

## **Suggested Reading for Students, Prospective Students and Members of the Bar**

Wide extra-curricular reading is an essential part of a good legal education and a common practice for both students and members of the bar seeking to expand their understanding of their profession. For students looking for guidance, we recommend the following list of books and articles. The list includes many works intended to make the study of law by the case method more coherent and rewarding. Other books were selected because of their immense influence on contemporary American law or their value for the formation of professional goals and values. Some were added simply because they are fun to read. Finally, virtually all were selected in accordance with the belief that a critical part of legal education is to make lawyers better citizens, committed to the common good and prepared to serve and lead in their communities. Books that may be of particular value and interest to prospective law students are marked with an asterisk (\*).

### **A. Books about the Supreme Court**

Students seeking to widen their understanding of American law might begin by reading one or more of the classic books on the Supreme Court. A perfect place to begin is with Archibald Cox's *The Role of the Supreme Court in American Government* (1976), which provides a short, extraordinarily well-written introduction to the court's role in American life. The best single volume overview of Court history is Bernard Schwartz's *A History of the Supreme Court* (1993). Another outstanding recent work is Edward Lazarus's *Closed Chambers: The Rise, Fall and Future of the Modern Supreme Court* (1998), a controversial inside look at the contemporary Court's political struggles. Leon Friedman and Fred L. Israel's *The Justices of the United States Supreme Court* (5 v., 1969-1978) provides short, highly readable biographical sketches of every Justice up to the late 1970s, with a discussion of their most significant opinions. Lincoln Kaplan's *The Tenth Justice: The Solicitor General and the Rule of Law* (1987) provides an excellent history of the office of the Solicitor General, which represents the United States in all cases before the Court. Now a bit dated but still excellent reading, Bob Woodward and Scott Armstrong's *The Brethren* (1979) is an inside look at the Court during the 1970s, when the Court decided such important cases as *Roe v. Wade*.

Students who want to investigate the role of the Court and the theory of judicial review in greater detail should consider reading two of the classic accounts of the Court's purpose and function. Alexander M. Bickel's *The Least Dangerous Branch: The Supreme Court at the Bar of Politics* (2d ed. 1986) provides an excellent defense of judicial restraint. John Hart Ely's *Democracy and Distrust: A Theory of Judicial Review* (1980) argues in favor of judicial intervention as a necessary counter-majoritarian supplement to democratic government. Students may also want to explore *The Federalist*, a series of short essays written by Madison, Hamilton and Jay in support of ratification of the Constitution. *The Federalist* has long been considered America's greatest contribution to political theory. For those who find reading all 85 Federalist essays too daunting, we suggest starting with essays 10 (Madison on faction), 51 (probably Madison, but possibly Hamilton, on checks and balances in the Constitution), 70 (Hamilton on the need for an

energetic executive) and 78 (Hamilton on the judiciary -- “the least dangerous branch” -- and the power of judicial review).

Two audio resources deserve mention. Peter Irons and Stephanie Guitton’s *May it Please the Court: 23 Live Recordings of Landmark Cases as Argued Before the Supreme Court* (cassette, 1993) and Jerry Goldman’s *The Supreme Court’s Greatest Hits* (computer disk, 2002) provide audio recordings of oral argument in some of the most important cases in legal history, providing students with a great insight into both the Court and the nature of appellate advocacy.

Finally, students interested in the Court may want to explore the multi-volume *History of the Supreme Court of the United States* (also known as the “Holmes Devise History”), an immense scholarly project funded by Justice Oliver Wendell Holmes’s bequest to the United States government. Though many of the volumes can only be viewed as failures, several are extremely valuable, including Julius Goebel’s *Antecedents and Beginnings to 1801*, which provides an in-depth (though sometimes dry) analysis of the early history of American law and the concept of judicial review in England and the United States; G. Edward White’s excellent *The Marshall Court and Cultural Change, 1815-1835*; and Owen Fiss’s *Troubled Beginnings of the Modern State, 1888-1910*.

## **B. Legal History**

Wide reading in legal history provides a student with a greater understanding of the rapid pace of legal change, a sense of the ways in which legal doctrine evolves over time to address or adjust to social needs, and some badly needed context that will aid one’s comprehension of the cases one reads in core law school classes. Lawrence Friedman’s *A History of American Law* (2d. ed. 1985), which takes the reader up to 1900, and the companion volume, *American Law in the 20<sup>th</sup> Century* (2002), remain the standard account of American legal history. Friedman’s work is flawed in some profound respects (not the least of which is the fact that it can be extremely dull in places), but because of the immensity of the task, his books are likely to remain the standard comprehensive work for years to come. A second standard (but vastly more controversial) account is Morton J. Horowitz’s *The Transformation of American Law, 1780-1860* (1977) and *The Transformation of American Law, 1870-1960* (1992), in which Horowitz argues that American legal doctrine has evolved over time to create and preserve the wealth and power of economic elites. G. Edward White’s highly readable *The American Judicial Tradition\** (1976), another standard work, provides short biographical essays on important American judges with an emphasis on their judicial styles.

Students interested in studying the historical origins of America’s constitutional and republican tradition might want to read two difficult but rewarding works, Bernard Bailyn’s *The Ideological Origins of the American Revolution* (enlarged ed. 1992) and Gordon S. Wood’s *The Creation of the American Republic, 1776-1787* (1969), both considered among the most important works of American history ever written. Another excellent (and more accessible) work on the origins and drafting of the Constitution is Richard B. Morris’s *Witnesses at the Creation: Hamilton, Madison, Jay and the*

*Constitution* (1985). Students with a particular interest in intellectual history may want to read Louis Menand's acclaimed *The Metaphysical Club* (2001), which describes the origin and growth of pragmatism and its influence in American law and, in particular, the legal thought of Justice Holmes.

Students may also want to explore non-American legal history for comparative purposes. Barry Nicholas's *An Introduction to Roman Law* (1962) is a short, highly readable introduction to the sophisticated Roman legal system, which provides the foundation for virtually all of the world's non-Common Law legal systems, including those of most of Europe, Japan, Brazil, and South Africa. R.C. Van Caenegem's brief *The Birth of the English Common Law* (2d ed. 1988) and Arthur R. Hogue's slightly more expansive *The Origins of the Common Law* (1966) both provide excellent overviews of the origins of Anglo-American law. Theodore F.T. Plucknett's *A Concise History of the Common Law*, 5<sup>th</sup> ed. (1956) remains, despite its age, the best single volume work on English legal history.

### **C. Judicial and Legal Biography and Autobiography**

Because of the relative paucity of great works of American legal history (aside from Supreme Court history, long the focus of American legal historians, to the detriment of other equally significant areas of legal history scholarship), generations of lawyers have learned their legal history by reading biographies of great judges and lawyers. Biography can also play an important role in the formation of professional values by providing role models – and models of what to avoid.

One good place to start is with a biography of Thurgood Marshall, arguably America's single most influential lawyer, who fought racial discrimination in the South as head of the NAACP's Legal Defense Fund, argued and won *Brown v. Board of Education* before the United States Supreme Court, and then served on the Court for several tumultuous decades. The definitive biography of Marshall has not yet been written. Two useful and interesting works, both valuable, are Carl T. Rowan's *Dream Makers, Dream Breakers: The World of Justice Thurgood Marshall* (1993) and Juan Williams' *Thurgood Marshall: American Revolutionary\** (1998).

One might also read some of the excellent biographies of America's judicial giants: Jean Edward Smith's *John Marshall, Definer of a Nation* (1996); G. Edward White's *Justice Oliver Wendell Holmes: Law and the Inner Self* (1993); Gerald Gunther's *Learned Hand* (1994); Andrew L. Kaufman's *Cardozo* (1998); or Ed Cray's *Chief Justice\** (1997), about the life and career of Earl Warren. There are many more excellent judicial biographies – more than one could list. One book deserving particular focus is Jack Bass's *Taming the Storm, The Life and Times of Judge Frank M. Johnson, Jr., and the South's Fight Over Civil Rights* (1993), which can provide students with a better understanding of the vast powers and influence of a federal district court judge.

Many of the framers of America's constitutional republic were lawyers. Students interested in the founding generation might try David McCullough's *John Adams* (2001),

Joseph J. Ellis's *American Sphinx: The Character of Thomas Jefferson* (1996), Ralph Ketcham's *James Madison* (1971), or Ron Chernow's *Alexander Hamilton* (2004). Abraham Lincoln was also shaped profoundly by his legal education and practice. The standard one volume biography is David Herbert Donald's *Lincoln* (1995), but law students and lawyers may also enjoy Benjamin P. Thomas's *Abraham Lincoln* (1952), which offers a very sophisticated understanding of the impact of law on Lincoln's approach to slavery and preservation of the Union, and John J. Duff's *A. Lincoln, Prairie Lawyer* (1960), which focuses exclusively, and in great detail, on Lincoln's legal education and practice prior to becoming President.

Students interested in great 20<sup>th</sup> century lawyers (who did not become judges!) might want to read William H. Harbaugh's *Lawyer's Lawyer: The Life of John W. Davis* (1973), about the great Supreme Court advocate, Democratic Presidential candidate, and founder of New York's excellent corporate law firm Davis, Polk; Evan Thomas's *The Man to See: Edward Bennet Williams, Ultimate Insider, Legendary Trial Lawyer* (1991), the story of a talented but deeply flawed Washington, D.C. trial lawyer and rainmaker; Ken Gormley's *Archibald Cox* (1997), about the Harvard Law School Professor, Solicitor General, and Watergate Special prosecutor; or David Chace's *Acheson: The Secretary of State Who Created the American World* (1998), about the corporate lawyer and diplomat. Students interested in radical lawyering might consider reading Ann Fagan Ginger's *Carol Weiss King, Human Rights Lawyer, 1895-1952* (1993); David J. Langum's *William M. Kunstler: The Most Hated Lawyer in America* (1999); or Kevin Tierney's *Darrow* (1979). Ann Fagan Ginger's *The Relevant Lawyers* (1972) provides short biographical essays of a large number of activist lawyers working for progressive social change.

Because women were long prevented from participating in the legal system in any meaningful fashion, there are far too few biographies of excellent women lawyers. To compound this problem, many of the first generation of powerful women lawyers are still practicing and thus have not yet received serious biographical treatment. For example, we still lack first-rate biographies of Justices Sandra O'Connor and Ruth Bader Ginsburg. One useful corrective is Emily Couric's *Women Lawyers: Perspectives on Success* (1984), which provides autobiographical profiles of successful women lawyers working in a variety of professional settings. One might also read some of the excellent autobiographies of women attorneys, such as legal pioneer Constance Baker Motley's *Equal Justice Under Law: An Autobiography* (1998) or Alice Vachss's *Sex Crimes* (1993).

Finally, students interested in English legal history might try Catherine Drinker Bowen's classic *The Lion and the Throne, The Life and Times of Sir Edward Coke\** (1956), which examines Coke's great struggle for the rule of law in Stuart England.

#### **D. Books about Great Legal Cases**

Many lawyers read books about great cases in legal history. Richard Kluger's *Simple Justice* (1975), which examines the history of court-approved racial segregation and its overturn in the landmark decision of *Brown v. Board of Education*, is widely considered

one of the best books on American law ever written. Other excellent works include Peter H. Schuck's *Agent Orange on Trial, Mass Toxic Disasters in the Courts* (1987), which explores the world of large class action torts; Gerald M. Stern's *The Buffalo Creek Disaster\** (1976), which examines a lawsuit to recover damages after a strip mining disaster in West Virginia; Jonathan Haar's *A Civil Action\** (1995), an outstanding look at how tort cases are actually litigated and settled; Mary Beth Norton's *In the Devil's Snare* (2002), an examination of the Salem Witchcraft trials; Anthony Lewis's *Gideon's Trumpet\** (1964), a highly readable account of *Gideon v. Wainwright*, the landmark Supreme Court case holding that all persons charged with felonies are entitled to legal counsel, regardless of their ability to pay; Anthony Lewis's *Make No Law: The Sullivan Case and the First Amendment* (1991); Edward J. Larson's *Summer for the Gods* (1998), about the famed "Scopes Monkey Trial"; Vincent Bugliosi's *Helter Skelter* (1974), another highly readable book, about the commission and subsequent prosecution of the notorious Manson Family murders; and Telford Taylor's *The Anatomy of the Nuremberg Trials: A Personal Memoir* (1993), dealing with the war crimes trials of senior Nazi leaders at the conclusion of World War II. Students interested in Oregon's most famous legal case may want to read Lewis and Clark Law School's own Ronald B. Lansing's *Juggernaut: The Whitman Massacre Trial* (1993). Finally, Steven Brill's interesting and readable *Trial By Jury* (1989) contains well-written profiles of sixteen leading civil and criminal cases of the 1980s.

#### **E. Books about Legal Education and the Legal Profession**

Students may be interested in reading about legal education. One place to begin is Scott Turow's now classic *One L\** (1977), about the ups and downs of the first year of law school. Another essential text is Oliver Wendell Holmes, Jr.'s brief but groundbreaking *The Path of the Law*, 10 Harvard Law Rev. 457 (1908), about the nature of law and legal education. Lani Guinier's important *Becoming Gentlemen: Women, Law Schools, and Institutional Change\** (1997) examines the impact of law school on women and calls for reform of legal education. Duncan Kennedy's *Legal Education and the Reproduction of Hierarchy: A Polemic Against the System* (1983) is a controversial but extraordinarily valuable and thought-provoking critique of legal education. Though dated, some students may still find value in Karl Llewellyn's classic *Bramble Bush* (new edition 1981), with its discussion of the purpose and function of the case method.

Students may also want to read some of the important works about life as a practicing lawyer, such as Steven Keeva's *Transforming Practices: Finding Joy and Satisfaction in the Legal Life* (1999), or Anthony Kronman's *The Lost Lawyer: Failing Ideals of the Legal Profession* (1993). Another important work, focusing on the particular challenges faced by women lawyers, is Mona Harrington's *Women Lawyers: Rewriting the Rules* (1993).

#### **F. Books about Trial Lawyering**

There are very few truly useful books about how to be a great trial lawyer. The place to start is undoubtedly the bible of American trial lawyers, Thomas A. Mauet's *Trial*

*Techniques* (6<sup>th</sup> ed. 2002), which has extremely useful “how to” chapters about every trial lawyering skill, of immense assistance for rookie lawyers seeking to excel in their first cases. Also useful, despite some tremendous flaws, not the least of which is the author’s ego, is Gerry Spence’s *How to Argue and Win Every Time* (1995), which provides useful advice about, among other things, the importance of building a bond with the jury and using drama and repetition to get your point across.

### **G. Books about Jurisprudence: Legal and Constitutional Theory**

The jurisprudential canon is vast and difficult. One excellent starting point is Edward H. Levi’s *An Introduction to Legal Reasoning*\* (1949), which deals, in a clear and straightforward fashion, with fundamental questions about legal reasoning, precedent, and statutory and constitutional interpretation. Another good introduction, well written and accessible, is Benjamin N. Cardozo’s *The Nature of the Judicial Process* (1921), which provides the classic (though by no means universally accepted) account of how judges decide cases. Karl Llewellyn’s *The Common Law Tradition: Deciding Appeals* (1960) offers a wealth of insights into legal history, legal theory, and the craft of lawyering. Robert Cover’s *Justice Accused: Antislavery and the Judicial Process* (1975) is a very readable and extremely valuable examination of the competing claims of law and morality as seen in the historical context of the nineteenth century judicial battle over the legitimacy of slavery. Lon Fuller’s *The Case of the Spelunkean Explorers*, 62 *Harvard L. Rev.* 616 (1949), which examines various jurisprudential schools through mock opinions in a hypothetical case, is another classic introduction to the field.

Students interested in less accessible but foundational reading in jurisprudence might consider H.L.A. Hart’s *The Concept of Law* (2d ed. 1994), a basic organizing text in the field; Richard Posner’s *Economic Analysis of Law* (3d ed. 1992), arguably even more influential than Hart; Jerome Frank’s landmark *Law and the Modern Mind* (1930), the first serious effort to study the implications of psychology for legal theory; Ronald Dworkin’s *Law’s Empire* (1986), a very influential (though ultimately somewhat dissatisfying) effort to provide a model for sound judicial decision-making; Martha Minow’s *Making All the Difference: Inclusion, Exclusion, and American Law* (1990), a landmark examination of the way in which law reinforces arbitrary social, racial, and gender lines; Catherine MacKinnon’s *Toward a Feminist Theory of the State* (1989) and Robin L. West’s *The Difference in Women’s Hedonic Lives: A Phenomenological Critique of Feminist Legal Theory*, 3 *Wisconsin Women’s Law J.* 81 (1987), two extremely important works of feminist legal theory; Roberto Mangabeira Unger’s *The Critical Legal Studies Movement* (1986), a good introduction to an influential leftist critique of American law and society; Owen M. Fiss’s *Objectivity and Interpretation*, 34 *Stanford Law Rev.* 739 (1982), an excellent introduction to problems in legal hermeneutics; Ronald Coase’s *The Firm, the Market and the Law* (1988), a foundational text in law and economics; and Richard Delgado and Jean Stefaniec’s *Critical Race Theory: An Introduction* (2001), or Patricia Williams’s *The Alchemy of Race and Rights* (1991), two important works in critical race theory.

## H. Drama and Fiction

Most American lawyers have read at least one of the great fictional or dramatic works about the law. The following are classics, all available in numerous different editions. Lee Harper's *To Kill A Mockingbird*\* tells the story of Atticus Finch, a lawyer in the South handling a racially charged criminal case. Other legal classics are Charles Dickens's *Bleak House*, which examines, among other things, what happens when the legal process becomes inefficient; Franz Kafka's *The Trial*, a chilling indictment of the 20<sup>th</sup> century bureaucratic state; Hermann Melville's *Billy Budd, Foretopman*, which explores the tension between morality and law; and Anthony Trollope's *Orley Farm*, the story of a forgery case by the great Victorian novelist, perhaps the most legally sophisticated novelist in the Anglo-American canon. Barbara Kingsolver's *Pigs in Heaven* provides a more contemporary take on the law. Those wishing to examine the roots of Western legal consciousness might try two ancient Greek tragedies: Sophocles's *Antigone*, which, like *Billy Budd*, explores the tension between law and morality, and Aeschylus's *Oresteia*, a three part blood-soaked thriller about, oddly enough, the transformation of legal culture and legal institutions.

## I. Books about Specific Areas of Law

Students in their first year of law school may find value in Grant Gilmore's classic *The Death of Contract* (1974), which discusses the relationship between tort and contract. Students interested in reading about criminal law might turn first to Susan Estrich's *Real Rape* (1987), one of the most influential books about criminal law and reform ever written, or Hugo Adam Bedau's *The Death Penalty in America* (1997), a standard introduction to the field. Students interested in civil rights generally, or in gay rights more specifically, may find value in Yale Law School professor William N. Eskridge Jr.'s *Gaylaw: Challenging the Apartheid of the Closet* (1999), an investigation of the treatment of sexual and gender variation in American law. Students interested in environmental law might want to read Lewis and Clark's own Michael C. Blumm's *Sacrificing the Salmon: A Legal and Policy History of the Decline of the Columbia Basin Salmon* (2002). Students interested in animal law should start with Cass Sunstein and Martha Nussbaum's *Animal Rights: Current Debates and New Directions* (2004). Students interested in corporate law should try Frank Easterbrook and Dan Fischel's *The Economic Structure of Corporate Law* (1991), an excellent introduction to the theoretical underpinnings of the field. Students interested in intellectual property and cyber-law may want to read Lawrence Lessig's *The Future of Ideas* (2001).

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