Keeping Up with New Legal Titles

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Keeping Up with New Legal Titles*

Compiled by Benjamin J. Keele** and Nick Sexton***

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* The works reviewed in this issue were published in 2014 and 2015. If you would like to review books for “Keeping Up with New Legal Titles,” please send an e-mail to bkeele@indiana.edu and nsexton@email.unc.edu.

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The Eureka Myth: Creators, Innovators, and Everyday Intellectual Property by Jessica Silbey reviewed by Morgan M. Stoddard

Strategic Legal Research: Finding the Information You Need Efficiently and Cost-Effectively by Tobin A. Sparling reviewed by Nick Sexton

No Day in Court: Access to Justice and the Politics of Judicial Retrenchment by Sarah Staszak reviewed by Deborah L. Heller


Corruption in America: From Benjamin Franklin's Snuff Box to Citizens United by Zephyr Teachout reviewed by Matthew E. Flyntz

In Food We Trust: The Politics of Purity in American Food Regulation by Courtney I. P. Thomas reviewed by Franklin L. Runge

Judging Judges: Values and the Rule of Law by Jason E. Whitehead reviewed by Deborah L. McGovern


Reviewed by Amy Burchfield*

¶1 The International Human Rights Law Sourcebook and the International Humanitarian Law (Law of Armed Conflict) Sourcebook (Sourcebooks) are reference volumes published by the American Bar Association. Edited by three experts in international law, the volumes collect important documents—treaties, resolutions, and other statements of law—in two easy-to-use desktop handbooks. While the physical format of the volumes makes them handy desk references, this characteristic may be one of the only good things going for the works. The static nature of the volumes, along with a lack of editorial enhancement, leaves me wondering whether these types of reference books are still viable research tools.

¶2 In an earlier “Keeping Up with New Legal Titles” column, Sara Sampson reviewed a compilation of federal and state abortion laws.¹ Like the Sourcebooks,

* © Amy Burchfield, 2015. Head of Research and Instructional Services, Cleveland State University Cleveland-Marshall College of Law, Cleveland, Ohio.
generations meant excessive private interests influencing the exercise of public power,” not the quid pro quo formulation of corruption employed by the Supreme Court (p.38). She also discusses the philosophical trends of the era, including the founders’ embrace of Montesquieu and Locke, and rejection of Hobbes, and how these beliefs shaped their perceptions of human nature, good government, and corruption.

¶83 Teachout provides a detailed history of the Constitutional Convention’s treatment of corruption. She demonstrates how the fear of corruption guided many decisions about the structure and functioning of the new government. Overall, she paints a compelling picture of a group of people very concerned with eradicating corruption, broadly understood.

¶84 She traces the history of corruption in American thought and law in great detail and with excellent supporting citations. She makes a convincing argument that corruption meant far more to the founders and has meant more throughout our history than the quid pro quo concept that the current Supreme Court espouses. She concludes that she is “trying to bring corruption back” (p.276). That is, she wants the American public to care about corruption as the founders did and for this anticorruption principle held by the founders to guide our courts’ handling of campaign finance issues.

¶85 The writing is generally brisk and compelling, but it could use a bit more editing. For example, in a description of Thomas Jefferson’s efforts to get around reporting a gift (another snuff box—did Louis XVI not realize that it is rude to give everyone the same gift?), Teachout writes, “he asked his secretary to take the gilded frame, remove the diamonds, catalogue and value them, sell the most valuable, put the money toward Jefferson’s own private account, and not report it” (p.29). Three sentences later, she writes, “He asked [his secretary] to take out the diamonds and sell them . . .” (p.29). Aside from a few moments like this, though, the writing is enjoyable.

¶86 Given the ongoing political and legal discussions surrounding campaign finance regulations, this book provides an interesting and worthwhile take on the subject. By providing insight into the way the founding generation viewed corruption, Teachout sheds new light on this issue and even provides fodder for jurists more inclined to originalism in dealing with these matters going forward.

¶87 While this book is written to be accessible to the interested public, it is certainly scholarly enough to be worthy of a home on the shelves of an academic law library, especially one where there is faculty interest in campaign finance and related issues.


Reviewed by Franklin L. Runge*

¶88 If you have a fear of germs, you should not buy this book. If you are looking to start a new diet, you should buy this book. If you play a role in the collection
development decisions of an academic law library, you should buy this book. *In Food We Trust: The Politics of Purity in American Food Regulation* is a comprehensive and readable account of how our food safety regulatory scheme got its start in 1906 and has yet to find its way.

¶91 In *Eating Animals*, Jonathan Safran Foer recounts that people, on hearing he was writing a book about eating meat, assumed he was arguing for vegetarianism.\(^{37}\) Perhaps we all know that something rotten is happening in our food's journey from farm to fork. *In Food We Trust* gives the legislative history of why our collective intuition is correct.

¶90 In 1906, Congress passed the Pure Food and Drug Act\(^ {38}\) and the Federal Meat Inspection Act\(^ {39}\) in the first federal attempts to address the adulteration of food products (a legislative way of asking meat producers to please stop tossing rats into the sausage and chocolatiers to stop putting soap flakes into candy bars). Over the next century, food production would change radically, and scientists would advance their knowledge of *E. coli* O157:H7 and *Salmonella*. The problem is that food statutes and regulations remained focused on additives and did not evolve in response to scientific advancements.

¶92 Thomas's normative arguments are in response to her compelling description of the regulatory process. Any author who can turn administrative law into a page-turner deserves accolades. She sets the table by recognizing that the problem is not only the statutes, but also the fragmentation of authority. Fifteen agencies help oversee food safety, which results in inefficiencies. The two major agencies are the Food and Drug Administration (FDA) and the U.S. Department of Agriculture (USDA). Notably, while the FDA is responsible for regulating eighty percent of food entering the market, it is receiving roughly one-fifth of federal funds allocated for food safety.

¶93 Thomas writes that the *Code of Federal Regulations* is more than a collection of "technical standards"; it is an expression of "political values and cultural attachments" (p.163). In the case of America's dinner table, the values expressed in regulations are those of corporations and agribusinesses. Thomas does an excellent job of unpacking the goals behind our food safety standards, which are (1) securing a market share for the largest participants (for example, introducing requirements that well-established companies can achieve, but are too onerous for smaller


producers in the supply chain); (2) opening up international markets for American companies; (3) preventing the collapse of food industries (in 1906 Congress passed legislation to restore public faith in the meat industry after Upton Sinclair published *The Jungle*, which caused meat sales in the United States to plummet by half); and (4) redirecting consumer rage at foodborne illnesses from the industry to the government. Thomas infuses her arguments with detailed case studies, including chapters on the Cranberry Crisis of 1959 (the inability to trace cranberries coated by a carcinogenic substance), the Jack in the Box incidents in 1989 (*E. coli* O157:H7 found in undercooked hamburgers due to a corporate decision to have a juicier product), and the Peanut Butter Crisis of 2009 (*Salmonella* found in numerous peanut products because a company with a filthy factory shopped around for a testing laboratory that would give its product more favorable results).

¶94 Thomas concludes that all attempts to improve the FDA’s and USDA’s regulatory powers have failed. The most damning evidence presented is that, throughout the twentieth century, federal agencies lacked the authority to issue mandatory recalls of contaminated foodstuffs. The government could make recommendations, but it was up to the private producers to recall their own products.

¶95 The book ends with a glimmer of hope. In 2011, the FDA Food Safety Modernization Act was enacted. This transformative legislation aligns with Thomas’s hopes for the FDA, but it does not address the USDA. We are now in a holding pattern to see whether the statute emboldens the FDA to promulgate regulations that align with Thomas’s goal: protection for all consumers. Until then, we will have to live with a faint suspicion of peanut butter, spinach, ice cream, cranberries, and everything else in the grocery store.


*Reviewed by Deborah L. McGovern*

¶96 Judicial activism is a hot topic in the United States. Many argue that when judges “legislate,” they usurp the constitutionally mandated role of the legislative branch and hence violate the rule of law. Whitehead examines the impact that judges have on the rule of law and discusses which of the four judicial values he introduces in his book, *Judging the Judges: Values and the Rule of Law*, is most faithful to the concept embodied in the rule of law.

¶97 Respect for the rule of law inclines citizens to obey the laws. When judges deviate from interpretation into lawmaking, the public perceives them as threatening the rule of law, and its promise to be a government of laws, not of men. According to Whitehead, for the rule of law to remain salient, “judges must feel sincerely bound by the law” (p.9). The judge must feel that she serves the law, not that she is free to decide that the law is whatever she wants it to be.

¶98 The rule of law is a social construct because even though judges are interpreting objective texts, they bring the subjective input of their humanity to their
