

2011

Reviewing Joan DelFattore's Knowledge in the Making

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Recommended Citation

Suzanne Corriell, *Joan DelFattore's Knowledge in the Making*, 103 Law Libr. J. 478 (2011) (book review).

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¶10 The specific practices of law that Dayan discusses in *The Law Is a White Dog* are fascinating in themselves, but take on critical importance because they influence the shape of contemporary government, which affects us all. The legal fictions historically used by the apparatus of government to relegate some individuals to a less-than-human status also serve to normalize violent means of social control that can develop, at the extremes, into the abuses seen at Guantanamo, the treatment of enemy combatants in the war on terror, or the curtailment of basic human rights within our nation's prisons.

¶11 Dayan works out her complex ideas and analyses across the seven chapters that make up her book. She focuses on the social construction of slaves as chattel, the callous punishment of felons, and the dehumanizing treatment of those identified as terrorists. In the final chapter, Dayan extends her analysis of how the law addresses those at the outer margins of society to examine how we treat our companion animals. She demonstrates that the development of animal law is most fruitfully read in light of historically changing understandings of what it means to be human and fully enfranchised as a participant in society.

¶12 Written by an author well known for previous interdisciplinary work in cultural studies and law, this book is a must-have for both general academic libraries and academic law libraries. The writing is crisp, and the way in which Dayan assembles a wide array of topics that are rarely grouped together is thought-provoking and engaging. The book addresses important social questions and reveals the subtle ways that idiosyncratic legal reasoning works to rationalize harsh social processes. Dayan's deconstruction highlights the law as a key mechanism for social control, rather than a narrow area of professional discourse or an administrative or procedural system that touches only a small segment of society. Ultimately, *The Law Is a White Dog* will prove valuable for anyone who seeks a comprehensive, critical understanding of our society and the role played in it by the law.

DelFattore, Joan. *Knowledge in the Making: Academic Freedom and Free Speech in America's Schools and Universities*. New Haven, Conn.: Yale University Press, 2010. 306p. \$35.

Reviewed by Suzanne Corriell

¶13 Joan DelFattore, a University of Delaware professor of English and legal studies, is an expert on the American educational system whose previous writings include books on textbook censorship³ and religion in public schools.⁴ In her latest book, *Knowledge in the Making: Academic Freedom and Free Speech in America's Schools and Universities*, DelFattore explores the history of academic freedom in America and scrutinizes the case law that defines the rights of universities, school boards, educators, and students. Throughout her book, DelFattore advocates for a vision of American education that aspires to the quotation from John Milton with which she opens: "Where there is much desire to learn, there of necessity will be much arguing, much writing, many opinions; for opinion in good men is but

3. JOAN DELFATTORE, WHAT JOHNNY SHOULDN'T READ: TEXTBOOK CENSORSHIP IN AMERICA (1992).

4. JOAN DELFATTORE, THE FOURTH R: CONFLICTS OVER RELIGION IN AMERICA'S PUBLIC SCHOOLS (2004).

knowledge in the making” (p.vi).⁵ Ultimately, she maintains, schools at all levels must welcome and encourage opinion and debate if American education is to succeed both in teaching its students “to think for themselves” and in “provid[ing] . . . access to those materials [that students] need if they are to think intelligently” (p.213).⁶

¶14 Rather than focusing exclusively on either universities or elementary and secondary schools, DelFattore carefully analyzes academic freedom at all levels of instruction. She demonstrates the basic administrative and structural differences between K–12 and higher education, and explains the distinct legal protections afforded to various governing bodies, administrators, educators, and students. She also presents a brief history of the American Association of University Professors (AAUP) that depicts the birth of academic freedom and describes the evolution of the concept over the course of the past century. Nor does DelFattore shy away from confronting more contentious issues like prejudice, sexuality, and politics in American schools. Indeed, her book specifically covers speech codes, reading lists, evolution, creationism, intelligent design, homosexuality, and ideological bias. Whenever applicable, DelFattore relies on the details of actual court cases to illustrate the historical and ongoing trends that help shape her topics.

¶15 Later chapters in *Knowledge in the Making* focus primarily on *Garcetti v. Ceballos*,⁷ a critical Supreme Court case addressing First Amendment speech protections—or the lack thereof—for government employees. In *Garcetti*, the Court ruled that because Ceballos, a deputy district attorney, made certain statements pursuant to his position as a public employee, rather than as a private citizen, his speech did not warrant First Amendment protection. The *Garcetti* majority specifically noted that it would not necessarily apply the same reasoning in an academic setting. Using this caveat as a springboard, DelFattore proceeds to examine various pre- and post-*Garcetti* legal decisions. Several of these cases were still on appeal at the time the book was written, and personally, not knowing the final outcome heightened my interest and suspense. I found myself eagerly turning to the Internet to read the final opinions and learn how the stories ended.

¶16 Adhering to the very principles she advocates for American education, DelFattore presents conflicting opinions and balanced information, leaving her readers to think for themselves and draw their own conclusions. Yet her discussions of the cases force readers to imagine what public education would be like if majority rule alone were to dictate what can be said or taught in American classrooms. Some may well argue that DelFattore writes with a liberal bias, but I found her perspective on most topics to be decidedly neutral, though peppered by a sense of humor that will resonate with many in academia. The civility with which she approaches controversial subjects helps demonstrate for her readers how respectful discourse and debate can generate a healthier American educational system.

5. Quoting JOHN MILTON, AREOPAGITICA 50 (Arc Manor 2008) (1644).

6. Quoting AM. ASS’N OF UNIV. PROFESSORS, 1915 *Declaration of Principles on Academic Freedom and Academic Tenure*, in POLICY DOCUMENTS AND REPORTS 291, 298 (10th ed. 2006).

7. 547 U.S. 410 (2006).

¶17 Although DelFattore's writing is geared toward legal scholars and an academic environment, educators at all levels should seriously consider reading *Knowledge in the Making*. Students may also appreciate it as an excellent introduction to education law and academic freedom. All academic libraries, including law school libraries, should add the title to their collections.

Downey, Arthur T. *Civil War Lawyers: Constitutional Questions, Courtroom Dramas, and the Men Behind Them*. Chicago: American Bar Association, 2010. 461p. \$34.95.

Reviewed by Karen E. Kalnins

¶18 Whether called the American Civil War, the War Between the States, or even the War of Northern Aggression, the four-year conflict that engulfed our nation during the mid-nineteenth century has inspired countless movies and books, both fictional and nonfictional. One significant new addition to the list is Arthur T. Downey's *Civil War Lawyers: Constitutional Questions, Courtroom Dramas, and the Men Behind Them*. Instead of revisiting the battlefield encounters and military personalities that fill many Civil War offerings, Downey's work focuses on the jurisprudence of the times and the lawyers and judges who crafted it. This decidedly different slant highlights the significance of both the rule of law and the legal profession during times of war. This is the unique contribution made by *Civil War Lawyers*, and it owes much to the narrowness of Downey's subject matter. The book is not an all-encompassing compendium, but it does provide a detailed and valuable examination of the lawyers, judges, and notable cases that helped to mold one of the defining periods in American history.

¶19 The organization of *Civil War Lawyers* is generally straightforward and offers easy access to the book's content for both casual readers and those researching specific information. An introduction provides a basic primer on the Civil War era, and successive chapters cover topics connected either to specific cases or broader themes: the "Prologue" to war, *Dred Scott*,⁸ the trial of John Brown, "Secession," *Ex Parte Merryman*,⁹ "The War at Sea," "Ending Slavery," and "The Revenge Trials." While the chapters progress chronologically, Downey obviously addresses only a limited selection of potential topics; presumably, he chose the most interesting or controversial cases and issues. Three appendixes, extensive endnotes, and a comprehensive index support the eight substantive chapters. The appendixes include a collection of short biographies on individual lawyers, a brief analysis of the intersecting relationships among notable attorneys, and a chronology of Civil War events. The index contains an extensive listing of keywords and topics, and it includes page references to material appearing both in the main text and the endnotes.

¶20 In terms of content, each chapter in *Civil War Lawyers* offers succinct but highly readable summaries of complicated topics, arranged in discrete sections and divided by clear headings. A number of photographs, paintings, and similar illus-

8. *Scott v. Sandford*, 60 U.S. (19 How.) 393 (1856).

9. 17 Fed. Cas. 144 (C.C.D. Md. 1861) (No. 9487).