.95).

Lawyer's autobiographies rarely make this good a tale. From young Jewish Yalie to veteran litigator and professor, Meltsner takes us on a gritty ride as he learns how important the law is not only to his clients but also to himself.

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

Interesting

The Courts

Justice in Robes, by Ronald Dworkin (320 pages, Harvard University Press, 2006 \$35.00).

A collection of articles, with a few new additions, from America's premiere legal philosopher. Though this book lacks the narrative arc of *Law's Empire*, it adds meat to the bones of his model of a principled judicial obligation to read the sources of law according to moral principles, defending this model against pragmatists, pluralists, economists, and others. Despite the fury Dworkin prompts in others, his may be the most accurate depiction of what justice means in America today.

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

Worthy

Judging under Uncertainty: An Institutional Theory of Legal Interpretation, by Adrian Vermeule (346 pages, Harvard University Press, 2006 \$55.00).

A rich discussion of social science in an effort to describe what judges do and what they ought to do. Oddly undervaluing the discussions of judging by judges such as Noonan and by theorists such as Pound or Coquillette, Vermeule concludes the theory of judging based on judges is too vague and writes a new one. Essentially, Vermeule believes judges lack the expertise or knowledge to do much, and so they should defer as often as possible to the rest of the government. He doesn't prove the rest of the government knows more or acts on what it does know, but that's not his point.

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

Interesting

The Myth of Judicial Activism: Making Sense of Supreme Court Decisions, by Kermit Roosevelt III (272 pages, Yale University Press, 2006 \$30.00).

In this survey of judicial review, Roosevelt summarizes writers from John Hart Ely and his followers to argue that most Supreme Court opinions that gather controversy are appropriate efforts to create or to apply doctrine to promote the public interest. In doing so, Roosevelt creates a neat test: assess these cases by asking, first, if the court is deferring to another branch or to state governments, and second, whether branch or government should be given deference or not.

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

Worthy

Communication and the Internet

Who Controls the Internet?: Illusions of a Borderless World, by Jack Goldsmith and Tim Wu (238 pages, Oxford University Press, 2006 \$28.00).

The Internet has captured the imagination of the public and the theorists with its promise of a single communication link through a borderless world that empowers the individual and tames the state.

In a thoughtful and timely book that examines real cases, Goldsmith and Wu describe the more likely future as they carefully describe the recent past. States matter, increasingly so as the Internet grows and the technology becomes less standard, and as their governments control individual conduct and national economy in their states. The authors' agenda skips the usual idle dreams to plan for the pros and the cons of IT in an age of resurgent state control.

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

Tops

The Wars on Terror

The Struggle of Democracy Against Terrorism: Lessons from the United States, the United Kingdom, and Israel by Emanuel Gross (291 pages, University of Virginia Press, 2006 \$35.00).

This comparative study contrasts the legislative, executive, and judicial approaches to terrorism investigation and punishment in the U.S., U.K. and Israel. To put it simply, we have a lot to learn. Most importantly, Gross makes clear the benefits of following the law far outweigh the risks of abandoning it. Not just the rights of terrorists, or even citizens are at stake, but the success of the investigations themselves will, in the long run, depend on the law to succeed.

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

Interesting

Guantánamo: And the Abuse of Presidential Power, by Joseph Margulies (336 pages, Simon & Schuster, 2006 \$25.00).

Margulies was lead counsel in *Rasul v. Bush* (2004), which determined the courts have jurisdiction over the detention center at Guantánamo Bay. This remarkably even-handed and stunningly well researched account goes far beyond that *Rasul* to consider the implications of an executive with no oversight, the legal and ethical dangers it has made, and the failure of the policies it created. If there was one book now to read on the intersection of law and the war on terror, this might be it.

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

Tops

Presidential Power

Lincoln and Chief Justice Taney: Slavery, Secession, and the President's War Powers, by James F. Simon (336 pages, Simon & Schuster, 2006 \$27.00).

In a surprisingly fresh draught from the well of Civil War constitutionalism, Simon depicts the conflicts between Lincoln and his Chief Justice. Taney, on the Court from 1836 to 1864 was opposed by Lincoln and opposed him in turn, on almost every issue of their age, not only on the status of freed slaves but also on the powers of the executive. Telling the story as a double-act highlights the passion for the law of both men, and Simon carefully gives them both their due.

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

Interesting

American Legal History

A Well-Regulated Militia: The Founding Fathers and the Origins of Gun Control in America, by Saul Cornell (288 pages, Oxford University Press, 2006 \$30.00).

In this, the latest history of the right to bear arms from the Framing to the present, Cornell does a nice job of mining new sources and remolding familiar ones. He disproves both sides of the modern argument, showing that both the collectivist and individualist approaches to gun rights are neologistic tropes that have overshadowed the original idea that the possession of arms was required to perform the civic obligation of assistance to the government.

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

Worthy

The Rescue of Joshua Glover: A Fugitive Slave, the Constitution, and the Coming of the Civil War (Law Society & Politics in the Midwest), by H. Robert Baker (272 pages, Ohio University Press, 2006 \$38.95).

Escaped slave Joshua Glover's case and the cases against his rescuers led the Wisconsin Supreme Court to declare unconstitutional the Fugitive Slave Act. By 1860, Glover's cases were perhaps the most notorious in the country. Baker, building from his doctoral dissertation, tells the story here as one not only of lawyering and federalism but as the intersection of the popular will and the legal argument.

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

Interesting

Slavery and the Commerce Power: How the Struggle Against the Interstate Slave Trade Led to the Civil War, by David L. Lightner (240 pages, Yale University Press, 2006 \$45.00).

This new history of the abolitionist movement focuses on the legal world centered by John Marshall in *Barron v. Baltimore*, not so much in the courts as in the political pressures upon the Congress and the executive, which had been long believed to have the power to regulate domestic slavery.

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

Reconstructing The Fourth Amendment: A History of Search & Seizure, 1789-1868, by Andrew E. Taslitz (368 pages, New York University Press, 2006 \$50.00).

The Fourth Amendment is usually read through twentieth century cases. In this examination of its nineteenth-century meanings, Taslitz locates its significance particularly in fugitive slave cases, where the amendment, occasionally protected privacy, free expression, and political dissent from loss in the name of the property rights of slave owners. From this, he shows a direct line to the language of the Fourteenth Amendment, which was intended, in part, to redress such concerns among the states. The thesis is bold and revisionist, but it is carefully researched and (with the exception of the pre-revolutionary common law) thoroughly explained.

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

Global Legal History

Voting About God in Early Church Councils, by Ramsay MacMullen (192 pages, Yale University Press, 2006 \$30.00).

This is a wonderful study of the heart of canon law, the councils from which the dogma arose. The many church councils from Nicea to the second great council of Constantinople are dusted off and made new by MacMullen, who is as interested in the back-bench bishops as he is in the saints up front. God was defined by majority vote, and this is how he won the elections.

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

Trusts

Broken Trust: Greed, Mismanagement, & Political Manipulation at America's Largest Charitable Trust (A Latitude 20 Book), by Samuel P. King and Randall W. Roth (324 pages, University of Hawai'i Press, 2006 \$26.00).

A fascinating history and polemic describing the failure of the educational trust in Hawai'i. King and Roth tell a richly researched story that details incompetence and abuse by the trustees of a ten billion dollar trust and rightly implicates every aspect of state government in the failure to carry out the worthy purposes of the trust. This book vividly highlights the danger of limited powers of beneficiaries to enforce a public trust.

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

Anti-Trust

Antitrust and Global Capitalism, 1930-2004, by Tony A. Freyer (Cambridge Historical Studies in American Law and Society) (452 pages, Cambridge University Press, 2006).

This comparative history of antitrust law, or competition law, develops parallel histories of the law regulating business practices in the U.S., Europe, Japan and Australia through the later twentieth century. It is wonderfully timely, covering a period running from American independence of actions over monopolies to global interdependence in their regulation. Freyer sees antitrust laws and their corollaries as tools for balancing economic and social question brought about by the enlarging corporation, a process grown more global as corporation enlarge and as the World Trade Organization, the European Union, and states become more engaged. Though it would have been nice to begin the story in America's trust-busting phase, it is a useful book indeed, well researched and with plenty of case studies to make his points.

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

Interesting

Family Law and the Law of Children

Place of Families: Fostering Capacity, Equality, and Responsibility, by Linda C. McClain (392 pages, Harvard University Press, 2006 \$45.00).

A challenge to right-wing definitions of family values, this study draws on cultural and social science as well as legal and feminist writings to develop a rich new understanding of the family. Family here is a unit defined by function rather than labels, but the functions include traditional goals in the advance of individual responsibility and civic virtue.

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

Interesting

Judging Children as Children: A Proposal for a Juvenile Justice System, by Michael A. Corriero (232 pages, Temple University Press, 2006 \$25.00).

This book by a juvenile court judge challenges the rush to try teens as adults. It is a powerful argument made with careful illustrations from specific cases that demonstrate the mistakes of treating teens as if they have the emotional and mental opportunities or limitations of adults. Though clearly written, I couldn't help myself from penalizing the writing of this book one point from the 3 it would have had for the author's habit of referring to himself in the third person.

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

Interesting

Feminist Theory

Legal Feminism: Activism, Lawyering, and Legal Theory, by Ann Scales (240 pages, New York University Press, 2006 \$35.00).

A study of feminist legal theory by a lawyer whose influence on "feminist jurisprudence" was profound. Here, she has morphed more into a lawyer informed by liberal feminism, in an effort to map legal feminism in a larger frame of legal philosophy, somewhere near Lon Fuller.

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

Interesting

Gay Marriage and Gay Status

Sexual Politics: The Gay Person in America Today (Series on Law, Politics and Society), by Shannon Gilreath (176 pages, University of Akron Press, 2006 \$42.95).

This thoughtful essay considers the influence of gays on politics and politics on gays. It is an interesting polemic seeking gays to come out, tune in, and engage in the political sphere.

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

Same Sex, Different States: When Same-Sex Marriages Cross State Lines, by Andrew Koppelman (224 pages, Yale University Press, 2006 \$35.00).

The least polemic and most useful book one can ask on the problem of gay marriage. This careful discussion of the state and federal efforts to bar gay marriages alongside a sober discussion of the moves by states to allow or recognize them is a useful discussion of not only the nature of marriage but also the problems of interstate recognition and the Full Faith and Credit clause.

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

Gay Marriage: For Better or for Worse? What We've Learned from the Evidence, by William N. Eskridge, Jr. and Darren R. Spedale (352 pages, Oxford University Press, 2006 \$29.95).

Conservative legislators have argued that gay couples harm children, communities, or the institution of marriage. In this careful study of the evidence from Scandinavia that conservatives tout, Eskridge and Spedale conclusively demonstrate that there is little or no evidence to support the conservative view, and much to suggest gay marriage is good for marriage, good for children, and good for communities and the state.

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

Race and Law & Immigration and Citizenship

Americans Without Law: The Racial Boundaries of Citizenship, by Mark S. Weiner (205 pages, New York University Press, 2006 \$45.00).

Race is created by law. At the least, the law defines what amounts what race is, who is a member of one or another race, and who is not. Even though lawmakers might employ ideas from scientists or cultural leaders, the definitions enshrined in law are what matter to the law. This careful history of what Weiner calls “juridical racialism” studies the implications of legal definitions of race among matters involving American Indians, Japanese and Filipino immigrants, and African Americans up to *Brown* in 1954. Weiner considers the effects of racialism not just on the people regulated but also on the lawyers and social scientists in these debates. Though the history concentrates on judicial questions to the expense of legislative debate, it is balanced and thoughtful and has as much to say about the dangers at the intersection of social science and law as the dangers of categories of “the other.”

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

Americans in Waiting: The Lost Story of Immigration and Citizenship in the United States by Hiroshi Motomura (272 pages, Oxford University Press, 2006 \$29.95).

This careful study of U.S. immigration focuses on the idea of the immigrant as future citizen, illuminating both mistakes and opportunities in U.S. immigration and naturalization law. In the rush to consider illegal immigrants, Motomura compels us to remember our obligations to lawful immigrants, who are too often as nearly neglected in the law.

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

The Idea of Law and Legal Philosophy

Law as a Means to an End: Threat to the Rule of Law (Law in Context), by Brian Z.

Tamanaha (268 pages, Cambridge University Press, 2006 \$75.00).

This may be the most important book about the law written in years. Tamanaha takes seriously the ideas of the “public good” as the basis for law and of the law as an end in itself. He demonstrates the dangers to law once it is perceived as an instrument of individual will, of social change, of judicial power, of the balance of politics, or the political assertion of policy through appointment of judges committed to policy. Each of these forms of instrumentalism makes law merely a tool for some to win at others’ expense.

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

Worthy

Noble Purposes: Nine Champions of the Rule of Law, Edited by Norman Gross (152 pages, Ohio University Press, 2007 \$26.95).

This wonderful collection of short essays is a lawyer’s *Profiles in Courage*. Contributions by Paul Finkelman, Kermit Hall, practicing lawyers and judges chronicle the lives and legal work of Samuel Sewell, James Alexander, Lemuel Shaw, Hugh Lennox Bond, Clara Foltz, Noah Parden, Octavio Larrazolo, Louis Marshall, and Francis Biddle. All of these people deserve a place in the collective memory of the bar.

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

Worthy

Lawyering

The Destruction of Young Lawyers: Beyond One L, by Douglas Litowitz (163 pages, The University of Akron Press, 2005, \$19.95).

Law school, bar exams, and large law firms are demanding, boring, and quite often dehumanizing. Arguing that firms are wrongly presented to law students as the best professional avenue but that firms turn lawyers into mere extensions of legal technology, Litowitz presents the “uncontrovertible fact: that young lawyers are morosely unhappy.” So he argues for wholesale reform, in more engaged teaching, in more meaningful professional tests, and in ending hourly billing. Litowitz might be right, but seeing no holes in his evidence, he misses the many lawyers who act already as he would have them, by maintaining their independent professional and moral judgment, by following professional rules, and by enjoying their work.

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

Interesting