both misunderstand and discount the significant ways in which paper documentation shaped such diverse areas as daily work activities, legal evidentiary standards, and even the deep moral and cultural authority afforded to written documents and signatures. Similarly, Blanchette relates how legal evidentiary regimes themselves developed concurrently with technologies that enabled and fostered deep cultural reliance on the authenticity, verifiability, and enforceability of written documents and signatures. Attempts by legal systems to bring evidentiary rules and presumptions in harmony with cryptographically protected signatures have met with limited success, precisely because respect for the evidentiary authority of paper "extend[s] far and deep into law's most quotidian activities" (p.11).

¶22 Blanchette discusses how current cryptographic modeling practices affect the practical application of any resulting technological advances and how they make fundamental assumptions about the nature of proof and authority of digital signatures as evidence. He also describes how legal adjudicators view the evidentiary weight and value of cryptographically protected signatures.

¶23 It is in critiquing the cultural blind spots of both legal and cryptographic disciplines that Blanchette's intellectual contribution is most significant. Other works almost certainly provide a more detailed discussion of the practice and theory of cryptography and encryption. Likewise, works such as Stephen Mason's *Electronic Signatures in Law*[7] provide a more detailed and descriptive account of specific evidentiary regimes as they relate to digital signatures. Blanchette's contribution is his critical analysis of the ways in which the culturally shaped views and presumptions exhibited by both cryptographers and legal professionals vary or even at times work at cross-purposes.

¶24 The goal of *Burdens of Proof* is to articulate the divergent concepts shared by cryptographic and legal disciplines related to the evidentiary value of digital signatures. Both seek veracity, accountability, and enforceability, but often conceptualize the achievement of these goals in very different ways. *Burdens of Proof* is both theoretical and technical without being inaccessible. It is highly recommended for academic law libraries, but it would be useful reading for anyone concerned or curious about the interplay between evidentiary rules and encryption and digital signatures.

Wilkinson, J. Harvie, III. *Cosmic Constitutional Theory: Why Americans Are Losing Their Inalienable Right to Self-Governance.* New York: Oxford University Press, 2012. 161p. $21.95.

*Reviewed by Karen Skinner**

¶25 A federal judge seems particularly well situated to provide an inside look at how various leading constitutional theories work in practice, and indeed Judge J. Harvie Wilkinson III, in *Cosmic Constitutional Theory: Why Americans Are Losing*

7. STEPHEN MASON, ELECTRONIC SIGNATURES IN LAW (3d ed. 2012).

* © Karen Skinner, 2013. Law Librarian–Research Services, Gabriel and Matilda Barnett Information Technology Center and Asa V. Call Law Library, University of Southern California Gould School of Law, Los Angeles, California.

Their Inalienable Right to Self-Governance, has written a succinct, well-organized review of current theories of constitutional jurisprudence. The book is part of the Inalienable Rights Series published by Oxford University Press, which includes works by authors such as Richard Posner, Richard Epstein, Alan Dershowitz, and Laurence Tribe.

¶26 Wilkinson discusses four theories of constitutional interpretation that he calls "cosmic constitutional theories." He provides a primer on each theory, touching on the virtues and vices of each. However, significantly more space is devoted to the drawbacks and day-to-day workability of each theory. Additionally, he identifies what you might call a representative, or champion, for each theory. From the first chapter, it is clear that Wilkinson believes that judicial restraint is the best course and that none of the theories he is about to discuss lives up to that ideal.

¶27 Living constitutionalism, as touted by Justice William J. Brennan, purports to attach current meaning to the words of the Constitution. Wilkinson credits living constitutionalists with "curbing racial and gender discrimination and expanding the rights of free speech and to the assistance of counsel" (p.11), but he believes that the courts overreached on "abortion, capital punishment, and habeas corpus" (*id.*), among other areas. Living constitutionalism promotes stability and assists the other branches of government to promote equality, but "charges judges with the task of creating a better world" (p.20). Wilkinson, providing his harshest criticism for this first theory, alleges that living constitutionalism ignores democratic will, institutional limitations, and textual constraints.

¶28 Juxtaposed against living constitutionalism is originalism. Relying primarily on Robert Bork's *The Tempting of America*,[8] Wilkinson states that originalism "accepts the original public understanding of the Constitution as the only legitimate source of constitutional interpretation" (pp.37–38). Originalism's greatest virtue, according to Wilkinson, is its focus on judicial restraint. The problem with originalism is that it requires judges to be historians. Two judges can reach conflicting conclusions from the same historical documentation, which Wilkinson argues actually leads to judicial activism.

¶29 Wilkinson uses John Hart Ely's *Democracy and Distrust*[9] to convey political process theory. This theory proposes that "courts should focus their attention on process rather than outcomes, ensuring both that our democratic government functions openly and transparently and that majorities adequately consider the interests of minorities" (p.63). The reliance on process is grounded in faith in representative government. Wilkinson argues that political process theory allows courts to define our democracy, while using process judgments as a substitute for substantive judgments.

¶30 The discussion of cosmic constitutional theories wraps up with Judge Richard Posner representing pragmatism. Pragmatic judges base their decisions on effects when the specific language of primary authorities does not resolve an issue. The truly pragmatic judge bases decisions on "*overall* consequences" (p.82) and not just those likely to affect the individual litigants. According to Posner and

8. ROBERT H. BORK, THE TEMPTING OF AMERICA: THE POLITICAL SEDUCTION OF THE LAW (1990).
9. JOHN HART ELY, DEMOCRACY AND DISTRUST: A THEORY OF JUDICIAL REVIEW (1980).

Wilkinson, pragmatism provides flexibility, cautions judges with limitations, and encourages honesty. However, the trouble with pragmatism arises when judges decide whether to balance costs and benefits when legal texts do not provide a solution, and then again when deciding how to balance interests.

¶31 Wilkinson maintains throughout the book that there is no one perfect theory, and that all of these constitutional theories have major shortcomings that cause judges to be interventionists. Wilkinson does such a good job laying out these shortcomings that by the end of the book you want his own take on which theory is best, or for him to provide a theory of his own, despite the fact that he states in the introduction that he does not do so. Alas, the reader is left desiring a solution to a problem that appears to have none. In spite of that, *Cosmic Constitutional Theory* offers a useful assessment of constitutional theories, and it is recommended for all academic law libraries and other academic libraries where patrons seek scholarly commentary on constitutional theory.

Kadri, Sadakat. *Heaven on Earth: A Journey Through Shari'a Law from the Deserts of Ancient Arabia to the Streets of the Modern Muslim World.* New York: Farrar, Straus, and Giroux, 2012. 384p. $28.

*Reviewed by Alicia Y. Dyer**

¶32 The idea of a book that covers Shari'a law is intriguing in and of itself, since it involves a topic that is as foreign to the Western mind as it is mystical. In the 620s, when the Qur'an was first articulated by the Prophet Muhammad, the term *Shari'a* referred to the idea of a "direct path to water" (p.12), a concept very important to desert peoples. In overly simplistic terms, *Shari'a* refers to Islamic law, which represents a Muslim's quest to do "right by God" (p.278). In reality, it is a complex concept that denies simple definition, which is why a text such as *Heaven on Earth: A Journey through Shari'a Law from the Deserts of Ancient Arabia to the Streets of the Modern Muslim World* is so useful. Although most Westerners have heard of the Shari'a, they know of it only in a very limited (and often hostile) context and have little understanding of its meaning. Sadakat Kadri, an English barrister of Indian heritage, strives to explain to a Western audience the elusive concept of the Shari'a in a digestible way.

¶33 Because of its complexity, one cannot expect to know and understand the Shari'a after reading one text, especially given the diversity of interpretation of the Shari'a that persists among Muslims. But Kadri outlines the chronology of events from the time of the Prophet Muhammad to the present, providing context for these differing opinions regarding the interpretation and application of the Shari'a.

¶34 In the first half of *Heaven on Earth*, Kadri leads readers through the history of Islam, beginning with the birth of the religion as conveyed to the Prophet Muhammad. Islam persisted through many tumultuous years, weathering conflicts not only with other major religions, but also from within the religion itself, which

* © Alicia Y. Dyer, 2013. Reference Librarian, Kresge Law Library, University of Detroit Mercy School of Law, Detroit, Michigan.