

The Yale Book of Quotations

Edited by Fred R. Shapiro

Yale University Press, New Haven, CT, 2006.
1067 pages, \$50.00.

REVIEWED BY HENRY COHEN

“To begin. There is the ordinary Brown Shark, or sea-attorney, so called by sailors; a grasping, rapacious varlet, that in spite of the hard knocks received from it, often snapped viciously at our steering oar. At times these gentry swim in herds, especially about the remains of a slaughtered whale. They are the vultures of the deep.” That is a quotation from Herman Melville’s novel, *Mardi*, and I include it here because it was dropped, for lack of space, from my review of *The Oxford Dictionary of American Legal Quotations*, which was published in the May 1994 issue of the *Federal Bar News & Journal* (*The Federal Lawyer’s* predecessor). That book, like the new *Yale Book of Quotations*, was edited by Fred R. Shapiro, and both books are delightful, though neither contains the quotation from *Mardi*. Finally, I’ve gotten it published!

“Delightful” might seem an odd word to describe a dictionary of quotations, but the Yale Book of Quotations contains examples that are funny as well as examples that are serious and thought-provoking. The funny quotations are sometimes intentionally so, and sometimes not, as in, respectively, “I recently turned 60 years old. Practically a third of my life is over” (Woody Allen), and “Smoking ... kills you, and if you are killed, you have lost a very important part of your life” (Brooke Shields, in congressional testimony). Serious quotations include “All sins are attempts to fill voids” (Simone Weil) and “The more the universe seems comprehensible, the more it also seems pointless” (physicist Steven Weinberg). And the book does not refrain from including raunchy quotations, such as “You ought to get out of those wet clothes and into a dry martini” (Mae West, of course) and, explaining why he never drinks water, “Fish fuck in it” (W.C. Fields).

As some of the above quotations suggest, this book is full of bon mots from pop culture. As Joseph Epstein writes in his entertaining forward to the book, “Fred R. Shapiro’s *Yale Book of Quotations* shows a strong increase over its two main rivaling volumes, *The Oxford Dictionary of Quotations* and *Bartlett’s Familiar Quotations*, in material from American literature and journalism, popular culture, computer culture, and contemporary proverbs.” It even lists 200 film lines and 140 advertising slogans, though one wonders whether we truly needed to immortalize “How do you spell relief? R-O-L-A-I-D-S.”

This is not to suggest that *The Yale Book of Quotations* overlooks world classics. It contains 455 quotations from Shakespeare, 400 from the Bible, and 110 from Samuel Johnson. The last one from Johnson quotes his reply to two women who commended him on his omission of vulgar words from his dictionary: “What! My dears! then you have been looking for them?”

Though this new book by no means replaces Shapiro’s prior *Oxford Dictionary of American Legal Quotations*, it does contain its fair share of legal quotations, including 44 by Holmes, a dozen by Brandeis, and several each by justices such as Brennan, Cardozo, Douglas, and Warren, not to mention many quotations about law by writers including Dickens, Kipling, Orwell, and Twain.

In giving you the number of quotations included by particular writers, I haven’t had to count them, because the book lists quotations in alphabetical order by author, and numbers each author’s contributions chronologically. Don’t worry, though, if you wish to search for a quotation by subject, because the keyword index occupies more than 200 pages and is user-friendly and easy on the eyes.

I’ll end this review as I began it—with a quotation about lawyers that is in neither *The Oxford Dictionary of American Legal Quotations* nor *The Yale Book of Quotations*: “his swarthy, unattractive face—shriveled up, like almost all legal faces” (Balzac, *Eugénie Grandet*). We lawyers must strive to make a better impression on great nov-

elists. TFL

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Inside: Life Behind Bars in America

By Michael G. Santos

St. Martin’s Press, New York, NY, 2006.
299 pages, \$24.95 (cloth), \$13.95 (paper).

REVIEWED BY ELIZABETH KELLEY

In response to crime — and to hideously violent crime, in particular — it is all too easy to say that we should lock up offenders for longer and longer periods, that we do our communities no favor by granting criminals probation or minimum sentences, and that we should just keep offenders in prison until they are elderly and past the age at which they are capable of committing more crimes. Whatever sense that response may make in theory, it requires that we as a society must be prepared to pay the bill for housing inmates for additional years as well as for building and staffing more prisons.

And writing the check might be the simplest part of this ultra-extreme solution to crime! We need to recognize that, if we care about this country’s prison system—from either a humanitarian or an economic point of view—then we must conclude that the system is a colossal failure. As *Inside: Life Behind Bars in America* shows, the federal prison system is full of violence among inmates and corruption among officials. Most important, our prisons do little to rehabilitate inmates, who, upon release from incarceration, are probably more violent than they were when they were admitted. The graphic and gruesome details included in this book—including descriptions of sadistic treatment of prisoners by guards—appeals to our consciences, and the depiction of the incompetence and inefficiency that surround daily prison life should appeal to our reason. The system is seriously broken.

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In 1987, the author, Michael G. Santos, was sentenced to 45 years in prison for dealing drugs. He was 23 years old. He came from a solid middle-class family in suburban Seattle and does not blame anyone else for his crime or for his sentence. "I have never written," Santos says, "that it was the 'mistakes' of my early twenties that brought me to prison. In distributing cocaine I knew exactly what I was doing. I was wrong, immature, driven by greed and inappropriate values. That is what led to my convictions and the predicament I endure." This attitude almost "removes" him from the prison, where he wrote this book, enabling him to see the system as both an insider and an outsider.

Santos has used his time in prison productively, earning a bachelor's and master's degree while incarcerated; he was working on his doctorate until prison authorities terminated his study. Why? Because Santos was transferred to a prison that had lower security and offered only GED classes and classes in English as a second language, plus a few courses offered at a local community college. Santos explained to a prison official that he had been enrolled in a doctoral program at the University of Connecticut, which had waived its residency requirement and allowed him to borrow books from its library. In a scene of maddening bureaucracy, the prison official told Santos that they could not make an exception in his case and that, moreover, Santos would be able to smuggle drugs into the prison inside his library books.

Today Santos is squeaky clean, but the stories he tells of prison life are not. He spares no details in describing gang rapes, strip searches, attacks on guards, smuggling of drugs into prisons, and sex between inmates and staff. If *Inside* were a movie, it would be X-rated for content, language, and violence. For example, Santos offers the following description of the mistreatment of an inmate:

Another prisoner, Dortch, a mentally ill African American man, smeared his cell and himself with his own fecal matter. Guards forcibly removed Dortch from his

cell and escorted him to a bathtub in the ... infirmary. According to a nurse who witnessed the episode, five or six correctional officers who were present managed Dortch's bath. They cuffed Dortch's hands behind his back. A guard held him down in the bathtub by the shoulders while another guard ran scalding hot water.

The nurse testified that she heard one of the officers say, "It looks like we're going to have a white boy before this is through, that his skin is so dirty and so rotten, it's all fallen off." The nurse testified that from just below Dortch's buttocks and down, his skin had peeled off and was hanging in clumps around his legs. The officers wanted to escort Dortch back to his cell in such condition [but] ... [h]e was ultimately taken to a hospital for treatment of the third-degree burns the correctional officers had inflicted.

The following passage describes how drugs can be smuggled into the prison:

Many of the problems in prison have their roots in drugs. Snake [an inmate] is active in trafficking of heroin. He uses his old penitentiary tricks to smuggle the drugs inside. His girlfriend packs colored balloons tight with a fingertip's portion of heroin. She triple wraps each balloon. She then coats the outside of the balloon with a lubricant. Those balloons fetch five hundred dollars apiece inside federal prison; the heroin that fills the balloons costs about fifty dollars on the street.

To transport the balloons inside, she opens a yellow M&M's Peanuts candy package. The mule then removes enough of the chocolate-covered candies to make room for a few heroin-stuffed balloons. When she walks into the visiting room, Snake's girlfriend carries the package of

M&M's in the pocket of her jacket. She walks to the vending machine and purchases several new packages of M&M Peanut candies that come in the same yellow package. She drops those in her pocket as well. When Snake comes into the room, the two kiss lightly to avert suspicion from the guards. Officers who roam around the room and observe visiting interactions through surveillance cameras expect drugs to transfer through open-mouth kisses. Snake's plan keeps him from being a suspect.

As they sit, Snake's girlfriend lays the candy packages on the table. While under the guard's direct observation, Snake swallows the tiny balloons that look just like M&M candies. He uses his body to smuggle the heroin into the institution. In the privacy of his cell, the lubricated balloons pass through Snake's system and increase his fortune. Ten of the tiny balloons bring him five thousand dollars; it is a profit of well over four thousand. In a population of nearly two thousand felons, his homeys move the eleven-five in a matter of hours.

As vividly written as passages like these are, a weakness of *Inside* is that it leaves many questions unanswered. For example, what happened to the correctional officers who burned Dortch or to Snake's girlfriend? But let's give Santos a break. The process of writing and editing this book was nothing if not arduous. To conduct research for his book, he borrowed a huge number of books from the prison library. He wrote passages in longhand and then mailed them to his wife (whom he had married in the prison's visitors' room in 2003), who typed them up for the manuscript. Yet make no mistake: *Inside* is not the work of an amateur. Santos is a self-made scholar, and the reader can't help wondering what he would have made of himself had he led a law-abiding life when he was outside of prison walls.

Advocates of longer and more fre-

quent incarceration are likely to dismiss the despondency, humiliation, and squalor that permeate prison life, noting that prison *should* be about punishment and that inmates get what they deserve. Santos seems to anticipate this response, concluding that—

This cycle of failure continues as if a closed loop, justifying the need for more prisons and all the billions of dollars in expenditures that keep the system alive. Neither those in corrections, nor those benefiting from the enormous capital disbursements—like prison towns, suppliers, contractors, et cetera—want to see material changes. Why would they? Doing so would be akin to those in Las Vegas making a call for an end to gambling.

The corrections complex does not exist to prepare people for law-abiding lives. Its growth depends strictly upon a culture of failure and high recidivism. The corrections complex has become one more classic example of the governmental tail wagging the dog. Corrections professionals, oxymoron though the term may be, want more people serving longer sentences. Conversely, they do not want people earning freedom, or preparing themselves to succeed in or contribute to communities outside.

Until taxpayers demand more from this twisted value system, the prison boom will continue in perpetuity.

Santos ends his book with a strong argument for a change in our prison policy, and the reader is bound to wonder what will happen to Santos as a result of the publication and—one hopes—wide circulation and discussion of the book. Toward the end of the book, Santos recounts how “[c]orrections professionals continue to make efforts to block my work. They do not want an inmate describing life inside these closed communities. Professors in universities across the United States use my work to help students ...

understand the life of prisoners. Those who work in corrections, however, ... intercept my mail and hold it for weeks at a time. They deny journalists access to interview me. They refuse visitation privileges to those who may further my writing or learning opportunities. ...” The reader naturally wonders, therefore, how this work ever got written in the first place. Were the almost 300 pages really all conveyed via letters to his wife? And how are authorities treating Santos now that *Inside* has exposed so much of the system’s underbelly?

Perhaps we will have to wait to find out until 2013, which is Santos’ projected date of release. (When he was sentenced to 45 years in 1987, his release date would have been 2032. For reasons Santos does not explain, 19 years have disappeared from his sentence.) Will prison authorities handle him with kid gloves, or will they retaliate in some fashion? Whatever happens to Santos during the next few years, surely society would benefit if, upon his release, he is asked to consult on such matters as preventing crime and recidivism in a nation that incarcerates 13.5 million people each year. **TFL**

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Steel Drivin’ Man: John Henry, The Untold Story of an American Legend

by Scott Reynolds Nelson

Oxford University Press, New York, NY, 2006.
214 pages, \$25.00.

REVIEWED BY JON M. SANDS

There are songs that have become so pervasive that they have entered our social sound track. On this playlist is “John Henry,” the song sung in school pageants, at workers’ meetings, on country

music albums, and at folk music revivals. The song tells the tale of an African-American railroad steel driver who challenges the might of the impersonal Industrial Revolution, exemplified by a steam drill. In the contest, as we all know, John Henry beats the drill, only to die from his effort:

*John Henry was a little baby
Sittin’ on his Mammy’s knee.
He picked up a hammer and a
little piece of steel
Said, “Hammer’s gonna be the
death of me.
Hammer’s gonna be the death of
me.”*

The ballad of John Henry began to circulate in the 1870s, as Reconstruction saw the revival of railroads throughout the South. Every state—and every railroad spur within every state—seems to have an association with John Henry, and his legend abounds. *Steel Drivin’ Man* attempts to locate the actual man behind the myth and to situate him in his actual circumstances. The book is also a study of popular culture and the appropriation of symbols and icons by a wider—and whiter—culture.

*John Henry went up on the mountain,
Came down on the other side.
The mountain was so tall, John
Henry was so small,
He laid down his hammer and he
cried.
Laid down his hammer and he
cried.*

An authority on Southern railroads, Scott Reynolds Nelson, in conducting the research for this book, noticed the many references in the archives to the ballad of John Henry. The references kept leading him back to the Chesapeake and Ohio Railroad and the efforts to establish a railway link between the Virginia Tidewater region and the Ohio River. The railway link would allow products such as coal and corn to be transported from the Ohio River basin to the Atlantic Ocean. Establishing the link, however, required cutting a path through the Appalachian Mountains—a task that was both dan-

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gerous and expensive. The line was forged through brute force and heavy loss of life—predominantly African-American lives.

*John Henry was a railroad man,
He worked from six till five.
“Raise ‘em up bullies and let ‘em
drop down,
I’ll beat you to the bottom or die.
I’ll beat you to the bottom or die.”*

Nelson’s work in the archives uncovered the possibility that John Henry was a real person. Nelson puts forward the premise that this person was John Williams Henry, an African-American convict serving 10 years in prison. Henry came from New Jersey; he was probably attached to the Union Army; and, after the war, in 1866, he was 18 years old. He was convicted of grand larceny and received a lengthy sentence because of the “black codes” then in effect and the reaction against rampant crime. Sent to the Virginia State Penitentiary, Henry was “leased out” on a penal railroad gang. At 5’1”, the real John Henry was a short man, not the giant described in the song. Nelson notes that steel drivers who were small-statured had an advantage, given the cramped tunnels they mined. John Henry died in 1873, when he was only about 25 years of age, and was presumably buried in the paupers’ sandy cemetery by the “white house” (white being the color of the state penitentiary).

*John Henry had a little woman,
Her name was Polly Ann.
John Henry took sick and had to
go to bed.
Polly Ann drove steel like a man.
Polly Ann drove steel like a man.*

The biographical evidence is tantalizing. Nelson identifies the names and references in the song with actual people and locations. The evidence, however, is scant—enough for conjecture, but not for definitiveness. But that is not the point.

*The Captain said to John Henry
“Gonna bring that steam drill
‘round.s*

*Gonna bring that steam drill out
on the job,
Gonna whop that steel on down.
Whop that steel on down.”*

The value of this book lies in what the song reveals about a particular society, economy, and cultural legacy—the world of railroad construction in the South during Reconstruction. The South’s economy was devastated following the Civil War and, for the most part, the railroads had all been destroyed, particularly in Virginia. In an effort to revive the state’s economy, Virginia’s state legislature, along with those of other Southern states, gave incentives to private industry to rebuild the railroads. In other words, railroads were privatized. Deals were struck under tremendously advantageous terms for investors to come in and own the means of transportation in the South. The arguments that were made for this arrangement have a familiar ring: private industry could do it better and faster, and no bureaucracy would be involved. The states, shouldering tremendous debts, were glad to hand over railroad construction to someone else.

*John Henry told his captain
“A man ain’t nothin’ but a man.
Before I let your steam drill beat
me down,
I’ll die with this hammer in my
band.
I’ll die with this hammer in my
band.”*

In 1866, the Southern states were in social turmoil and under military control, with military tribunals enforcing justice. Southern legislators reacted against Reconstruction by passing “black codes,” which contained extremely harsh penalties directed against people of color. Although the black codes were eventually ruled unconstitutional and replaced with less discriminatory codes, the new codes were equally harsh, and prosecutorial discretion enabled the authorities to continue to focus on newly freed slaves and newly arrived African-Americans from the North. Nevertheless, many of those living in the North returned to the South, because they had family there or because they were

in the Army and stationed in the South and either lacked the means to return to the North or had nothing to return to. Some of them ran afoul of the law, as was the case with John Henry.

*They placed John Henry on the
right hand side,
The steam drill on the left.
He said “Before I let that steam
drill beat me down,
I’ll hammer my fool self to death.
I’ll hammer my fool self to
death.”*

The military tribunals in the South prosecuted crimes by court martial. In 1866, in *ex parte Milligan*, the Supreme Court ruled that military courts could not operate while civil courts were in session. This decision sought to overturn military prosecutions, but the result was to turn criminal prosecutions over to the state, where racism dealt harshly with the perceived threat of black crime and violence. This racism landed heavily on John Henry. For this book, Nelson doggedly uncovered the court transcripts, discovering that Henry had entered a small grocery store and taken some food. This act was not grand larceny, but because the store was a “structure” and the theft may have occurred at night, the crime was considered burglary and subject to a harsh sentence.

*John Henry told his shaker
“Shaker you had better pray
For if I miss this six-foot steel
Tomorrow will be your buryin’
day.
Tomorrow will be your buryin’
day.”*

The hate-driven racism of the time cannot be overemphasized. Although this book is not a study of Reconstruction, its chapters about the black codes and the culture of the time are informative and chilling. Nelson makes the reader understand why the John Henry he discovered received a 10-year sentence. Even if this is not the “real” John Henry, Nelson makes his tragedy real. He stands for the thousands who suffered from the terrorizing, racist after-

math of the Civil War.

*The man that invented that steam
drill
Thought he was mighty fine.
John Henry sunk her fourteen
feet,
And the steam drill only made
nine,
Steam drill only made nine.*

Nelson is good at explaining the technology and economics of railroads. A tunnel, for example, is not simply dug straight through a mountain; rather, various tunnels (sometimes five or more) have to be drilled to provide for ventilation, removal of debris, and drainage. Steel drivers were skilled and efficient. In the beginning, the new mechanical drills, vaunted for their power, were undependable; they frequently broke down, and it would have been easy for an experienced team of steel drivers to do better than the drills could do. Working as a skilled team, the steel driver would swing a sledgehammer down on a chisel. The man holding the chisel, who was known as the shaker, would adjust the chisel to improve its bite. He would “rock” the chisel to clear away broken rock and twist or “roll” the chisel to improve its bite. The men chanted songs to give a rhythm to the work, with the pounding becoming a backbeat, and Nelson speculates that it was from this process that the term “rock and roll” originated. Again, there is no way of knowing this, and there are other contenders for the honor of coining the phrase, but this theory is intriguing—one of the many insightful contributions of the book.

*Sun shine hot and burnin',
Weren't no breeze at all.
Sweat ran down like water down
a hill
The day John Henry let his ham-
mer fall.
Day John Henry let his hammer
fall.*

Over time, all John Henrys—and what they stood for—were fated to lose the race to the steam drills. Indeed, steam drills soon became more dependable and, by the end of the 19th century, were widely used. It was

not the drills themselves, however, that killed railroad workers. Rather, the pounding of the drills created clouds of silicon dust, whose sharp particles would sear and cut the lungs of the workers. The choking caused by silicosis probably claimed the life of John Henry and scores of workers like him.

*John Henry was lyin' on his death
bed,
He turned over on his side.
And these were the last words
John Henry said,
"Bring me a cool drink of water
'fore I die.
Cool drink of water 'fore I die."*

After describing the burial of John Henry in a pauper's grave, Nelson devotes the second half of *Steel Drivin' Man* to the subsequent history of the song. He traces the song's use by the labor movement of the 1890s, as socialists, trade unionists, and Wobblies all adopted the song as an anthem for the individual standing against the industrial age. It is unusual that a ballad born from a constituency as small as the African-American railroad workers in the South could spread so far and so fast. Part of the song's appeal was that it never mentions race; therefore, anyone facing industrialization and the threat of being marginalized could identify with John Henry. The song could be interpreted as a Luddite lullaby, expressing the fear of being replaced by a machine—a sentiment that struck a chord with many workers. As America changed in the late 19th and early 20th centuries, immigration from rural America to urban settings—from the farmhouse to the factory—and the unrelenting pressure of industrialization transformed the ballad of John Henry into a protest song. He became a symbol for railway workers, miners, Communist organizers, and, later, coming full circle, civil rights workers, who rediscovered his race.

*John Henry's woman heard he
was dead,
She could not rest on her bed.
She got up at midnight, caught
that No. 4 train,
"I'm goin' where John Henry fell
dead.*

*Goin' where John Henry fell
dead."*

However, “John Henry,” made the jump from protest song to popular ballad when country music singers and folk singers took it up. Tennessee Ernie Ford recorded one of the close to 200 renditions of the song, as did Johnny Cash. “John Henry,” like “Casey Jones” and other work songs, lost its edge in the early 20th century and is now a “safe” ballad.

*John Henry had a little woman,
The dress she wore was blue.
She went down the track and
never looked back,
Saying "Johnny, I been true to
you.
Johnny, I been true to you."*

Steel Drivin' Man makes a valuable contribution to America's social, economic, and legal history. But Nelson claims too much with respect to the influence of the song. Although “John Henry” joins the tall tales of Paul Bunyan and Pecos Bill, along with the self-sacrifice of Casey Jones, I doubt that John Henry was a true forerunner of Superman and other comic book superheroes. It is enough that “John Henry” was a leftist labor anthem and protest song, as well as a beloved song sung at school pageants, usually right after the Pledge of Allegiance is recited. The ballad strikes multiple cultural chords, and Nelson's recovery of its origins in the era of racism, railways, and Reconstruction allows us to hear the song anew. I am grateful for that opportunity.

*They took John Henry to the white
house
And buried him in the sand.
And every locomotive come roar-
in' by
Says, "There lays that steel-drivin'
man.
There lays that steel-drivin' man."*

TFL

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The Money Men: Capitalism, Democracy, and the Hundred Years' War Over the American Dollar

By H. W. Brands

*W.W. Norton & Co., New York, NY, 2006.
239 pages, \$23.95.*

REVIEWED BY CHRISTOPHER FAILLE

H.W. Brands has written a capsule biography for each of five men who cut a large figure in the monetary history of the United States between its founding and the creation of the Federal Reserve System in President Woodrow Wilson's day. He has also woven the five biographies together a bit, perhaps the better to call this a book rather than a collection of essays.

The men discussed are Alexander Hamilton, Nicholas Biddle, Jay Cooke, Jay Gould, and John Pierpont Morgan. Hamilton's story is the most familiar of the five. I think it is only necessary to say that Brands rather overstates the role that the dispute over Hamilton's bank played in fixing the lines between the Federalists and the Republicans. It was perhaps even more important that Jefferson and Hamilton disagreed over their understanding of the events in France—a disagreement that would have been just as intensely passionate even if the two men had managed to see eye to eye over matters of domestic debt and credit. After all, the lives of personal friends and acquaintances—Lafayette, Paine, and others now less well known—hung in the balance as a result of the French Revolution.

Nonetheless, if Brands overstates the significance of the disputes on which his book is focused, it is a natural mistake to make—one perhaps inherent in that focus itself. Indeed, once we get into Brands' second chapter, on Biddle, we're confronted with evidence of the tight interlace of domestic financial concerns with foreign policy. It was the Jefferson administration that agreed to buy Louisiana from France. That administration hired Biddle (whose father was friendly with Vice President Aaron Burr) to help sort out some of the financial details of the transaction.

The famous London House of Barings served as underwriters, and Biddle was fascinated by his chance to hobnob with Barings—enough to reset his life's course for a career in banking.

The second war with England forced James Madison to charter a second bank in 1816, and over time Biddle rose within its ranks to become its president—and almost the leader of the political opposition when an anti-bank politician, Andrew Jackson, became President.

The third figure given biographical treatment here, Jay Cooke, is probably the least well-known of the five men included in the book, but Brands makes a persuasive case for his importance. It was Cooke who converted treasury bonds into a retail investment. The first public treasury to benefit from Cooke's assistance was that of the Republic of Texas. After the United States annexed that republic—a development that came about at least in part because some of the senators who owned the republic's bonds thought it best to secure their investment in this way—and after the start of the war with Mexico, Cooke worked in an upstart bank, E.W. Clark & Co., which sold bonds for the United States. It was in this context that Cooke discovered for himself the wonders of float.

Apparently, Clark & Co., as broker and middleman in the U.S. bond sales, devised a roundabout way of funneling the proceeds of bond sales to the U.S. Treasury. The bank would pay the St. Louis subtreasury in notes redeemable in gold in Philadelphia and New York. As Cooke later told an interviewer, "The mails were sometimes from ten to fifteen days in transit," so it took that long before his bank was actually out the gold, and, in the meantime, it could earn interest on the notes.

The real moment of glory for Cooke came years later. During the Civil War, he was one of the keys to Yankee solvency. This war was the crisis that gave rise to the retailization of sovereign bonds. The instrument for which Cooke worked his magic was a 20-year bond, which the government reserved the right to redeem in gold at any point after five years; the bond was known

for short as the "five-and-twenty." So effective was Cooke's marketing, Brands writes, that "the bonds went out the door so fast the engravers and printers at the Treasury couldn't keep up. New men were hired and new presses purchased. The register of the Treasury, the person who had to sign all the bonds, nearly paralyzed his arm from overuse."

Fourth in the golden thread that Brands traces through American history is another Jay—Jay Gould, a friend and associate of the legendary Boss Tweed of New York City. Gould's career, its importance, and the passions it aroused all reflected the shift in the center of American finance northward from Philadelphia—where it had been since the nation was founded there, and where Biddle's bank had opened and closed—toward the mouth of the Hudson.

Two episodes made Gould notorious. The first was the "Erie war," an epic struggle over control of the Erie Railroad—the land-bound link between New York City and Buffalo. Gould teamed up with Daniel Drew and Jim Fisk, and the three of them planned to buy a controlling share of the Erie Railroad with borrowed money, strip it of its salable assets, and then sell their shares of the corporate husk before the market realized that that was what it was. On the other side of the Erie war, however, was the formidable figure of Cornelius Vanderbilt, universally known as "Commodore" because he had made his first fortune in steamships. He, too, was determined to control the Erie Railroad.

Gould's group seized control of the railroad first, through manipulated proxies. Vanderbilt, smelling a rat, got a court order to allow him to look through the new managing group's papers. Gould and his allies were so afraid of what a search would uncover that they grabbed packages and files of papers and literally ran out of their New York office, heading for the nearest ferryboats and the jurisprudential safety of the New Jersey shore. One contemporary account describes the three men stacking bales, each containing \$6 million in greenbacks, into a

hackney coach. Eventually, Gould and his friends kept control of the railroad, after paying Vanderbilt \$1 million to leave them alone.

That was a pittance compared to the money that was at stake in Gould's even more notorious adventure—his effort to corner the gold coin market in September 1869. Jim Fisk was again one of Gould's associates in this venture. In lieu of Daniel Drew, however, the two old pals found a new associate, Abel Corbin, who was a key figure in their plans, because his wife's sister was Julia Grant, the first lady of the United States.

Of course, the Treasury held a lot of gold, and Ulysses S. Grant could deflate any effort to corner the gold market by simply ordering some of it to be sold. Gould's connection, through Mrs. Corbin and Mrs. Grant, was important, because through it Gould could assure himself—and others—that the President was not going to order the sale of any gold; thus, there was no limit to how high Gould's cabal could drive up the metal's price.

Although the attempt to corner the gold market was one of the incidents that led to the general impression that the Grant administration was corrupt, the President seems to have been innocent. It was not until the Gould/Fisk machinations were far advanced, in mid-September, that Grant got wind of rumors that he considered ugly. He told his wife that she should write to her sister and tell her that her husband's name had been linked to that of unscrupulous speculators in New York and that the President was distressed.

Mrs. Corbin, of course, informed her husband of the letter from Julia Grant, and Abel Corbin told Gould about it. Gould replied that he, Corbin, should keep the missive in the family. "I am undone if that letter gets out." He was soon to be undone anyway.

Appropriately, the peak came right after the equinox. On Thursday, Sept. 23, 1869, the price that gold coins would fetch in paper money reached a premium of 40 percent. This was conventionally expressed at the time as a "gold price of 140," on the assumption that gold was to be purchased in units of five gold coins, each with a face value of \$20. As the price passed \$140, Fisk

became quite boisterous in the Gold Room, where these coins were traded. He boasted that the price would pass \$145 by the day's end. He wasn't quite right. It closed that day at \$143. Still, it had been a very bad day for the bears. Fisk thought that all was right with the world. Apparently, Gould was keeping news of Grant's letter to Corbin secret even from Fisk.

The following morning, Grant gave orders to his treasury secretary to sell \$4 million worth of the stuff. Nonetheless, the price went up in early trading. Soon after noon, someone said "sold one million at 162" (one million in terms of the face value of the gold coins sought). This was apparently a Treasury representative acting on Grant's orders.

Nobody else stepped up to offer \$162 for gold. But \$161 was soon bid, again for one million, and "the same quiet voice" accepted it. Nobody else offered \$161. The next bid was for \$160 even, for up to five million. When the crowd of traders heard \$160, a wave of recognition passed through the room, as if everyone knew at once that the fever had broken. Moments later, nobody wanted to buy gold for more than \$135—and weeks of price advances were undone in minutes.

Because much of Wall Street had been ruined in the process, Fisk and Gould fled the scene. An eyewitness said that "the chances were that the lamp-post near by would have very soon been decorated with a breathless body" had the wrong people caught sight of either of them for the remainder of that day. Fisk and Gould hid out in the Opera House.

Gould lived more than two decades longer, but never lived this down. In 1892, after his death, a New York newspaper reported, "There was no sorrow by his bier. There was decent respect—nothing more."

Brands' final chapter tells us about John Pierpont Morgan. By a striking illustration of Newton's law of action and reaction, Morgan may have pressed the Democratic Party into nominating William Jennings Bryan for President.

As 1895 began, the U.S. Treasury held roughly \$100 million worth of gold, which it was committed to paying on demand to holders of its dollars.

Throughout the early days and weeks of the new year, the Treasury received many such demands, and the quantity of its reserves fell alarmingly. By the end of January, the size of the Treasury reserve was a mere \$45 million.

J.P. Morgan met with President Cleveland, now serving the second of his two notoriously nonconsecutive terms. Cleveland belonged to the pro-gold wing of the Democratic Party. He didn't want to have to refuse redemptions and thereby abandon the gold standard—or to offer redemptions in some lesser metal either. Morgan offered to put together a syndicate that would make any such drastic move unnecessary. The syndicate would buy \$100 million in bonds, paying for them in gold coins, and thereby replenish the Treasury's supply to a level that would be reassuring to the market. Cleveland thought \$100 million would be too much indebtedness for the United States to take on at a single stroke (one wishes his successors were at all scrupulous on that point) and suggested selling only \$60 million in bonds.

Cleveland also asked for a personal guarantee. "Mr. Morgan, what guarantee have we that if we adopt this plan, gold will not continue to be shipped abroad, and while we are getting it in, it will go out, and we will not reach our goal? Will you guarantee that this will not happen?" Morgan gave his word that "during the life of the syndicate," until the full \$60 million worth of gold was in Treasury hands, there would be no large-scale redemptions. It seems almost incredible, in the early 21st century, that anyone could have made such a pledge, or that a President could have believed it. But Morgan said it, Cleveland believed it, and Morgan made it stick. And the gold standard was saved.

The reaction within the Democratic Party was outrage. The President's deal sounded like something Hamilton and Biddle would have done—not like anything one would have expected from Jefferson or Jackson. It was almost tantamount to making Morgan's syndicate the new central bank. Bryan and the silverites rode the outrage, taking over the convention of 1896.

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McKinley defeated Bryan in that year's presidential election. It was soon after McKinley began his second term, in 1901, that Morgan's deal-making created two of the greatest combinations (or "trusts" as they were called) of the day: the United States Steel Corporation and the Northern Securities Company. McKinley's death put a "damned cowboy" into the office of President, and Roosevelt co-opted some of the populist, Bryanite anger at Morgan by turning himself into a trust buster.

Brands' story comes to an end soon after this episode. Woodrow Wilson became President in 1912, defeating both Theodore Roosevelt as a Bull Moose and the Republican candidate, William Howard Taft. Wilson engineered the creation of the Federal Reserve—a central bank that, in various politically palatable respects, does not look or smell like a central bank. This finally put the "money issue" in U.S. politics to rest.

I enjoyed *The Money Men*. Its target audience is not those with a scholarly interest in any of the five men profiled or in monetary economics and history. Rather, the book is squarely targeted at that, alas, too scarce reader—the cultivated and curious nonspecialist. TFL

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From Lynch Mobs to the Killing State: Race and the Death Penalty in America

Edited by Charles J. Ogletree Jr. and Austin Sarat

New York University Press, New York, NY, 2006.
309 pages, \$75.00 (cloth), \$22.00 (paper).

REVIEWED BY HEIDI BOGHOSIAN

Southern trees bear strange fruit,
Blood on the leaves and blood at the root,
Black bodies swinging in the southern breeze,
Strange fruit hanging from the

poplar trees.

Billie Holiday gave voice to Abel Meeropol's 1937 poem, "Strange Fruit," which beautifully evoked the hideous imagery of lynchings. Perhaps no other work of art better expressed the horrors of racism in the United States.

Seven decades after "Strange Fruit" was written, two social commentators have rendered an equally powerful work on the modern-day counterpart of lynching—capital punishment. Those who would proclaim lynching merely a shameful part of our past need only read *From Lynch Mobs to the Killing State* to realize that lynching—albeit in a more sanitized form that our society finds justifiable—remains a reprehensible part of our present.

Charles Ogletree and Austin Sarat have assembled an elegant compendium of essays written by sociologists, historians, criminologists, and lawyers. The essays starkly reveal how this country's death penalty has its roots in lynchings, and how it operates to sustain a racist agenda.

The death penalty evolved from lynching when courts stepped in to sentence those whom angry mobs would hang, writes Timothy Kaufman-Osborne, who has authored a book on the transition, *From Noose to Needle: Capital Punishment and the Late Liberal State*. Purportedly race-neutral, the practice of capital punishment has nonetheless well-served the perpetuation of racial categories. Due process concerns ostensibly differentiate the death penalty from lynching, but they also serve to mask how the state persists in perpetuating racial differences. *Lynch Mob's* co-editor and contributor, Charles Ogletree, agrees that current practices fail to counteract age-old discriminatory impulses.

Two contributors to the book—Glenn Pierce and Michael Radelet—have analyzed legal and extralegal factors in Illinois' death penalty system and found what noted researcher David Baldus has exposed in his studies: blacks have a higher conviction rate for killing whites than for killing blacks and are less than half as likely to receive a death sentence for killing blacks. De-

spite these statistics, initially presented in the 1987 case of *McCleskey v. Kemp*, all attempts to create systemic remedies have met only with opposition from legislators and others.

Another contributor to *From Lynch Mobs to the Killing State*, Stuart Banner, who has written a history of capital punishment in this country (reviewed in the June 2003 issue of *The Federal Lawyer*), explains how the close connection between race and capital punishment led to the temporary abolition of the death penalty in 1972, with the Supreme Court's decision in *Furman v. Georgia*. Constitutional challenges to the death penalty were an outgrowth of the Civil Rights movement and were led by such Civil Rights organizations as the NAACP. Such challenges were based on racial discrimination; undoubtedly, slavery and the Jim Crow era that followed account for the continuing racial disparity in the imposition of the death penalty.

Racial stereotyping often takes place subconsciously and can hide under legal formalities, writes Mona Lynch. She cites four elements of the system that allow room for such subconscious racism: (1) the jury selection process in capital cases, which excludes opponents of the death penalty; (2) the fact that capital trials often involve violence and criminal conduct that feeds into cultural stereotypes; (3) confusing sentencing guidelines, which allow racism to flourish; and (4) the effect of racism generally on jurors' perceptions of mitigating evidence presented in the sentencing phase. Lynch writes, "The influence of empathy is likely magnified in cases where a White is victimized by a non-White—where, all other things being equal, the highest relative percentage of death sentences are found—when jurors may extend feelings of empathy for the victim but not for the defendant."

The essay by Austin Sarat, *Lynch Mob's* co-editor, gets to the heart of the matter in recognizing that the issue of race is undeniably divisive and discomforting in public discourse. He writes that the past three decades—from *Furman v. Georgia* in 1972 to Governor George Ryan's historic mass commu-

tation of Illinois death sentences in 2000—have witnessed both continuity and change in the role that race plays in the rhetoric of the movement to abolish the death penalty. Race, Sarat explains, is conceptualized as a matter of discrimination and unfair outcome in individual cases. This paradigm neglects the deeper links between the death penalty and our racially organized society. Governor Ryan, for example, focused on wrongful convictions, at the expense of race, to justify his commutations.

Arguing that it is wrong to kill the innocent transcends the ideological divides that accompany discourse about race and shift the focus away from the awkwardness of such discourse. Sarat provides an overview of this shift, in which the scandal of innocent people being sentenced to death comes together with science in the form of DNA testing. Racial discrimination in capital punishment simply cannot compete with this combination. Sarat believes that new abolitionists “must resist the temptation to further marginalize the discourse of race in their rhetoric and politics.” He argues that race and capital punishment are “deeply entangled,” and that we should no longer ignore the persistence of racial prejudice in all stages of the process, “[f]rom the racial profiling that occurs before an arrest, to the prosecutorial decision of whether to seek the death penalty, to the peremptory challenges of jurors, to the final decision of whether to impose the death penalty.”

Public officials and judges admit that discrimination existed until the 1970s, but they seem to think that it somehow suddenly ended at that time, writes Steven Bright of the Southern Center for Human Rights. Courts and legislatures perform a disservice by substituting an idea of what criminal justice should look like with the reality of what it is. In reality, the justice systems in this country are frequently plagued by a lack of funding, overall neglect, and personnel who are ill-equipped to fulfill their responsibilities. Members of racial minorities are grossly underrepresented at all levels. Yet, Bright notes, “Courts have been increasingly hostile to challenges to the exclusion of minorities from state judicial sys-

tems, even when it is apparent that the minority vote has been diluted in order to preserve a primarily white judiciary.” Courts lose respect and credibility when they refuse to acknowledge and remedy racial discrimination that is evident to all others.

And so the legacy of lynching flourishes in the modern criminal justice system. Benjamin Fleury-Steiner, who teaches sociology and criminal justice, rightly applies the label of “apartheid practice” to this current form of official lynching (pointing out that we saw “the entrenched racial apartheid in America’s cities” in our response to the devastation of Hurricane Katrina). He writes: “Official lynchings are *realized* in death penalty jurors’ performances of the ‘criminal black,’ ‘illegal alien’ and ‘white trash’ minstrels. The 985 lives lost to official lynchings in the United States since the practice resumed in 1976 symbolize a much broader and enduring culture of American apartheid.” (Emphasis in the original.) Fleury-Steiner suggests that the political and legal elites must honestly acknowledge the failure of the capital punishment system. Citing recent positive Supreme Court decisions that present a “grammar of justice,” Fleury-Steiner says that if the high court were to abolish state killings, it would show the world that the high court does not fear “too much justice,” borrowing Justice William Brennan’s words in his *McCleskey* dissent. Abolition is the clear next step if the Court and the state legislators are committed to human rights. **TFL**

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On Political Equality

By Robert A. Dahl

Yale University Press, New Haven, CT, 2006.
142 pages, \$24.00.

REVIEWED BY JON M. SANDS

In this extended essay, the eminent political scientist Robert A. Dahl argues that democracies must strive for political equality among their citizens. At the age of 91, Dahl seems to intend *On Political Equality* as both a summing

up of his work and a jeremiad that he hopes will be heeded.

We assume that political equality is a good thing. But why? According to Dahl, “Throughout much of recorded history, an assertion that adult human beings are entitled to be treated as political equals would have been widely viewed by many as self-evident nonsense, and by rulers as a dangerous and subversive claim that they must suppress.” Today, however, people want democracy because they feel entitled to a voice—and a voice equal to that of others—in how they are governed. It seems paradoxical, however, that, in capitalist societies, where democracy seems to work best, rising inequalities threaten to devalue political equality. Wealth and opportunities are not fairly or evenly distributed. People accept these inequalities because due process of law as well as certain rights, such as freedom of speech and religion, are ensured. One other key right is political equality—the right to have equal access to the political process and to have one’s vote counted equally. Dahl identifies political equality as a core benefit of democracy that allows us to live with other social inequalities.

Dahl analyzes the development of political equality and how it met the needs of developing and industrializing countries. Democracy as a political system is neither absolute nor widespread. Dahl needs only to point out the lack of rights of slaves and women in the original Constitution and the slow expansion of those rights over most of the 19th and 20th centuries. His point is that democracy as an ideal comes up short in practice, and that we pay far more lip service to political equality than we practice it.

Dahl’s concern is that increasing economic inequality and a lessening of involvement in the political process by so many, especially in the United States, is leading us to slip into a faux democracy, where a small cadre of wealthy elites and a few selected “mandarins” will control the nation. Is our democratic republic becoming the state that Orwell portrayed in *Animal Farm*, where “All animals are equal. But some are more equal than others”? Dahl fears

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that this may be the case, but he sees two possible scenarios for the United States. The first is the increasing cost of political participation and the disenfranchisement of so many, leading to withdrawal from the process. The second is a realization that inequalities can be controlled and that reforms can be instituted.

Dahl's view is dark. He comes across as a frustrated liberal, wanting the people to wake up. Yet, there is involvement. The conservative movement, one can argue, has ascended because it is based on passionate involvement and has demonstrated the grassroots power of school boards, neighborhood meetings, and single-issue advocates. The GOP's vaunted 72-hour "get out the vote" program was one tactic to increase political involvement. Dahl wrote this book before the 2006 midterm election, when Democratic voters chose to send a message. Yet, as Dahl would point out, gerrymandering, voter disenfranchisement, money inequalities, and indifference still resulted in only slightly more than 30-seat majority for Democrats in the House and a majority in the Senate that depends on the health of a senator recovering from a major illness.

As for the people's belief that their votes do not count, which economists say is a rational assessment, George W. Bush's slim margin of victory in Florida in 2000 and the razor-thin wins by so many candidates in the 2006 midterm elections should eliminate that problem. Individual votes do matter.

The need for involvement was the leitmotif of Justice Breyer's recent book, *Active Liberty: Interpreting our Democratic Constitution* (reviewed by this reviewer in October 2006 issue of *The Federal Lawyer*), which can be read as a legal approach to complement Dahl's political science approach. Breyer argued that the Constitution and statutes should be construed to increase active involvement, with interpretations that increase participation being favored. Dahl would agree but would emphasize that the channels of participation increasingly water the few, leaving most parched of involvement. This is occurring because of the

pernicious effects of money in shaping campaigns, the seemingly growing distance between politics and everyday needs, and the hurdles erected against exercising the right to vote. Dahl wants more channels with easier access to increase political equality.

Dahl argues that size matters—smallness and nearness increase political involvement. He looks to Scandinavia as a model. For Dahl, democracy works in Denmark, Norway, and Sweden, because the citizens of these countries view the opportunity for political involvement as an important social benefit. In the United States, alas, the rising economic inequality among Americans—exemplified by the contrast between chief executive officers' salaries and those of their companies' workers—does not bode well for our democracy. Still, there is widespread political involvement in India's democracy, so the key may not be size as much as people's attitudes. Dahl concentrates his analysis on the United States and Western Europe; he does not address non-European possibilities to any great extent, and he avoids Iraq altogether. It would have been interesting if Dahl had commented on the neo-conservative crusade to bring democracy to the Middle East. My sense is that Dahl, although he acknowledges people's desire for democracy, is wary of its enforced exportation. And Dahl has little faith that international organizations or regional unions (think Europe) can increase democratic equality. Growing bigger, Dahl fears, will diminish rather than augment people's sense of political equality.

On Political Equality is a provocative essay—a call to involvement and a lamentation for the present state. Dahl, who has spent his career as a political scientist studying democracies, is justifiably fearful. He sees the distance to attaining political equality widening to the point that it ceases to be bridgeable. Perhaps the debate over an increasingly unpopular war, with a tragic, mounting death toll, will cause people to reconnect. **TFL**

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