

Western New England University

## Digital Commons @ Western New England University

---

Faculty Scholarship

School of Law Faculty Scholarship

---

2017

### Review of David Cole. Engines of Liberty: The Power of Citizen Activists to Make Constitutional Law.

Pat Newcombe

*Western New England University School of Law*, [pnewcombe@law.wne.edu](mailto:pnewcombe@law.wne.edu)

Follow this and additional works at: <https://digitalcommons.law.wne.edu/facschol>



Part of the [Constitutional Law Commons](#)

---

#### Recommended Citation

Pat Newcombe, Review of David Cole, Engines of Liberty: The Power of Citizen Activists to Make Constitutional Law, 109 LAW LIB J. 146 (2017).

This Book Review is brought to you for free and open access by the School of Law Faculty Scholarship at Digital Commons @ Western New England University. It has been accepted for inclusion in Faculty Scholarship by an authorized administrator of Digital Commons @ Western New England University.

¶9 Lindsay Cameron, a graduate of the University of British Columbia School of Law, worked for six years as a corporate attorney at large law firms in the United States and Canada before writing *Biglaw*, her debut novel. The novel's title refers to firms that cater to the country's largest corporations. These firms often include sections specializing in mergers and acquisitions, banking, and corporate litigation.

¶10 Insights into big law suggest that it is a grueling environment in which associates are expected to be available at all times. To best survive, they must put down their heads, plow through obligations, and learn to tolerate unpleasant work. They must keep track of several ongoing projects at once and keep partners informed.

¶11 Mackenzie Corbett is a twenty-eight-year-old graduate of Georgetown Law Center. After two years at Freedman & Downs, a top (fictional) Manhattan law firm, she is about to obtain a prestigious temporary job assignment with one of the firm's clients. *Biglaw* follows Mackenzie as she moves seemingly closer to reaching her goal, when an unexpected visit from Securities and Exchange Enforcement changes her plans. Covering a seven-month time frame, Cameron details all aspects of Mackenzie's life as a dedicated junior associate, through all the ups and downs of working in big law. As Mackenzie is tormented by her mentor, works day and night to satisfy the partners' requests, and finds herself investigated for insider trading, we learn about the life of an associate in a big law firm. Intrigue in the small bit of her life outside the office moves the story along at a quick pace. Colorful characters that inhabit Mackenzie's sphere, her secretary Rita in particular, are well developed.

¶12 Is all that is presented truly realistic? Details of sleep deprivation and psychological abuse seem plausible, given what is at stake for the lawyers and their clients. The sacrifices that continue to be made and the cutthroat nature of the interactions between partners, associates, and administrative personnel ring true, if only due to many examples of similar actions found in the legal fiction genre.

¶13 Perhaps one needs to have been a big law associate to know for sure, but Cameron's novel amuses and entertains. One wants to root for Mackenzie and her eventual discovery of the truth and realization of her inner strengths. Complete with legal intrigue, humor, romance, betrayal, lust for power, and a strong female character readers can root for, *Biglaw* is engaging and suspenseful. It is a perfect Sunday afternoon read—if you are not still at the office. Legal fiction fans and anyone who would enjoy an inside look at big law firms will want to get a copy of this book. Recommended for popular legal fiction collections.

Cole, David. *Engines of Liberty: The Power of Citizen Activists to Make Constitutional Law*. New York: Basic Books, 2016. 307p. \$27.99.

*Reviewed by Pat Newcombe\**

¶14 Beginning in the 1980s, Evan Wolfson, an attorney who worked at Lambda Legal Defense Fund and later established Freedom to Marry, a leading nonprofit

---

\* © Pat Newcombe, 2017. Associate Dean for Library and Information Resources, Western New England University School of Law, Springfield, Massachusetts.

advocacy group, banded with other marriage equality champions and developed a game plan to incrementally pursue state rights for gay people. Once gay rights activists made sufficient headway in certain states, the push for marriage equality began in the states that appeared most amenable. They collaborated with public relations strategists to identify the best arguments to persuade the citizenry and brought pressure on the entertainment/media industry to portray gay individuals in a more positive light. All of this strategic planning for more than twenty years, including the wins and the losses along the way, led to the constitutional acknowledgment of same-sex marriage rights in *Obergefell v. Hodges*.<sup>1</sup>

¶15 This epic struggle is captured masterfully by David Cole in *Engines of Liberty: The Power of Citizen Activists to Make Constitutional Law*. The book recounts three engaging stories of enormous constitutional change and of the organizations and individuals whose efforts achieved such change. Cole holds up these movements—same-sex marriage, gun rights, and human rights in the war on terror—as examples of where ordinary citizen activists have been actual change agents, and convincingly proposes that constitutional evolution begins not when a legal matter comes before the Supreme Court, but much earlier when civil society organizations advocate for reform.

¶16 Cole's second illustration of citizen activism traces the evolution of the individual right to bear arms. For nearly a hundred years, it had been well settled in Second Amendment doctrine that only the states' rights to support militia was protected, not an individual's right. Cole introduces the second main character, Marion Hammer, who entered politics when Congress passed the Gun Control Act in 1968, believing that the Act was setting a path to abolish what she viewed as an individual right to bear arms. Hammer decided to get involved in this struggle and eventually became the first female president of the National Rifle Association (NRA). The NRA and its advocates adopted a state incrementalism strategy, beginning with those states most inclined to be sympathetic to amending gun laws to recognize an individual right to bear arms under their own constitutions. The NRA then used precedents won there to continue their progress in other states.

¶17 Throughout the decades, the NRA campaigned outside the federal courts, encouraging legal scholarship that promoted their perspective, backing legislators who advocated amending state laws and constitutions to advance the individual right to bear arms, obtaining influential endorsements from Congress and the executive branch for individual gun rights, and helping ensure that the "Supreme Court's newest justices were selected in part on the basis of their sympathy to gun rights" (p.100). By 2008, the Supreme Court held in *District of Columbia v. Heller*<sup>2</sup> that the Second Amendment indeed protects an individual's right to bear arms.

¶18 The third example of citizen activism recounts the work of civil liberties and human rights organizations to alter the deference paid to the President during war and times of conflict and hostilities. "Civil liberties are often among the first casualties of war" (p.151), and the courts have largely approved actions sacrificing liberty during wartime. Cole introduces Michael Ratner, a lawyer with the Center for Constitutional Rights, who learned that prisoners housed at Guantanamo Bay

---

1. 135 S. Ct. 2584 (2015).

2. 554 U.S. 570 (2008).

Naval Base were deprived of hearings and legal representation. Ratner and other activist groups working to protect civil liberties and human rights faced an uphill battle, as the Supreme Court had held that foreign prisoners of war may not be heard in U.S. courts. However, these groups formed a strategy to focus on foreign audiences and governments, beseeching them to pressure the United States to abide by principles of basic human rights. They found support from retired military commanders, a very credible resource; they sought transparency, acquiring records under the Freedom of Information Act and publicizing them to draw scrutiny to the administration's controversial initiatives; and they resorted to a public shaming strategy that many human rights organizations use when formal remedies are not available. Human rights organizations also took their constitutional concerns to the federal courts, since delaying such a tactic (as same-sex marriage advocates and gun right advocates had done) is not feasible when individuals are facing detention. In 2004, the Supreme Court ruled that the Guantanamo prisoners had a right to sue in federal court to challenge the legality of their detentions.<sup>3</sup> However, the threat of judicial oversight brought about reform. President Bush curtailed most of his highly aggressive counterterrorism initiatives.

¶19 All three groups chronicled in this book eventually succeeded in federal court because they had helped to transform popular consensus via advocacy outside the court, often triumphing without any express court involvement. All were dedicated to constitutional reform with lengthy periods of sustained and intensive advocacy, and each worked with civil society organizations that were focused on safeguarding, protecting, and upholding fundamental values.

¶20 Cole presents a fascinating perspective on constitutional law that is well supported with citations to documents and personal interviews, all written in an accessible, engaging, and clear style. Cole has made a strong case that individuals with such a desire can shape the law to their own ends. I highly recommend this first-rate work to law, general academic, and public libraries.

Donohue, Laura K. *The Future of Foreign Intelligence: Privacy and Surveillance in a Digital Age*. New York: Oxford University Press, 2016. 183p. \$24.95.

*Reviewed by Franklin L. Runge\**

¶21 International spying seems like a good profession. Judging by the James Bond films, a spy's job description includes the extrajudicial killing of awful people, dressing sharply, falling in "love" with much younger individuals, and visiting exotic locations. Laura K. Donohue's new book, *The Future of Foreign Intelligence: Privacy and Surveillance in a Digital Age*, obliterates this archetype. She convincingly asserts that the United States of America's intelligence agencies repeatedly and brazenly violate the Constitution to spy on their own citizens.

¶22 If you play a role in collection development at an academic library (law or otherwise), you should add this monograph to your shelves. As a reader, I zipped

---

3. *Rasul v. Bush*, 542 U.S. 466 (2004).

\* © Franklin L. Runge, 2017. Faculty Services Librarian, University of Kentucky College of Law, Lexington, Kentucky.