

BOOKS

FIVE RECOMMENDATIONS



Femi Cadmus[†] & *Ariel A.E. Scotese*^{*}

Renee Knake Jefferson and Hannah Brenner Johnson
Shortlisted Women in the Shadows of the Supreme Court
(New York University Press 2020)

The release of *Shortlisted* could not have been more timely and relevant in a year which witnessed the death of Ruth Bader Ginsburg, the second female Justice on the Supreme Court of the United States, and the confirmation of Amy Coney Barrett as the fifth female Justice. The book provides a behind-the-scenes empirical examination of the gendered portrayals of women shortlisted to the Supreme Court, casting a spotlight on media biases and stereotypes. The authors conducted extensive research in presidential archives and museums on nine extraordinary women who made presidential shortlists prior to the confirmation of the first female Supreme Court Justice, Sandra Day O'Connor, dating back to the 1930s. In their analysis, they note that in the few instances when women were considered for nomination to the Court, the shortlisting process ended up being a mere formality to project an

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appearance of diversity, given those ultimately selected for nomination. The final chapter offers practical strategies for surmounting obstacles in a shortlisting process to women aspiring to any competitive leadership roles.

Yolanda Flores Niemann, Gabriella Gutiérrez y Muhs,
and Carmen G. González
*Presumed Incompetent II: Race, Class, Power
and Resistance of Women in Academia*
(Utah State University Press 2020)

In a year in which racial and social justice issues have risen to the forefront, *Presumed Incompetent II* is most prescient, providing candid and raw accounts of the challenging trajectories of women of color in the legal academy and academia at large. The sincere, personal experiences and accounts outlined in the book lay bare the biases, slights, and blatant discrimination endured by women of color. The authors of these compelling narratives do not simply recount their challenges but provide hope and strategies for successfully navigating the most impossible of contexts. Namely: persistence is key, allies can be found in the most unexpected places, and the importance of speaking up and advocating for oneself. This book is an essential read for anyone committed to cultivating true diversity and inclusion in the academic setting, particularly faculty and administrators.

William G. Thomas III
*A Question of Freedom: the Families Who Challenged Slavery
from the Nation's Founding to the Civil War*
(Yale University Press 2020)

A Question of Freedom focuses on a remarkable period in history, from 1787 to 1861, during which enslaved families in Prince Georges County, Maryland bravely filed hundreds of freedom lawsuits challenging the legitimacy of their enslavement. The author conducted extensive research, delving into historical documents which revealed concerted and well planned challenges in the courts by enslaved families, including the Butlers, Queens, and Mahoneys, and their lawyers, who ironically were sometimes slaveholders, including the young Francis Scott Key. The defendants were often prominent slaveholding families, and also included Jesuit priests who founded what is now Georgetown University, an institution which the author notes is still reckoning with the legacy of its ties to slavery. While an astoundingly successful lawsuit by Edward Queen became the precursor to over a thousand legal actions, future lawsuits were not assured certain victory. In 1813, *Queen v. Hepburn* failed

on appeal to the United States Supreme Court. The court's interpretation of the hearsay rule disqualified oral accounts from the enslaved and privileged slaveowners who had supporting documentation, effectively preserving and entrenching their slaveholding position. *A Question of Freedom* succeeds in both humanizing and bringing attention to the plight and extraordinary determination of the enslaved who bravely pursued freedom suits in the face of fierce resistance and threats of retribution from slaveowners.

Alejandro de la Fuente and Ariela Gross
*Becoming Free, Becoming Black: Race, Freedom,
and Law in Cuba, Virginia, and Louisiana*
(Cambridge University Press 2020)

Becoming Free, Becoming Black provides an in-depth analysis of the legal regimes of Cuba, Virginia, and Louisiana regarding slavery and demonstrates the critical role that the laws governing freedom played in ultimately defining race in these jurisdictions. The book examines the three jurisdictions from the early days of the colonies through the antebellum period and up to the eve of the Civil War in the United States. Examining the legal landscape in each jurisdiction, including statutes, case law, and census data, the authors discuss how elite slaveholders attempted to connect blackness with slavery and whiteness with citizenship and freedom. The book reveals that the presence of an established legal regime — one addressing the methods not tied to race by which a slave could become free — determined whether these attempts to define whiteness as citizenship and blackness as slavery were successful. Additionally, the presence of an established legal regime regarding freedom from slavery allowed for a flourishing population of free people of color, which could in turn provide crucial support and resources to slaves looking to become free. As our society continues to grapple with structural racism, this analysis of how blackness came to be defined in these jurisdictions and the role that the law of freedom played in that definition provides an interesting framework for analyzing issues of race and racism.

Mark Tushnet
*Taking Back the Constitution: Activist Judges
and the Next Age of American Law*
(Yale University Press 2020)

Taking Back the Constitution examines how constitutional thought and the Supreme Court evolved from the New Deal/Great Society era to the Reagan Era of conservatism that persists today and what this evolution

means in the current political climate. Professor Tushnet reviews the Supreme Court's analysis of topics such as affirmative action, abortion, and campaign finance over time and demonstrates the role that discretion plays in judicial decision-making and how that discretion is impacted by other factors (including politics), regardless of an individual justice's method of constitutional interpretation and construction. He then examines the political crossroads in the United States and how we might expect the Supreme Court to act in this climate. Ultimately, the book argues that the response to an increasingly political court is to move away from judicial supremacy and towards popular constitutionalism, which has seen some success with the framing of issues such as gun control. *Taking Back the Constitution* is incredibly timely given the increased attention to the Supreme Court during the Obama and Trump presidencies. This interest, and in some cases deep concern over, the Supreme Court makes this book relevant not just to constitutional scholars but to anyone interested in learning more about the Supreme Court.

Richard Mullender, Matteo Nicolini, Thomas D.C. Bennett,
and Emilia Mickiewicz (editors)

Law and Imagination in Troubled Times:

A Legal and Literary Discourse

(Routledge 2020)

The law is not immune to the pressures of intense social, political, and economic change, and in those times it falls to legal practitioners and scholars to fit novel circumstances to the existing legal system and possibly change legal norms. This need for agility and creativity is where the idea of legal imagination becomes critical. *Law and Imagination in Troubled Times* is a collection of essays that discuss the role of imagination in the evolution of legal education, in judicial decision making, and legal scholarship, as well as how it can impact the future of legal thinking, particularly in moments of transition. The book's examination of the role of imagination in weathering change, and the space that philosophy, literature, and storytelling can occupy within the legal imagination, is an interesting study of this emerging interdisciplinary field. The book is challenging for those who are not familiar with the interdisciplinary field of law and philosophy, as most of the essays rely heavily on philosophical frameworks in their analysis. Regardless, this book is an interesting read and relevant given the dramatic changes we are seeing in the United States and the United Kingdom.