RECENT PUBLICATIONS

DISCRIMINATION LAUNDERING: THE RISE OF ORGANIZATIONAL INNOCENCE AND THE CRISIS OF EQUAL OPPORTUNITY LAW. By Tristin K. Green. New York, N.Y.: Cambridge University Press. 2017. Pp. viii, 201. $34.99. Do organizations discriminate — or does discrimination arise only from the isolated actions of individuals within organizations? In *Discrimination Laundering*, Professor Tristin Green explains how courts' belief in the latter — that employment discrimination results only from "low-level, rogue employees" acting against their "innocent" organizations' interests — threatens the "common commitment to a workplace where racial and gender stereotypes and biases . . . will not determine worker success" (p. 1). Green begins with the claim that courts increasingly engage in "discrimination laundering," washing workplaces themselves of illegal discrimination by shifting away from a legal obligation on the part of employers to address structural causes of discrimination at work and toward a narrower obligation to respond to individual complaints of discrimination as they arise. Green then turns to what is wrong with this perspective, arguing it removes any legal impetus for employers to examine how "they might be inciting discrimination and contributing to outcomes that are skewed along racial and gender lines" (p. 109). But, Green contends, employers *do* contribute to discrimination in the workplace and *can* take measures to quell discrimination. Reversing discrimination laundering will go far toward encouraging them to do so.

ISSUES IN LAW & ECONOMICS. By Harold Winter. Chicago, Ill: University of Chicago Press. 2017. Pp. xii, 233. $27.50. Do judges discriminate when sentencing defendants? Should the selling of body parts be legalized? Can anyone own sunlight? Will file sharing destroy the music industry? With economic analysis as the lens, Professor Harold Winter covers these and other issues in property, contracts, torts, and criminal law in this new book. In each chapter, Winter explores a different question through a foundational court case. After guiding the reader through a presentation of the facts of the case, Winter presents a step-by-step economic analysis that proceeds through a three-step process: theory, evidence, and policy. Each chapter's questions for further discussion push readers to take the analysis further. The book's broad spectrum of topics and Winter's clear and engaging style make these important questions accessible and interesting to all readers.

WRITING FOR HIRE: UNIONS, HOLLYWOOD, AND MADISON AVENUE. By Catherine L. Fisk. Cambridge, Mass.: Harvard University Press. 2016. Pp. x, 308. $35.00. "A writer . . . is a person who writes as a vocation or at least as an avocation. To be an author, however, means something more" (p. 237). In *Writing for Hire*,

Professor Catherine Fisk examines the question of why different conceptions of authorship arose in two uniquely American writing industries: Hollywood's film and television studios and Madison Avenue's advertising agencies. Fisk suggests the answer is simply that screenwriters formed a union to protect their interests, while ad workers did not. *Writing for Hire* is primarily a historical account of these developments, drawing on newly uncovered archival sources and interviews with figures like *Mad Men* creator Matthew Weiner. The story begins in the 1930s, when "corporate" writing first began to take hold (p. 89). Fisk carefully chronicles events throughout the twentieth century, including the labor negotiations that created Hollywood's norms of writer attribution, the McCarthy-era blacklisting of hundreds of screenwriters, and the increasing professionalization of the advertising industry. On a deeper level, Fisk makes the argument that to truly understand what it means to be an "author," one must look not just to copyright law but also to the history of the social and economic forces shaping a particular field.

CYBER INSECURITY: NAVIGATING THE PERILS OF THE NEXT INFORMATION AGE. Edited by Richard M. Harrison & Trey Herr. Foreword by Richard J. Danzig. Lanham, Md.: Rowman & Littlefield. 2016. Pp. xx, 391. $65.00. After decades of innovation in computing and the web, cybersecurity regulation remains a new and mysterious frontier. With careful cultivation, Richard M. Harrison and Trey Herr present a comprehensive manual for policymakers concerned about the growing barrage of cyberattacks but unsure how to address them. Part primer, part briefing, and part policy agenda, Harrison and Herr's compilation is best described as a series of field reports from the Wild West of cybersecurity law. In addition to bringing together the diverse perspectives of military leaders, legal practitioners, and academics, Harrison and Herr outline four categories for discussing and prioritizing avenues of reform. Section One focuses on *Securing Data, Devices and Networks*; Section Two on *Combating Cyber Crime*; section Three on *Governing the Security of the Internet*; and section Four on *Military Cyber Operations*. Within these analytical guideposts, each chapter covers a specific topic, from the risks of connectivity in the automobile industry to disrupting malware markets. Wherever each contributors' recommendations may lead, it is clear Harrison and Herr have taken a significant step in clarifying and guiding serious policy discussion on cybersecurity.

ANTITRUST LAW IN THE NEW ECONOMY: GOOGLE, YELP, LIBOR, AND THE CONTROL OF INFORMATION. By Mark R. Patterson. Cambridge, Mass.: Harvard University Press. 2017. Pp. viii, 317. $45.00. Regulation of market information traditionally has fallen under

the purview of consumer protection law, which addresses similar information-based issues like false advertising. However, in *Antitrust Law in the New Economy*, Professor Mark Patterson challenges this conventional division, arguing that antitrust law offers a more appropriate framework for managing competition in an information economy dominated by big players like Google and Yelp, in addition to credit ratings agencies and trade associations. Patterson urges a shift in antitrust law toward conceptualizing information — that is, data arising from consumption-related decisions — as a product, which although different from traditional goods and services, poses problems familiar to antitrust law, such as monopoly and collusion. With an underlying focus on the *quality* of information, Patterson identifies unique challenges facing antitrust law in this new economy, from the high cost of entry for new firms seeking to unseat goliaths like Amazon to the misleading aura of "objective" information sharing cultivated by some information providers. After addressing complications posed by two relevant fields, intellectual property and First Amendment law, Patterson calls for a deeper "reappraisal" of our modern informational universe, informed by antitrust principles (p. 237).

INVENTING AMERICAN EXCEPTIONALISM: THE ORIGINS OF AMERICAN ADVERSARIAL LEGAL CULTURE, 1800–1877. By Amalia D. Kessler. New Haven, Conn.: Yale University Press. 2017. Pp. xi, 449. $35.00. In the first year of law school, most American students are taught that the adversarial model of litigation is inseparably linked to distinctive American values. That account may be true at present, but it was not always this way. *Inventing American Exceptionalism* sets out to complicate that narrative by tracing the adversarial model's development through one period of U.S. history, noting the existence of alternate approaches. Courts of equity, for one, controlled proceedings and fact-finding to such an extent that they were properly "quasi-inquisitorial" (p. 5). The Reconstruction-era Freedmen's Bureau also departed from the adversarial model but was ultimately frustrated by Southern charges of militaristic oppression and denial of due process. That rhetorical link between the inquisitorial model and due process deficiencies continues to ground the modern view of the American system. Thus, what appears at first to be a procedural choice in fact embodies values springing from "the historical particularities of the American experience" (p. 7) — and those values come at a cost. Examining a formative period of American legal practice, Professor Amalia D. Kessler provides a historical basis for considering the merits of an adversarial system often taken for granted.