Bourbon and the Law: A Brief Overview

Mark W. Podvia

Question: What type of whiskey has been defined by the United States government as “a distinctive product of the United States?”

Answer: Bourbon!

Question: What is the name of one of Kentucky’s most celebrated counties?

Answer: Bourbon!

Question: What is the official beverage of the Commonwealth of Kentucky?

Answer: Milk.

Bourbon is a type of American whiskey made primarily from corn. All Bourbon is whiskey but not all whiskey is Bourbon.

Pursuant to 27 CFR §5.22(b)(1)(i), Bourbon “is whisky produced at not exceeding 160° proof from a fermented mash of not less than 51 percent corn, rye, wheat, malted barley, or malted rye grain, respectively, and stored at not more than 125° proof in charred new oak containers; and also includes mixtures of such whiskies of the same type.” There is no minimum aging requirement for Bourbon, however Bourbon aged less than four years must state the age on the bottle. In addition, 27 CFR §5.22(b)(1)(i) provides that “[w]hiskies…which have been stored in the type of oak containers prescribed, for a period of 2 years or more shall be further designated as “straight”; for example, “straight bourbon whisky.” Federal regulations further provide that there can be no artificial coloring or flavoring in Bourbon whiskey.

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2 Thirty-four present-day Kentucky counties were formed out of the original Bourbon County, usually referred to as “Old Bourbon County.” Ironically no Bourbon is distilled in modern Bourbon County.
3 What was the Kentucky Legislature thinking? You folks in Kentucky need to work on this one!
4 Also spelled Whisky.
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Bourbon

There is no legal requirement that Bourbon be produced in Kentucky. However, roughly 95% of all Bourbon is produced there. Really—who would want to drink Hawaiian Bourbon?5

The production of whiskey was among the first industries of the American colonies. Isolated farmers, particularly those on the frontier, found it far easier to convert their excess grain to whiskey for shipment to market by wagon or raft. Whiskey produced in western Pennsylvania was usually made from rye;6 that made in Commonwealth of Kentucky was more often made from corn.7 Thus it should come as no surprise that, following the American Revolution, whiskey was among the first domestic products to be taxed by the Federal government.

The Excise Whiskey Tax Act—officially "An Act repealing, after the last day of June next, the duties heretofore laid upon Distilled Spirits imported from abroad, and laying others in their stead; and also upon Spirits distilled within the United States, and for appropriating the same"—was adopted by Congress on March 3, 17918 with the strong support of Secretary of the Treasury Alexander Hamilton. Designed to pay the Revolutionary war debts that the new Federal government had inherited from the states, the Act provided for the taxation of distilled spirits at a six- to 18-cent per gallon rate; smaller distillers often paid double what larger distillers paid, with payment being made in cash to a Federal revenue officer appointed for the distiller’s county.

Needless to say, the new tax was opposed by the farmers/distillers in western Pennsylvania, western Maryland and Kentucky. Resistance gradually turned from disobedience to violence; in July, 1794, shots were fired at a Federal tax collector.9 Faced with armed rebellion—the first test of the new Constitution—President Washington lead an army from Carlisle, Pennsylvania to Bedford, Pennsylvania and the insurrection was quelled.10 Although Washington’s army never reached Kentucky, distillers there generally complied with the law following the collapse of resistance in Pennsylvania. The Act was repealed in 1802 during the administration of Thomas Jefferson, only to be reintroduced briefly to help fund the War of 1812.

Please note that the “rebellion” suppressed by General Washington was called the “Whiskey Rebellion,” not the “Bourbon Rebellion.” This was for two reasons: 1) As already noted, the Whiskey produced in western Pennsylvania was primarily made from rye,11 and 2) the largely corn-based Whiskey being produced in Kentucky was only beginning to take shape as “Bourbon.”

5 “Tennessee Whiskey” generally meets the requirements of Bourbon but—with the exception of Benjamin Prichard’s Tennessee Whiskey—it is required under Tennessee law to be filtered through sugar-maple charcoal, a procedure known as the Lincoln County Process.

6 The author recently had his first experience with Rye whiskey—wow! A bottle of Town Branch Rye now resides in his liquor cabinet.

7 According to legend, it was the Rev. Elijah Craig who first made Kentucky whiskey from corn in 1789.

8 1 Stat. 199 (1791).


10 The Militia Act of 1792, 1 Stat. 264 (1792), required that a United States Supreme Court Justice certify that local authorities were unable to enforce the law before troops could be raised. On August 4, 1794, Justice James Wilson, who had once practiced law in both Carlisle and Bedford, Pennsylvania, declared that western Pennsylvania was in a state of rebellion.

11 Most of Pennsylvania’s distillers left the Commonwealth following the suppression of the Rebellion, the majority of them heading to the southern states. Whiskey production in Pennsylvania never recovered. Boo General Washington!
No one recorded who first aged Kentucky’s corn-based Whiskey in a charred oak barrel. Most probably a distiller had received a shipment that arrived by barrel, and wanted to clean the container before reusing it to age Whiskey. It is the caramelized wood sugars in the barrel that are responsible for Bourbon’s unique flavor.\(^\text{12}\)

It is still unclear how “Bourbon” became the name of this delightful beverage. Some say that it was named after Old Bourbon County, Kentucky, where it was originally produced. However, the product was shipped by flatboat from Bourbon County down the Ohio and Mississippi Rivers to New Orleans where it was sold on Bourbon Street, another possible source of the name. It has also been suggested that it was named directly in honor of the Royal Family of France, the Bourbons.

However Bourbon was named, it is known that the “Great Compromiser,” Henry Clay, United States Representative and Senator from Kentucky from 1811 to 1852, regularly brought a barrel of Bourbon with him on his trips to Washington.\(^\text{13}\) One can only wonder how many of Clay’s compromises can be attributed to the Bourbon that he shared with his colleagues. It is possible that this amazing beverage might have played a pivotal role in the passage of the Missouri Compromise, the Tariff Act of 1833 and the Compromise of 1850.\(^\text{14}\)

Bourbon was again taxed by the Federal government during the Civil War beginning at the rate of $.20 per proof gallon (one gallon of 100 proof whiskey).\(^\text{15}\) The tax was increased as the war went on, ending at $2.00 per gallon. Knowledge of how much revenue was raised by the tax, as well as what a morale-booster good Bourbon was for the Union troops, might have provided the inspiration for President Abraham Lincoln’s statement “I hope to have God on my side, but I must have Kentucky.”\(^\text{16}\)

By the late 1800’s, the availability of bad whiskey in the marketplace was hurting the industry as a whole. This ultimately lead to the adoption of “An Act to Allow the Bottling of Distilled Spirits in Bond” on March 3, 1897.\(^\text{17}\) The Act required that whiskey be made at one distillery in one batch, aged for at least four years under government supervision and bottled at 100 proof.

Whiskey came under further Federal regulation with the adoption of the Pure Food and Drug Act of 1906.\(^\text{18}\) The Act forbid the adulteration or misbranding of any “food, drug or liquor,” however it failed to define many specific terms, including the definition of “pure” whiskey. After considerable debate, that determination was left to President William Howard Taft. On December 27, 1909, after studying the issue for months, Taft decided “that the term ‘whiskey’ might be used as descriptive of any liquor distilled from grain, no matter how it was composed. Other liquors, distilled from such substances as molasses, fruits, etc., he excluded from the definition of

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\(^{13}\)  Another famous Bourbon drinker was President Harry S Truman, who regularly had a glass of I.W. Harper Bourbon for breakfast.  [American Presidents: Their Food & Drink Preferences & Dislikes](http://www.amicusveritas.org/archives/AmericanPresFoodPreferences.htm) (Apr 2008).  Yet another Presidential Bourbon drinker was Ulysses S. Grant, who preferred Old Crow Bourbon.


\(^{15}\)  12 Stat. 447 (1862).

\(^{16}\)  Of course the strategic location of Kentucky might have also played a role in inspiring the President’s words.

\(^{17}\)  29 Stat. 626 (1897).

\(^{18}\)  34 Stat. 768 (1906).
whiskey.” Taft further set forth the classifications of whiskey, including that of Bourbon, which he defined as being “made from mash that consists of at least 51% corn (maize).”

President Taft further determined that Bourbon “must be distilled to no more than 80% alcohol by volume, and must then be aged in new charred-oak containers.” With a few additions, this remains the legal definition of Bourbon today. No wonder that in 2009 Taft was inducted into the Kentucky Bourbon Hall of Fame by unanimous vote of the Kentucky Distillers’ Association Board of Directors.

However, Taft’s determination came at a time of increasing public sentiment against the consumption of alcoholic beverages. Perhaps this sentiment was best summed up by the words of social activist Robert G. Ingersoll: “I believe, from the time it [alcohol] issues from the coiled and poisoned worm in the distillery until it enters into the hell of death, dishonor, and crime, that it dishonors everybody who touches it—from its source to where it ends.” Similar views were expressed by many American Courts; in State ex rel. George v. City Council of Aiken, for example, the Supreme Court of South Carolina held that “liquor, in its nature, is dangerous to the morals, good order, health, and safety of the people, and is not to be placed on the same footing with the ordinary commodities of life.”

A resolution calling for a Constitutional amendment to accomplish nationwide Prohibition was introduced in Congress and passed by both houses in December 1917. It provided as follows:

Section 1. After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

Sec. 2. The Congress and the several States shall have concurrent-power to enforce this article by, appropriate legislation.

Sec. 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.

21 Id.
22 In a case that predated Taft’s decision, Justice Robb of the United States Court of Appeals of the District of Columbia had written that “it is well understood that Bourbon whiskey is a Kentucky product made principally out of corn, with sufficient rye and barley malt added to distinguish it from straight corn whiskey.” Levi v. Uri, 31 App. D.C. 441, 445 (1908).
24 What People Have Said About Whiskey, 34 McClure’s Mag. 700 (1910).
25 26 L.R.A. 345 (1894).
26 S.J. Res. 17, 40 Stat. 1050 (1917).
By January 16, 1919, the Eighteenth Amendment had been ratified by 36 states securing its adoption. On October 28, 1919, Congress passed enabling legislation officially known as the National Prohibition Act, but more commonly known as the Volstead Act.\textsuperscript{27} Prohibition went into effect at midnight, EST, on January 17, 1920.

Prohibition, which lasted until 1933, had a devastating effect on the Bourbon industry. Six distilleries nationwide were permitted to remain open to manufacture whiskey for “medicinal” purposes.\textsuperscript{28} Only seven of the 17 distilleries that had been operating in Kentucky prior to Prohibition were operating in 1935 following its repeal.\textsuperscript{29}

However, the industry did gradually rebound; by the early 1940s “the distillers had managed to age sufficient quantities of straight whiskey to have an appreciable amount of good aged Bourbon and rye back on the shelves.”\textsuperscript{30} In 1933, the Roosevelt administration established the Federal Alcohol Control Administration to regulate alcohol, including Bourbon, which later became part of the Bureau of Alcohol, Tobacco, and Firearms.

On May 4, 1964, Bourbon was officially recognized as a “distinctive product of the United States.” The Congressional Resolution read as follows:

Whereas “Bourbon whiskey” is a distinctive product of the United States and is unlike other types of alcoholic beverages, whether foreign or domestic; and Whereas to be entitled to the designation “Bourbon whiskey” the product must conform to the highest standards and must be manufactured in accordance with the laws and regulations of the United States which prescribe a standard of identity for “Bourbon whiskey”; and Whereas Bourbon whiskey has achieved recognition and acceptance throughout the world as a distinctive product of the United States: Now, therefore, be it Resolved by the Senate (the House of Representatives concurring) that it is the sense of Congress that the recognition of Bourbon whiskey as a distinctive product of the United States be brought to the attention of the appropriate agencies of the United States Government toward the end that such agencies will take appropriate action to prohibit the importation into the United States of whisky designated as “Bourbon whiskey”.\textsuperscript{31}

Bourbon was the first American spirit to be so recognized. However, speaking fifty years after the adoption of the resolution, U.S. Representative John Yarmuth of Louisville, co-founder and chairman of the Congressional Bourbon Caucus, noted that “it doesn’t take an act of Congress to know Kentucky Bourbon is the finest spirit in the nation.”\textsuperscript{32}

\textsuperscript{27} 41 Stat. 305 (1919).
\textsuperscript{28} GARY REGAN AND MARDEE HAIDIN REGAN, THE BOOK OF BOURBON AND OTHER FINE AMERICAN WHISKEYS 75 (1995).
\textsuperscript{29} Id. at 76.
\textsuperscript{30} Id. at 82.
The recognition of Bourbon as a “distinctive product of the United States” is reflected in several foreign agreements. The North American Free Trade Agreement, Annex 313 (Distinctive Products) accords special status to Bourbon: “Canada and Mexico shall not permit the sale of any product as Bourbon Whiskey…unless it has been manufactured in the United States in accordance with the laws and regulations of the United States governing the manufacture of Bourbon Whiskey.”

The US/European Union Distilled Spirits and Spirit Drinks Agreement, March 15, 1994 likewise recognized Bourbon as a distinctive US product: “The EC agrees to restrict, within its regulatory framework (Council Regulation No. 1 576/89, Article 11 or an equivalent successor regulation) the use of the product designations…’Bourbon whiskey’/’Bourbon whisky’ and “Bourbon” as…spirit drinks products of the USA.” In exchange, the United States agreed to restrict the terms “Scotch whisky’, ‘Irish whisky’/’Irish whisky’, ‘Cognac’, ‘Armagnac’, ‘Calvados’ and ‘Brandy de Jerez’ to distilled spirits/spirit drinks products of the Member States of the EC.

Bourbon has also been the subject of a number of court cases, primarily involving trademark protection. Among the most recent of these was Marker’s Mark Distillery v. Diageo North America, where the United States Court of Appeals for the Sixth Circuit held that Maker’s Mark famed red dripping wax seal was a valid trademark.

Why the Commonwealth of Kentucky failed to name Bourbon as its official beverage is beyond the author’s comprehension—perhaps the dairy industry in Kentucky has a better-funded lobby. However, the Commonwealth does have an Official Bourbon Festival, the Kentucky Bourbon Festival, Incorporated, of Bardstown, Kentucky, a Bourbon Academy (http://filsonhistorical.org/education/the-filson-bourbon-academy/) and the Kentucky Bourbon Trail—complete with a Passport that can be stamped as you visit each historic distillery (http://kybourbontrail.com/). To an extent that makes up for the Commonwealth’s unfortunate choice of milk as official state beverage.

A toast to Bourbon!

Select Bibliography


32 Even those opposed to NAFTA would have to recognize that Bourbon is worthy of special status.
33 The Agreement also granted special status to Bourbon’s close cousin Tennessee Whiskey. In exchange, the U.S. and Mexico recognized Canadian Whisky as a distinctive product of Canada, and the U.S. and Canada recognized Tequila and Mezcal as distinctive products of Mexico.
35 Id.
36 697 F.3d 410 (2012).
37 Milk? Really?
39 Preferably made with a glass of Bourbon in hand!
On November 6, 2014, the Library of Congress opened its special exhibit – *Magna Carta: Muse & Mentor*. For ten weeks the Library displayed the 1215 Lincoln Cathedral Magna Carta, one of only four original copies from June 1215, in addition to 77 items from the collections of the Law Library, the Prints and Photographs Divisions, the Rare Book and Special Collections Division, the Manuscript Division, and the Music Division.¹

The timing of this exhibition was particular auspicious, since 2015 marks the 800th anniversary of Magna Carta. 2014 was also an anniversary for the Library of Congress, since it had been 75 years since the Lincoln Cathedral copy was last displayed at the Library. At the 1939 World’s Fair in New York, it was on display at the British Pavilion as show of goodwill from the British and as a reminder of our shared philosophy and history.² With the start of World War II two months before the scheduled end of the Fair, another secure location for the document had to be found. For a time the Library of Congress displayed Magna Carta in the Great Hall directly across from the Declaration of Independence and the Constitution.³ When the United States enter the war, the document and the Library’s other priceless pieces, were removed to Fort Knox for almost three years for safe keeping.⁴ In 1946 the Magna Carta sailed back to England aboard the *Queen Elizabeth*, but because of the size of its shipping container, did not fit within any safe on the ship and has to be stowed instead under the Captain’s bed.⁵

In a change from its previous visit, the exhibit space for *Magna Carta: Muse & Mentor* was on the second floor of the Jefferson Building, in a room adjoining that of Thomas Jefferson’s Library. The curators couldn’t have chosen a more suitable space, not only because of Magna Carta’s connection with our own historical documents, but because Thomas Jefferson was also a descendant of some of the Runnymede barons.⁶

Curated by Nathan Dorn, a rare book curator in the Law Library of Congress, the exhibit flowed between different themes with Magna Carta at its center. Unlike many exhibits that are linear, or others of a twisting variety like the Smithsonian’s National Museum of the American Indian, this particular exhibit allowed for the exploration of various themes the Library identified around Magna Carta. From a practical point of view, this made the exhibit flow well even with the large amount of visitors. Each theme or section could be explored without missing any of the significant details that aided in the explanation or analysis of the document. It also made the overall exhibit more approachable for those individuals that were not familiar with the Great Charter.

Around the corner from the exhibit entrance, the document rested in a low, simplistic display case, enabling everyone an unobstructed view, including the tiny video camera to make sure that the

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³ *Id.* at 13.
⁴ *Id.* at 18. This collection of documents included the Articles of Confederation, the Gutenberg Bible, the Declaration of Independence, the Constitution, and President Lincoln’s second inaugural address and two drafts of the Gettysburg Address written in his own hand.
⁵ *Id.* at 23-24.
⁶ *Id.* at 13.
document was being well cared for. With no other displays in the area to distract from the Great Charter, it was easy to appreciate the document itself. As one of only four remaining original copies of the charter from June 1215, the Lincoln Cathedral Magna Carta stands out for having written on its back the address *Lincolnia.* The writing on some areas are faint, but with the assistance of a Library of Congress docent, the general areas which contain more famous passages could be identified. Through the years, the seal disappeared, but the three holes where the seal would have been affixed are easily visible.

The first two sections of the exhibit following the Magna Carta itself were ‘King John in History and Memory’ and ‘Rebellion and the Great Charter’, which provided the visitor insight into the English political climate at the time King John affixed his seal to the charter at Runnymede. The exhibit also shed light on the reputation of King John both at the time and in later accounts, which was largely unfavorable due to his being “a cruel and unpleasant man, a second-rate soldier and a slippery, faithless, interfering king.” It is no wonder that popular accounts have not shown him in a more favorable view than the history books. A Shakespeare First Folio on display was opened to the beginning pages of *Life and Death of King John*, which does not mention Magna Carta, but instead centers on who is the rightful heir to the throne. Another popular account of King John in fiction was also included, Robin Hood. On display was a theatrical poster of *Runnymede: A Drama of Magna Charta*, where during the final scene, the barons force King John to sign Magna Carta.

The most compelling parts of the exhibition were those sections that concentrated on Magna Carta’s influence on the laws of the United States, which were traced from colonial times to present day. For those unfamiliar with Magna Carta and its legacy, this was one way in which to feel engaged in an exhibit where the document is foreign, but which is one of the great underpinnings to our shared legal history. Each section was a snapshot of the Magna Carta during a period in our history. In the foreword to *Magna Carta: Muse and Mentor*, David Mao, then Law Librarian Of Congress, wrote “[r]ather than trying to say what Magna Carta means to people today, the Library envisioned an exhibition that would illustrate the document’s importance by showing what it has meant to people, especially Americans, in those times and places where Magna Carta’s memory guided and inspired some of the most significant legal, constitutional, and political changes that have shaped the world.”

A large portion of the exhibit focused on these legal and constitutional issues – ‘Magna Carta and the U.S. Constitution,’ ‘Due Process of Law,’ ‘Trial by Jury,’ ‘Writ of Habeas Corpus,’ and ‘Executive Power.’ On display were various state Charters, James Madison’s personal copy of the proposed

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7 Id. at 9.
10 Id.
12 Id. at xiv.
Bill of Rights\textsuperscript{14}, and Washington’s draft of the Constitution.\textsuperscript{15} The other sections dealing with law all traced their roots back to various Chapters of Magna Carta. The origins of due process can be seen in Chapter 39 of Magna Carta and the Library chose to display items ranging from the Due Process Statute in \textit{Statuta Nova} to Earl Warren’s notes on \textit{Miranda v. Arizona} to illustrate this concept.\textsuperscript{16}

Although most of the sections focused on the legal history of Magna Carta, the Library ended the exhibit with an enjoyable tongue-in-cheek display. ‘Magna Carta in Culture’ showed how deeply-rooted in popular culture Magna Carta has become for the United States. The items on display showed Magna Carta’s influence on popular culture through sheet music, cartoons, and even postage stamps.\textsuperscript{17} The original manuscript score of John Philip Sousa’s 1927 “Magna Carta March” was displayed, once again confirming that every horn part in every Sousa march is truly terrible.\textsuperscript{18} Another musical tribute on display was a photo of Jay Z’s Magna Carta Holy Grail album displayed at Salisbury Cathedral in 2013.\textsuperscript{19} For many people walking through the exhibit there was a very familiar sight, which was a map of Medieval England that was part of a special issue of National Geographic in 1989.

A full list of all the sections of the exhibit can still be found on the Library of Congress’ website.\textsuperscript{20} The fourteen distinct areas are listed with images and explanatory text for each particular item from the collection. Each section’s grouping of materials lent itself to the greater goal of the exhibit which was to show how Magna Carta “became an enduring symbol of liberty and the rule of law.”\textsuperscript{21}

It was an exhibit that did a superb job in tying together various elements to tell a story around the themes of Magna Carta, its history, and its greater influence on the rule of law.

\textit{Mary Kate Hunter is Reference/Government Contracts Librarian at the Jacob Burns Law Library, George Washington University.}

\textsuperscript{14} \textsc{Magna Carta: Muse and Mentor, Magna Carta and the U.S. Constitution}, \url{http://www.loc.gov/exhibits/magna-carta-muse-and-mentor/magna-carta-and-the-us-constitution.html} (last visited July 2, 2015).

\textsuperscript{15} \textit{Id.}


\textsuperscript{17} \textsc{Magna Carta: Muse and Mentor, Magna Carta in Culture}, \url{http://www.loc.gov/exhibits/magna-carta-muse-and-mentor/magna-carta-in-culture.html} (last visited July 2, 2015).

\textsuperscript{18} After 24 years of playing French horn, this theory has been empirically proven by the author of this article.

\textsuperscript{19} Not familiar with Jay Z? Neither am I, but his album did debuted number 1 on the U.S. Billboard 200 and he is married to Beyonce.

\textsuperscript{20} \textsc{Magna Carta: Muse and Mentor, Exhibition Overview}, \url{http://www.loc.gov/exhibits/magna-carta-muse-and-mentor/overview.html} (last visited July 2, 2015).

\textsuperscript{21} \textsc{Magna Carta: Muse and Mentor}, \url{http://www.loc.gov/exhibits/magna-carta-muse-and-mentor/} (last visited July 2, 2015).
The Outer Limits of Legal Ephemera: Finding Legal History in the Oddest Places

Kurt X. Metzmeier

The slightest objects for the collector of the printed word are ephemera, minor items of print that are “not meant to have lasting value.”¹ Ephemera come in all types, including those pieces related to the practice of law. Traditionally, the collectors of legal ephemera preferred handwritten legal documents like deeds, leases, contracts, and charters. There is hardly a law library that doesn’t have some old framed Latin sheepskin indentures on a wall (or hidden away in some closet if they have a dean that prefers more modern décor). Other popular print ephemera are broadside editions of English laws, printed dockets and briefs, and engravings of judicial portraits and courtroom scenes. But given that law in America is, as Alexis De Tocqueville noted in 1831, part of the “vulgar tongue” penetrating “into the bosom of society,” popular depictions of the law, in all its variety, are also collectable.² Legal historian Michael H. Hoeflich's The Law in Postcards & Ephemera 1890-1962 reveals a selection of such items drawn from his own excellent collection.³ However, the discerning eye can find the legal angle in all kinds of items. This short article will extract the legal history residing in some for unlikely printed objects: Congressional pass, a piece of campaign literature, and a National Football League trading card.⁴

**Item 1: The Future Justice and the Broadway Actress**

This item is a Senate chamber gallery pass issued by Sen. Hugo Black (D-Ala), a future senator, to a Miss Mary Orr, who may be the future author of a story that became an Oscar-winning movie. These passes are not extremely rare, as they were issued frequently and most, including this one, had a stamped signature, not an autograph. Nonetheless, like all historical artifacts they are an emotional connection to the past, a tangible, material item held by a real person who was an eyewitness to history.

Besides its association with a justice of the Supreme Court, date of the pass is the most interesting thing about this item. It was issued in April 1, 1937, in the height of the Senate debate over FDR’s ill-fated (and ill-considered) measure to reorganize the U.S. Supreme Court by adding a number of new justices. The so-called "court-packing" plan rocked the political world, raising fears that FDR’s landslide re-election victory in 1936 had spawned dictatorial ambitions in the president.

What is also intriguing is the recipient, a Mary Orr. The most prominent person in that era with that name was a young Broadway actress. The Canton Ohio-born Orr was very intelligent, later becoming a successful playwright and a

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⁴ All items from the author’s eclectic collection.
writer whose first published short story became “All About Eve,” winner of the 1950 Academy Award for best motion picture. In 1937, Orr was still was a sought after ingénue actress, but perhaps the drama of the Senate debate inspired her and her party’s visit.\(^5\)

Later in 1937, Senator Black would be appointed by FDR to replace Justice Willis Van Devanter, one of the “Four Horsemen” (the conservative justices who had banded together to oppose progressive ideas throughout the early 20th century) on the U.S. Supreme Court. Black’s brief membership in the Ku Klux Klan in Alabama would make his Senate confirmation rocky, but as a Supreme Court associate justice he proved a reliable supporter of civil rights. Within three years after Black joined the Court, the other three of FDR’s judicial foes were dead or had resigned, and had been replaced by progressives like Black. It seems time had its own reorganization plan.\(^6\)

**Item 2: A Forgotten Law School Dean? Thomas R. Gordon and the University of Louisville’s Louis D. Brandeis School of Law**

Like many modern educational institutions, the University of Louisville has absorbed the history, alumni and traditions of the many Louisville schools and colleges that it merged with over the years. Among these institutions was the Jefferson School of Law, which was founded in 1905 to provide legal education at night and weekends to working-class Louisvillians, and merged into the current Louis D. Brandeis School of Law in 1950.\(^7\) Its early boosters were attorney Benjamin F. Washer, Judge Shackelford Miller, and, the subject of today’s legal ephemera, Circuit Judge Thomas R. Gordon (1854-1929), who served as the night school’s dean in the late teens and throughout the 1920s (while still managing his full circuit court docket in the day).

Gordon, a Democrat, was first elected to the Jefferson County Circuit Court in 1902 and served in that capacity until his death in 1929. (Until 1975, Kentucky judges ran for office on a party slate alongside governors and congressmen). Gordon’s parents were both born in Georgia, but had settled in Owingsville, Kentucky by the time that young Thomas was born in 1854.

I have not yet ascertained details of his early education, but in 1890 he joined with University of Louisville graduate John C. Strother (class of 1869), a Trimble County native, to form the extremely successful partnership, Strother & Gordon. The firm, which was dissolved by necessity upon Gordon’s election, had among its clients such prominent institutions as the Mutual Life Insurance Company of Kentucky and the Louisville Title Company.

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After his election in 1902, the voters faithfully returned Gordon to office until 1929, when he died of a stroke, complicated by heart disease. (At this time, death did not prevent a good Democrat from voting; it was, however, a more severe impediment to standing for office). Judge Gordon was buried among his constituents in Cave Hill Cemetery.

The item reproduced is a campaign calling-card of a type widely used in elections in Kentucky during this era. The obverse has a simpler message, using the long-time symbol of the Kentucky Democracy, the proud rooster. In the lever-action voting booths of my youth, this symbol (or the Republican log cabin) marked the switch that you flipped to vote the straight ticket.

**Item 3: Judge Alan Page, Tackling the Big Cases**

Hall of Fame defensive tackle Alan Page (depicted here in a 1978 trading-card) is (with U.S. Supreme Court Justice Byron “Whizzer” White) perhaps one of the two great “two-sport” (football and law) players to ride a judicial bench. White may have reached a higher pinnacle (for now), but the Colorado-born running back’s three NFL seasons cannot compare with Page’s reign as one of the greatest defensive players of all-time.

Page began his career winning a national championship ring in 1966 for Notre Dame. He anchored the Minnesota Vikings famed “Purple-People Eaters” defense in the 1970s, in 1971 becoming the first defensive player to be named as MVP. He was voted to nine consecutive Pro Bowls, 1969-1977 and in 1988 the Canton native joined the Football Hall of Fame.

At the same time he was flattening offensive backs in the autumn, he was attending law school in the spring. The reverse of Page’s 1978 card highlights this fact, depicting him as a “generic” (i.e. white) football star proudly holding an oversized book of “Law.” (This is the book that many pro se litigants are convinced that we law librarians are withholding). In 1978, Page graduated University of Minnesota Law School and joined the law firm of Lindquist and Vennum (working as a lawyer in his off-seasons until his retirement from football in 1981). In 1992, Page was appointed as Associate Justice of the Minnesota Supreme Court, becoming the first African-American to join the state’s high court. He has been repeatedly re-elected, most recently in
In 2008, Page was asked to choose the three-judge panel deciding the election dispute involving Minnesota’s U.S. Senate seat. Page has been suggested (at least by bloggers) as a possible appointee to the U.S. Supreme Court.

Judge Page is also a collector of ephemera himself. When PBS’ Antiques Roadshow visited Minnesota in 2012, Page showed up with a banner mourning the death of Abraham Lincoln and in 2007 revealed that he was a collector of African-American and Jim Crow-related memorabilia.

Concluding Remarks

With the outsized role of the Supreme Court in American social and political culture and lawyers showing up everywhere from American sports to reality shows (recall for a moment that the O.J. Simpson murder trial is linked to the most popular show on the E! network by a lawyer named Robert Kardashian), legal ephemera can be any type of printed object. So, a “Notorious R.G.B” playing card featuring Associate Justice Ruth Bader Ginsburg or a 2000 ballot from Florida (complete with “dimpled chad”) all could be valuable legal collectibles. All the item has to do is to serve as a ticket that brings whoever holds it just bit closer to a person or an event in legal history. Of course, the right ticket is ephemera, too. Perhaps a torn stub for one of Whizzer White’s 1940 Detroit Lions games ...

Kurt X. Metzmeier is Associate Director of the University of Louisville Law Library.

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8 Page was appointed mid-term to a vacant seat, was elected to finish the remainder of that six-year term, and like all Minnesota Supreme Court Justices, is subject to recall elections at the end of each term. His current term will his last because he will have passed the mandatory retirement age of 70 by its end. Minn. Const. art. VI, §§ 7-10.


11 Apparently Kardashian’s daughters have a little show.

12 The types of chads and their meaning in the 2000 Florida recount is discussed in Jessica Reaves, “The Dimpled Chad Dilemma,” Time (Nov. 21, 2000) (http://content.time.com/time/nation/article/0,8599,89086,00.html).
The Colonial Law Library of Jasper Yeates

Mark W. Podvia

Among the treasures housed at LancasterHistory.org—the historical society of Lancaster County, Pennsylvania—is the law library of colonial lawyer Jasper Yeates.¹ The library is among the finest such collections in the United States.

Jasper Yeates

Lancaster attorney Jasper Yeates was one of the leading legal practitioners in Pennsylvania from before the Revolutionary War until his appointment to the bench. Admitted to the bar in 1765, Yeates located his law office in Lancaster and soon had the largest practice in the interior of the Province of Pennsylvania. Active in organizing Lancaster’s militia throughout the Revolutionary War, Yeates was a delegate to the Pennsylvania convention that ratified the Federal Constitution in 1787. In 1794, he was one of three commissioners appointed by President Washington to confer with the leaders of the Whiskey Rebellion.

On March 21, 1791, Yeates was appointed as a Justice of the Pennsylvania Supreme Court. He remained on the Court until his death in 1817. At the time of his death he had prepared four volumes of case reports for press. They were published following his death as Reports of Cases Adjudged in the Supreme Court of Pennsylvania: With Some Select Cases at Nisi Prius, and in the Circuit Courts.

Yeates’ remains, along with those of his wife Sarah, are buried at St. James’ Episcopal Church in Lancaster. The following epitaph is carved upon his tombstone:

He filled the various duties of his office with fidelity. His integrity was inflexible. As a judge he was most earned and sincere, and in the exercise of public functions he deserved the confidence of his fellow citizens, and has left behind him a name which will only perish with the judicial records of his county.²

The Law Library

Jasper Yeates compiled one of the most extensive law libraries in colonial Pennsylvania, many of the volumes having been purchased in London and in Dublin. According to a catalog prepared shortly before his death, the library then represented a cost of $2,772. Following the death of his wife, the collection passed to Yeates’ daughters Margaret and Catherine; Margaret’s portion later passed to her sister.

Upon Catherine’s death, her heirs tendered the collection to the Lancaster Law Library Association and the books were moved to the Lancaster County Courthouse. At that time the library consisted of 1,043 volumes; 53 of those books have unfortunately disappeared over the years.³ Despite that loss, this collection remains largely intact. The volumes have been well cared for and are in

¹ The author had the opportunity to examine the collection during a visit to LancasterHistory.org on June 27, 2013. LancasterHistory.org is located at 230 North President Ave., Lancaster, Pennsylvania, adjacent to President James Buchanan’s Wheatland estate.
³ One missing volume has recently been restored to the collection.
excellent condition.

Many of the books in the collection are available via electronic sources such as *The Making of Modern Law*. This includes such works as *A New Abridgment of the Law* by Matthew Bacon, *A Practical Treatise on the Law of Nations* by Joseph Chitty, and *The History, Principles and Practice, (Ancient and Modern,) of the Legal Remedy by Ejectment* by Charles Runnington. However, other books, particularly many of the Pennsylvania-specific items, do not seem to be available electronically. Dr. Herbert A. Johnson, Distinguished Professor Emeritus of Law at the University of South Carolina School of Law, has described the Jasper Yeates Law Library as being “of substantial size and quality,” noting that “[p]roperly arranged and cataloged, the Yeates library would rival those of Adams, Jefferson, and Chew in its value for legal historians.”

LancasterHistory.org is also the repository of a portion of Jasper Yeates’ papers; other papers are held by the Historical Society of Pennsylvania in nearby Philadelphia. It would seem that the presence of these papers enhances the importance of the Jasper Yeates Law Library—a researcher can not only use Yeates’ law books, but can also examine his letters and other writings.

The books in the collection have been placed in numerical order and a list of books by common reference (i.e. *Barrington on the Ancient Statutes*, *Evan’s Essays*, *Theloal’s Digest of Original Writs*) has been prepared. More comprehensive efforts are underway--an intern is currently working to create an ACCESS database that will largely supersede the current short title list. This will allow improved access to this material, opening it up for historians and practitioners. Given Lancaster’s proximity to law schools in Philadelphia, Baltimore, Wilmington and the Harrisburg area, this collection could also prove valuable to law students studying Anglo-American legal history as well as to undergraduate and graduate students from area colleges and universities.

Marjorie R. Bardeen, Director of Library Services at LancasterHistory.org, is hoping to make contact with a scholar in the field of Colonial Law who could work to identify the potential research possibilities that the collection holds. Any interested person can contact her at Marjorie.bardeen@lancasterhistory.org or 717-392-4633.

*Mark Podvia is Head of Public Services and Instruction and Special Collections Librarian at the West Virginia University College of Law Library.*

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5. Sadly most practitioners today do not take the time to conduct research using antiquarian books. However, there are some modern attorneys who continue to cite such material. In an article published several years ago in the *Student Lawyer*, Mechanicsburg, Pennsylvania attorney Charles E. Shields, III said that he regularly uses antiquarian law books in cases involving such issues as water rights, real property and probate. He reported that “[s]ometimes an old treatise will give an angle a new one won’t.” Jen Hill, *Collectors of Legal Books don’t just put their Best Specimens up on a Shelf*, 22 Student Lawyer 32 (1993). Mr. Shields will be speaking at the “Voices from the Past program at this year’s AALL Annual Meeting.
Greetings from the Chair! In my first LH&RB column, I wrote about the conference we’d just finished in San Antonio, the finances of the SIS, and the strength of our membership. In this, my last LH&RB column, I thought I’d write about our upcoming conference events in Philadelphia and touch on a few of our conference-related accomplishments this past year.

First off, the programs and events we have planned for the upcoming conference in Philadelphia are really outstanding. On Sunday, Sun Yup Kim, the winner of our Morris L. Cohen Student Essay Competition will present his paper titled “Those Innumerable Litigations of a Civil Nature Arising among the Lower Sort: Justices of the Peace and Small Debt Litigation in Late Colonial New York.” As a member of the Cohen Committee, I’ve already gotten to read this paper, and it’s a fascinating use of primary sources to lend insight into social and economic history. Sunday is also the night for our business meeting and then our reception at McGillin’s Olde Ale House (dating from 1860 and considered the best Irish pub in Philadelphia).

On Monday, Stacy Etheredge and her guest speakers will use our “Host City History Roundtable” timeslot to talk about two of Philadelphia’s oldest libraries: the Library Company of Philadelphia (1731) and the Jenkins Law Library (1802). Afterwards, I encourage rare book catalogers and selectors (and those who have interest in such things) to head over to our Rare Book Cataloging Roundtable to swap stories and exchange ideas. If you’ve never attended before, it’s a very informal environment, in the style of a traditional roundtable. Personally, while I don’t necessarily contribute much as a non-cataloger, I find that I learn something new from this roundtable group every year!

On Tuesday, using the “Roman Law Interest Group” timeslot, Marylin Raisch and Fred Dingledy will talk about using the Corpus Juris Civilis in modern research and using modern editions. Last but not least, we have our LHRB-sponsored program, Voices from the Past: Using Rare and Antiquarian Books in the Modern Practice of Law. In this program, Mark Podvia and his guest speakers will discuss the value of citing to antiquarian materials in modern legal pleadings.

I want to encourage everyone to attend these programs but, more importantly, please review the programs when AALL sends their email surveys. It’s an uphill battle to convince the AMPC each year that legal history and rare books related programming is worthy of a timeslot. If we can show that members attend and enjoy these programs, that fight will become a little easier.

I also want to encourage everyone to think about submitting a program of their own for next year. I know it may seem early (Philadelphia hasn’t even happened yet!) but the deadline seems to get earlier every year. More than ever before we need to be thinking strategically and using what resources we can in order to make our SIS visible to the larger organization. So use the conference to draft ideas and line up your speakers, then submit your proposal to LHRB’s Education Committee so that you can receive feedback and drafting advice prior to the AMPC deadline.

Finally, there was much talk a year ago about the SIS’s finances. The new AMPC rules which require each SIS to cover the costs of their sponsored program (a minimum of $1000 and easily more) have had a disproportionate effect on the smaller SISes. In the wake of this, one of my major goals this past year as Chair was to make us more fiscally solvent so that we would be able to consider funding any meeting or program we wish, regardless of cost. I’m happy to report that we’ve made some progress in this regard.

As mentioned above, a large chunk of our budget goes to AALL to cover our sponsored program
Mark Podvia

Editor’s Corner

You probably noticed a flurry of e-mails over the past month discussing both this newsletter and our SIS journal, *Unbound*. Our journal was created so that the many substantive articles and book reviews from *LH&RB* could be made available to researchers. Now that HeinOnline includes our newsletter, that is no longer necessary.

I have proposed that we split our two publications, allowing *LH&RB* to become a real newsletter and moving most substantive material to *Unbound*. This would make life much easier for the newsletter editor. More importantly, it would allow us to do more with *Unbound*, perhaps eventually expanding it to twice-yearly publication and making it a leading journal in the field. Anything that gains publicity for our small but mighty SIS is a good thing! This far I have received only positive comments. I expect that this will be discussed at the Annual Meeting.

If this happens, we will need someone to take over as editor of *LH&RB*. Please consider volunteering. I would be happy to stay on as co-editor for the upcoming year to assist a new editor.

Speaking of editors, welcome to our new Exhibits Editor, Noelle Sinclair!

The deadline for the Fall issue of *LH&RB* will be **October 19th**.

I hope to see many of you in Philly! For information on Philadelphia’s most famous food, the cheesesteak, including instructions on how to properly order a “wiz wid,” visit http://www.visitphilly.com/articles/philadelphia/top-10-spots-for-authentic-philly-cheesesteaks/.

Mark
LHRB Programs & Activities at the 2015 AALL Annual Meeting

Laura E. Ray

Legal History & Rare Books SIS members have some great programs and events to look forward to at the AALL Annual Meeting in Philadelphia. On Sunday, July 19th, we'll kick things off with the LHRB-SIS Morris L. Cohen Essay Presentation, in Philadelphia Convention Center (PCC) Room 111A, 11:30am-12:45pm. Sung Yup Kim, our 2014 Morris Cohen Essay Contest winner, will present the winning paper “Those Innumerable Litigations of a Civil Nature Arising among the Lower Sort,” Justices of the Peace and Small Debt Litigation in Late Colonial New York. Feel free to bring a brown-bag lunch, and enjoy this annual recognition of blossoming legal historians. At the end of Sunday’s programs, our LHRB-SIS Business Meeting will be 5:30pm-6:30pm, in Room 305 of the Marriott hotel, which is connected to the convention center. There, you will get the latest information on our projects and activities, one of which may entice you to get more involved in your SIS. Following the Business Meeting, hope you have pre-registered to attend our LHRB-SIS Reception, 7pm-10pm, at McGillin’s Olde Ale House, 1310 Drury Street, about 5 blocks from the convention center. This should be a great way to end our Sunday. On Monday, July 20th, join us at the LHRB-SIS Host City History Roundtable, in PCC Room 104B, 3:15pm-4:30pm. This year’s Roundtable will feature Regina Smith, Executive Director of the Jenkins Law Library, and John Van Horne, Director Emeritus of The Library Company of Philadelphia, who will discuss how the evolution of their libraries can serve as a blueprint for successfully adapting to economic and technological changes. Cataloging members, at the end of Monday’s programs, don’t miss the LHRB-SIS Rare Book Cataloging Roundtable, in Marriott Room 304, 4:30pm-5:30pm. On Tuesday, July 21st, 12:30pm-2pm, in PCC Room 105A, the LHRB-SIS and FCIL-SIS Roman Law Interest Group will discuss Researching the Corpus Juris Civilis. For anyone not attending the Association Luncheon, this promises to be a fascinating brown-bag lunch meeting. Finally, closing out the AALL Annual Meeting, is our key LHRB-SIS sponsored program Voices from the Past: Using Rare and Antiquarian Books in the Modern Practice of Law, 4pm-5pm, in PCC 204BC. Speakers will be Mark W. Podvia, Head of Public Services and Instruction Librarian, West Virginia University College of Law; Michael von der Linn, Antiquarian Book Department Manager, Lawbook Exchange, Ltd.; and Charles E. Shields, III, Attorney-At-Law, The Law Office of Shields and Houck. Be sure to review the final conference program to confirm rooms and times, as well check our web site for more details on LHRB-SIS activities at the 2015 AALL Annual Meeting.

Many thanks again to the coordinators, speakers, and organizers of our programs and activities at the 2014 AALL Annual Meeting in San Antonio. Bonnie Shucha presented a summary of her winning paper, White Slavery in the Northwoods: Early Sex Trafficking Narratives and the Reformation of Law in the Late Nineteenth Century, at our Morris Cohen Essay Presentation and Luncheon. Sabrina Sondhi, our 2014-2015 Chair, co-presented The Accidental Archivist: Creating Archives on a Shoestring Budget, which discussed how to evaluate unprocessed archival materials and cost-effectively create an archive. Jennie Meade, our 2013-2014 Chair, organized our Host City History Roundtable, which featured Michael Ariens, Professor of Law, St. Mary’s University School of Law. Professor Ariens is the author of the award-winning LONE STAR LAW: A LEGAL HISTORY OF TEXAS, and his discussion of Texas legal history was most enjoyable. Joel Fishman coordinated our key LHRB-SIS sponsored program, The Civil Rights Act of 1964: Celebrating Its 50th Anniversary, in which Sanford Levinson, Professor of Government, University of Texas School of Law at Austin, discussed the legislative process surrounding the passage of this Act, as well as personally reflected on those historical months. Finally, a good time was had by one and all at our LHRB-SIS reception at a local restaurant on the River Walk.

Can we do it again in 2015? Hope to see you all in Philadelphia!

Laura E. Ray is Outreach & Instructional Services Librarian at the Cleveland-Marshall College of Law

The Old English Canons of Theodore (CT) consists of three edited Anglo Saxon texts—versions of the “penitentials” or manuals of penitence associated with Theodore of Tarsus, Archbishop of Canterbury from AD 669 until his death in 690. Editors Fulk and Juransinski, both English professors, demonstrate in their introduction that siting and dating Saxon texts is a vexed undertaking. While the scribes who translated CT from Latin originals wrote in the style of the kingdom of Wessex, their work also contains idiomatic expressions that seem to be derived from Anglian prose (pp. xxviii, xxx). Of one scribe, the editors advance the possibility “that although he wrote the standard Late West Saxon literary dialect, he was himself of the Midlands.” (p. xxxv). To add even more complexity, Fulk and Juransinski compare CT with a near-contemporary penitential, The Scrifboc, declaring that both show “a distinct admixture of apparently Mercian features” (p. xxxvii). Scholars have dated CT to the ninth or tenth centuries, thus identifying it as a product of the vernacular literary/theological movement set in motion by Alfred, king of the West Saxons (AD 871-899) and continued by his descendants. However, Fulk and Juransinski consider numerous possibilities and (refusing to rule out the possibility of an early origin) date the composition of CT as somewhere between AD 690 and 1025 (pp. xxxvi-xlili).

From the point of view of linguistic analysis and the deductive (textual) genealogies that flourish when several texts are being compared, the introductory material and detailed commentaries are splendid. Likewise the book contains an informative discussion of English penitential practice and its possible relation to the “Carolingian dichotomy,” a system of penitence by which the “gravest sins were atoned for by a public, ceremonial ‘excommunication’ during Ash Wednesday followed by reconciliation on Maundy Thursday” (pp. lvi-lix). However, invoking Alfred’s reign and the impact of Carolingian practices invites the reader to think historically. And truth to tell, Mssrs. Fulk and Juransinski make scarcely a nod in the direction of broader historical analysis. There is no discussion of the continental elements of Alfred’s intellectual program—beyond passing references to Benedictine religious reforms and to communications between Alfred and Fulk, Archbishop of Reims (pp. lvi, lix-lx). Nor is there any treatment of the reasons why vernacular translations such as CT would have been especially pleasing to the royal house of Wessex, whose members combined pride in English

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1 For “Sources and Background,” for example, see pp. xlii-lv.

Most startling of all, CT contains little biographical information on Theodore or discussions of the milestones of his career. Certainly Fulk and Jurasinski know that Theodore was well known to his younger contemporary Bede (AD 673-735), who was the author of many notable books, including \textit{A History of the English Church and People}. Bede saw Theodore as a cultivated, charismatic man whose teaching (together with that of his associates and students) helped bring about significant advances in Latin culture among the Saxons. In addition Bede shows Theodore at work in synods, notably that of Hertford (AD 673), in which the archbishop emphasized certain canons as particularly important and persuaded an audience of bishops and high-ranking clergy to agree with him. The Hertford canons prescribed celebration of Easter on dates determined by the Roman method of reckoning, replacing the method prevalent among Celtic Christians. The Hertford canons also laid down lines of jurisdiction and authority for bishops and abbots, and mandated laws and regulations regarding marriage and sexual conduct.\footnote{Bede, \textit{A History of the English Church and People}, translated and edited by Leo Sherley-Price and R.E. Latham (New York: Penguin Books, 1968), 204-205, 206-207, 214-217 (synod at Hertford), 226-227; 234-236 (680 synod at Hatfield); 243 (Theodore makes peace between warring kings); 247, 262-263 (synod at Twyford, c. 685); 273-274, 281 (death of Theodore). On Theodore and his colleague Hadrian as teachers, specifically of canon law, see Bernard Bischoff and Michael Lapidge, \textit{Biblical Commentaries from the Canterbury School of Theodore and Hadrian} (New York: Cambridge University Press, 1994), 149, passim.}

Theodore likewise figures in several passages of the \textit{Anglo-Saxon Chronicle}, itself a product of Alfred’s cultural program. One of Theodore’s \textit{Chronicle} appearances reveals the Archbishop’s participation (AD 675) in a ceremony proclaiming papal confirmation of a charter issued by the king of Mercia. The charter had granted lands, privileges, and freedom from taxation or service to the monastery at Medeshamstede. Subsequently, in noting Theodore’s death, one of the scribes who composed the \textit{Chronicle} observed that the archbishop’s passing marked a turning point in post-Roman history: “Before this time the [arch-] bishops had been Roman, but afterwards they were English.” The Roman Empire had fallen; but tenth-century Saxons were still tracking its prestige.\footnote{G.N. Garmonsway, translator and editor, \textit{The Anglo-Saxon Chronicle} (London: J.M. Dent & Sons, Ltd., 1990), 33-34; 35-37 (Medeshamstede); 38-39 (Theodore presiding over the synod at Hatfield “because he wanted to amend the doctrines of the Christian faith”); 40 (quoted passage).}

The most effective way to write a negative review is to describe whatever the target book is \textit{not}, and then denounce the book for not being that. It would be easy to subject Fulk and Jurasinski’s CT to that sort of review. But in truth, the Early English Text Society (EETS) does not publish the type of translated, contextualized texts that the Selden Society produces, and that legal historians have come to expect. Rather, EETS remains true to its nineteenth-century origins. According to its website,\footnote{The Quotes and information that follow come from the Early English Text Society website (http://users.ox.ac.uk/~etts/). Accessed June 25, 2013.} EETS was founded in 1864 as a club dedicated to bringing “the mass of unprinted Early English literature within the reach of students,” and likewise to assisting the ongoing labors of what would become the \textit{Oxford English Dictionary}. EETS’ mission to reproduce all manner of medieval writing is much broader than that of the Selden Society, or for that matter of the Stair
Society, Ames Foundation, or similar organizations. The EETS editors assume that their target audience will be versed in all of the variations of Early English. The Society’s website notes that though its books “normally provide a glossary and notes, no translation is provided.” Operating under these criteria, EETS has published 475 works in three series—an enormous contribution.

It is difficult not to wonder about the impacts church canons may have had on the enforcement of justice. The literature on Alfred the Great’s Domboc, for example, makes it clear that the celebrated ruler was deeply influenced by clerical writings on secular laws. The church’s impact upon the largely customary law of the shire moots is less clear. Still, thanks to Fulk and Jurasinski’s CT, we have access to the thinking of a post-Roman clergyman whose influence shaped the lives of later Englishmen from Northumbria to Kent.

Paul M. Pruitt, Jr.
Bounds Law Library
University of Alabama


Daniel Klerman, the Charles L. and Ramona I. Hilliard Professor of Law and History at the University of Southern California, has compiled a hefty selection of seminal articles on law and economics as a lens through which to examine legal history and history, in general. This mammoth tome is organized in seven parts. Part I is entitled “Dependent Variable: Efficiency and Beyond” and is followed by Part II, “Independent Variable: Women’s and Minority Rights.” Part III is entitled “Independent Variable: The Glorious Revolution,” while Part IV is designated, “Bidirectional Histories: The Reciprocal Interactions of Law and Society. Part V is “Private Ordering, “Part VI is “Litigation and Contracting,” and Part VII, “Critique of the Economic Approach to Legal History,” concludes the text. All told, this volume includes twenty-one articles drawn from scholarship produced over the course of the past fifty years.

Part I, “Dependent Variable: Efficiency and Beyond,” offers four articles principally dealing with property rights. Editor Klerman characterizes “law as dependent variable” as a genre that “tries to explain why societies have the laws they do and why laws change over time. (ix) He also notes that such economic analysis is evolving, moving from an efficiency model to a more inclusive one involving groups and transactions costs. (Id.) Part I includes the following articles: Harold Demsetz’ “Toward a Theory of Property Rights;” Zeynep K. Hansen and Gary D. Libecap’s “The Allocation of


8 For discussion of these questions with regard to royal justice of the post-Norman years, see Frederick Pollock and Frederic William Maitland, The History of English Law Before the Time of Edward I (1895; Indianapolis: Liberty Press, [2009]), I: 140-144. And see Maitland’s related work Roman Canon Law in the Church of England: Six Essays (London: Methuen & Co., 1898).
Property Rights to Land: US Land Policy and Farm Failure in the Northern Great Plains;" Paul G. Mahoney’s "The Political Economy of the Securities Act of 1933" and the editor’s own "Jurisdictional Competition and the Evolution of the Common Law." These articles grapple with the notion that legal history can be explained in terms of efficiency. While this paradigm held currency for some time, it has been challenged by new emphases upon interest group theories and the role of legislation in shaping behavior. Klerman’s representative sampling of major scholarship traces the evolution of thought concerning law and economics as explanation of human behavior and the course of legal history.

Part II, “Independent Variable: Women’s and Minority Rights,” provides three articles exploring the complicated relationships between marginalized status, the law, and economic development. Klerman describes the “law as independent variable” approach as an attempt to “look at the effect of law and legal change on human behavior.” (ix) The articles he features as exemplars of this approach are the following: James J. Heckman and Brook S. Payner’s “Determining the Impact of Federal Antidiscrimination Policy on the Economic Status of Blacks: A Study of South Carolina;” John R. Lott, Jr., and Lawrence W. Kenny’s “Did Women’s Suffrage Change the Size and Scope of Government;?” and Grant Miller’s “Women’s Suffrage, Political Responsiveness, and Child Survival in American History.” Econometrics factor heavily in the “law as independent variable” analysis. These articles argue that significant advances in the law, such as federal antidiscrimination and women’s suffrage legislation, bear an important role in economic development.


Part IV, “Bidirectional Histories: The Reciprocal Interactions of Law and Society,” showcases three articles exemplifying application of the bidirectional approach. The following articles constitute this section of the book: Abner Greif and David D. Laitin’s “A Theory of Endogenous Institutional Change;” Avner Greif’s “History Lessons: The Birth of Impersonal Exchange: The Community Responsibility System and Impartial Justice;” and Claire Priest’s “Creating an American Property Law: Alienability and Its Limits in American History.” The bidirectional method focuses upon the claim that causation is not restricted to one direction alone; it flows both ways. Thus, the effect of law on society works along with the effect of society on law to provide an understanding of legal history and law and economics.

Part V, “Private Ordering,” presents three pieces representing the “private ordering” method of analysis. According to Klerman, “A significant body of historical work investigates the ability of groups to develop norms and practices partly or wholly independent of the state.” (x) As evidenced by the titles of the articles, whaling, mining and medieval trade are archetypes for the “private ordering” method. The articles are ordered as follows: Robert C. Ellickson’s “A Hypothesis of Wealth-Maximizing Norms: Evidence from the Whaling Industry;” Karen Clay and Gavin Wright’s “Order Without Law? Property Rights during the California Gold Rush;” and Avner Greif’s “Reputation and Coalitions in Medieval Trade: Evidence on the Maghribi Traders.” Klerman asserts: “Writers in this genre tend to argue that law is not as important as it may seem, and groups, especially small groups, can generate effective solutions to social problems without governmental assistance.” (xvi) While the “private ordering” approach remains controversial, it has gained some traction among factions of law and economics scholars.

Finally, Part VII, “Critique of the Economic Approach to Legal History,” proffers a single powerful article to challenge the validity and limits of applying the law and economics lens to explain legal history. Klerman selects Robert W. Gordon’s 1984 *Stanford Law Review* article, “Critical Legal Histories,” to emphasize the point that there are numerous perspectives and methodologies employed by scholars to understand the complex and inextricably intertwined relationships between and among law, economics and history. According to Klerman, “Robert Gordon criticized legal historians for implicitly or explicitly assuming “evolutionary functionalism,” the idea that there is a process of social development common to most “advanced” or “dynamic” societies, culminating in…liberal-capitalist forms of economic organization,’ and that ‘law and legal institutions are best understood as facilitative technologies that are adaptive responses to social needs and demands resulting from these modernizing processes.” (xix) Gordon proposes, instead, that “legal historians view law and society as ‘mutually constitutive.’” (xx) In other words, law and society cannot properly be viewed as separate categories, since each contributes to the constitution of the other. Part VII is the ideal capstone to *Economics of Legal History* because it further problematizes an already complicated law and economics approach to understanding legal history and this, in turn, challenges the reader to examine anew the claims made in the preceding sections of the book.

Ultimately, *Economics of Legal History* is not for the faint-of-heart. Spanning 783 very dense pages, this book delves deeply into law and economics methodologies and their in/ability to fathom legal-historical developments. Readers who are not schooled in econometrics will need to take much on faith because complex mathematical formulae dominate whole sections of the book. Nonetheless, Daniel Kerman does a fine job in assembling articles representing a number of paradigms from the law and economics perspective. Even more importantly, he juxtaposes them in a manner that invites and provokes readers to compare and contrast the relative efficacies—and efficiencies—of each method. Yes, there are significant “transactions costs” in terms of the reader’s time, but, on the whole, this impressive book is a worthy investment for scholars who wish to investigate the possibilities of fruitful application of law and economics techniques as a means of understanding legal history.

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In the seventy years since the end of World War II, the most inhumane laws created by the National Socialist (Nazi) party have been repealed, but other less blatantly offensive laws, such as
those concerning marriage and divorce, remain part of the family law system in several European countries. The existence of in-force laws created by the Nazi party might not carry the negative implications one might expect. Only by analyzing the development of family law before, during, and after the reign of the Nazi party can one accurately assess its continuing influence. In *National Socialist Family Law: The Influence of National Socialism on Marriage and Divorce Law in Germany and the Netherlands*, Mariken Lenaerts shows how the current state of family law in these countries has been directly influenced to varying degrees by the laws and regulations created by the Nazi party.

Lenaerts asserts that her book is not merely a recounting of what happened during the Nazi period, but provides a deeper understanding of the essence of law. “…although remembering our past may not prevent evil from happening again, it can help us to develop a better understanding of what happened. And understanding might help us to prevent evil from happening. To me this knowledge justifies another book on the Nazi period, about which so many books have already been written, to help us understand not just what happened during those dark years, but also what the essence of law is: rules that regulate human behavior in order to make life liveable.” (P. 1).

Lenaerts begins by describing the disturbing developments that carried social and scientific thought from Darwin’s theories of evolution to social Darwinism and eugenics. She explains how the Nazi party was able leverage political and economic failures with social Darwinism to create increasingly oppressive family laws. Understanding the scientific and social theories of the 1930’s is necessary to understand Nazi justification for the enactment of racial purity laws. These laws, generally known as the Nuremberg Laws were designed to increase the size and purity of the so-called Aryan race while preventing other races from procreating, or inter-breeding with Aryans. Lenaerts circles back, chronologically speaking, to discuss the changes in family law in the late 1800’s as well as during the Weimar Republic in the early 1900’s before analyzing the laws created by the Nazi party in Germany, the laws proposed during the German occupation of the Netherlands, and the police regulations enacted by the Nazi party. This close analysis reveals not only why the laws were developed, but also the many attempts at family law revision which failed. In surprising, but strategic instances, Hitler restrained the party from enacting far more extreme forms of marriage and divorce laws which would have supported the racial purity concepts of the Nazi party.

The laws concerning who should be permitted to marry and under what circumstances divorce should be permitted were of the highest concern for the Nazi party. The Nazi party promoted a society which placed the needs of the community above those of the individual. Under this ideal, the purpose of marriage was to have racially “pure” children to populate and strengthen the Aryan race. The Nuremberg Laws were enacted to institutionalize the racial ideology of the Nazi party. However, German marriage and divorce laws did not contain discriminatory language but were interpreted in light of the Nuremberg Laws. Therefore, when the Nuremberg Laws were repealed after World War II, the German family laws could remain as written. To a great extent, those laws remain in place today.

The goal of family law reform in the Netherlands by the Nazi party was to create laws that mirrored those in Germany, but corrected for unexpected gaps and oversights. To achieve immediate change, Germany was forced, by international law, to enact regulations rather than comprehensive legal reform. As in Germany, the enforcement of these new regulations resulted in systematic genocide. Even after World War II, the Netherlands was slow to modify its family law and only added a no-fault divorce option in 1971.

It probably goes without saying, but bears repeating, that reading a historical, systematic explanation of the development of some of the most shocking events in modern history is no easy task. The Nazi agenda, which began with the scientific principles of the time and progressed to the extermination of individuals asserted to be “hereditary ill,” or racially impure, as defined by the laws, continues to shock and enrage the reader.
This book is highly recommended to anyone with an interest in the development of family law, past and present. The development of family law in Germany during the Nazi era may seem like an obscure and disturbing topic, but given the daily relevance of governmental control over marriage and divorce, it is both timely and relevant. Unfortunately, if the reader does not have some language skill with both German and Dutch, some important information will be missed. Although the author faithfully quotes relevant laws, an English translation was not always provided, which may impair the reader's complete understanding of the author's analysis. Therefore, with some reservation as to translation issues, this book is recommended to readers interested in a scholarly analysis of family law.

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This slim work is divided into three parts: Paul Pruitt and David Durham write a biographical sketch of Tait's life; Sally Hadden presents a discussion of his legal career and the presentation of three federal jury charges in 1822, 1823, and 1825; and the text of the three charges. Charles Tait (February 1, 1768-October 7, 1835) was a Virginian, who grew up in Georgia as a teenager, and after educated at Cokesbury College in Maryland he became an instructor there while studying for the bar. He was admitted to the Georgia bar in 1794. He became rector at Richmond Academy for three years and then became a state senator for one term in 1799. In 1803, he was elected a superior court judge serving until 1809 when he won election to the United States Senate for a one-year term until 1818. He supported the war effort, the rechartering of the Bank of the United States, the growth of the navy, and supported the purchase of Thomas Jefferson's library for the Library of Congress. In 1817 he supported the creation of Mississippi as a state and introduced the legislation that would provide for the creation of Alabama in March 1819. In October 1819 the Alabama Senate passed him over for a position of senator, but President Monroe appointed him to the position of first judge of the federal district court of Alabama from May 1820 to 1826. It was unclear why Tait gave up his federal judgeship, and spent the remaining years traveling and studying science to improve the crops and slavery population on his plantation. In 1828, he even rejected President John Quincy Adams's offer of an ambassadorship to Great Britain.

Professor Hadden's discussion of Tait's legal career reviews some of the events that Pruitt and Durham relate. Whether he was admitted to the Georgia bar in 1794 or 1795, Tait still became involved with the Yazoo scandal that affected Georgia politics for two decades. Hadden points out that “studying law” by reading only Blackstone and still be called “an astute lawyer” meant that he knew Blackstone better than his other contemporaries. (46-47) Tait had a difficult time as a federal judge traveling through Alabama from 1820 to 1824 similar to the justices of the U.S. Supreme Court’s traveling their circuits. She discusses the geographical importance of Cahaba and Mobile as capital for Tait’s judicial hearings. The charges become more important when there are no published decisions of Tait’s cases published in *Federal Cases*. 

Hadden provides a useful discussion of the role of the grand jury during early nineteenth century: how the jury was called and its role in the presentment of a case. Judges like Tait could educate jurors on new areas of American law that needed enforcing and alert grand jurors to a newly changed legislation that required attention on their part; demonstrate the legal knowledge of the judge; elevate his social standing upon the social hierarchy in the location that he worked; and provide an educated lecture/oration to his audience. (56-64).

Her discussion of the three grand jury charges opens with a description of the similar introductions of all three charges, reflecting the presentation in three different locations geographically. Tait discussed the limitations placed upon a grand jury and then discussed the specific topics in each charge. In 1822, Tait dealt with piracy and the African slave trade; in 1824, the role of lawlessness in society and also piracy; and the 1825 charge dealt with the safety of the mails along post roads and preservation of court records from destruction or alteration. (79-97)

Two appendixes contain the original manuscript of the 1825 charge and a bibliography of Tait’s law books. It is interesting that his mixed collection of English and American publication reflects what many members of the legal community would have possessed at this time.

Pruitt, Durham, and Hadden present a useful biographical account of a lesser-known judicial officer of early nineteenth-century United States and the description of the three grand jury charges. With less than a dozen published charges found in Making of Modern Law database, Hadden’s chapter makes an important contribution to the history of grand juries. Pruitt and Durham as co-editors of the Occasional Publications series deserve congratulations on another useful legal historical work on Alabama history. It is only hoped that other librarians interested in legal history would begin such series in their states.

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The name Francisco Suárez (1548-1617) may be vaguely familiar to many of us, but we probably cannot quite place him. We may associate him with Francisco de Vitoria, but that’s likely the extent of it. Why in the world would a book of essays about this sixteenth century scholastic and his work be of interest in the twenty-first century to the readers of this newsletter?

There are several reasons for interest, not only in the present book of essays on Suárez, but for two others about him that have been written since 2012. Francisco Suárez was old-school—a scholastic—but he was of the Second Scholastic School and a transitional figure into modern philosophy and jurisprudence (in addition to being a major theologian). His areas of endeavor that are of special importance for legal historians are: natural law theory, the law of nations—especially
the law of war (ad bellum, in bello, and post bellum), a quasi-contract theory of the State, and a refutation of the divine right of kings. Born two years after Vitoria died, Suárez elaborated on the former's theories, influenced his own contemporary, Grotius, as well as the later Pufendorf, and, more generally, helped to create the foundation of modern public international law.

A Companion to Suárez looks broadly at Suárez's body of work, including his theology and metaphysics, whereas the other two—The Philosophy of Francisco Suárez (Oxford University Press, 2012), and Interpreting Suárez (Cambridge University Press, 2013)—attend solely to his philosophical and legal theories. The editors of this collection note their awareness of the earlier collections and indicate that theirs includes much more on Suárez's theological contributions, since he thought of himself primarily as a theologian. Moreover, the other two collections overwhelmingly represent an Anglo-American perspective and have English as their original language, while most of the contributors to A Companion to Suárez are continental European scholars and not all of them write in English. As a consequence, three of the essays in the essays in this volume are translations into English.

Three contributions to the present volume and the bibliographic apparatus will be of particular interest to those interested in law. The editors' introduction is one of them, as it provides a highly informative biography of Suárez, surveying his major activities and writings in the context of the events and ideas of his era. This historical context is quite useful in understanding why Suárez focused on certain topics—such as the divine right of kings—and why he may have adopted certain of his positions. The introduction is particularly extensive in its explanation of his natural law theory. While this piece is called an introduction, it's as long and as substantive as a regular chapter and should be viewed as such.

The second chapter of considerable interest to the readers of this review is "Political Thought and Legal Theory in Suárez." This essay examines two of Suárez's works: De legibus ac Deo legislatore (1612), which is the culmination of his jurisprudence and includes his ideas on divine law, natural law, international law (the ius gentium), as well as human, positive law; and Defensio Fedei Catholica (1613), which deals with social contract theory and the divine right of kings. The latter was especially relevant to the dispute between James I of Great Britain and Pope Paul V over the independence of royal power from the power of the Church in secular affairs.

This chapter on the political thought and legal theory of Suárez was written by a French professor of philosophy and translated into English by one of the editors. It is the only one of the translations that I found difficult to read. Consider the following:

“This opposition [that of ecclesiastical power to the Rechtsstaat) marks the emergence of a process working towards the autonomization of the civil power in relation to the law, and leads to a recognition of the irreducibility of the State’s foundation to the law, thus opening the need for a moral point of reference: one which shows that the State has the increase of well-being as its primary purpose, and that the law is only an institutional means for attaining this end.”

This, and a few similar passages, want several re-readings. However, as the other chapter translated by the same editor is much more readily comprehended, I assume the fault lies more with the nature of French philosophical writing than with the translation.

“Suárez and the Natural Law” is the other chapter that is likely to be worthwhile for students of law. Natural law has been reintroduced the modern era, mainly through human rights advocacy. This makes the history and development of natural law theory relevant generally, even if the divinely-based version of Suárez, set out in book two of his De legibus ac Deo legislatore is not especially popular today. The author of this chapter offers an accessible account of Suárez's natural law thought, which he deems not to be known as well as it deserves to be, on account of the jurist’s “impenetrable style” and the absence of modern editions.
This mention of “modern editions,” leads neatly to a discussion of the collection’s bibliographic apparatus. The appended bibliography of the editions of Suárez’s *opera omnia* considered to be authoritative is very helpful, as is the selective bibliography of medieval and scholastic texts and the ten-page bibliography of secondary sources. Otherwise, the editors rely on a reference to what they say is the definitive Suárez bibliography by one of their contributors, Jean-Paul Coujou’s *Bibliografía suareciana* (Universidad de Navarra, 2010). These are fine, but I was disappointed to see no references in the collection to online sources for any of the texts, whereas many are offered in *The Philosophy of Francisco Suárez*.

In addition, *A Companion to Suárez* has no bibliography of translations into English or other languages. Yes, some of this collection’s audience probably can read Suárez in the original Latin, but surely there are competent philosophers and jurists who cannot handle his “impenetrable style” and would benefit from access to translations in modern languages. Here, again, by contrast, *The Philosophy of Francisco Suárez* provides a reference to a website containing links to Suárez in translation. (Sydney Penner, *Suárez in English Translation* www.sydneypenner.ca/SuarTr.shtml and id., *Suárez in non-English Translation* www.sydneypenner.ca/SuarTro.shtml).

In sum, *A Companion to Francisco Suárez* is very well done and worthy inclusion in any library collecting extensively in the fields of legal history and the philosophy of law, and it is especially well suited to the interests of theologians. However, a law library that collects more selectively might be better served by one of the other two recent books about Suárez that focus more on his philosophy and legal theory.

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**Urofsky, Melvin I. *Dissent and the Supreme Court: Its Role in the Court’s History and the Nation’s Constitutional Dialogue.* New York: Pantheon, 015. 544 pages. ISBN: 978-0-307-37940-5. $35.00.**

Eminent legal history scholar Melvin I. Urofsky, Professor of Law and Public Policy and Professor Emeritus of History at Virginia Commonwealth University, provides yet another important book on the United States Supreme Court and the role of dissent in the evolution of high court decisions. With fascinating specificity, Urofsky analyzes the patterns of dissents and incisively dissect the rhetoric that shapes them. Ultimately, he succeeds in illuminating the way in which U.S. Supreme Court dissents contribute to the dialogue concerning the shifting interpretation of the Constitution. Along the way, he provides insightful discussion of landmark Supreme Court cases, thereby offering a focused, but comprehensive, history of the law as proclaimed by the Supreme Court.

Initially, Urofsky draws attention to the shifting patterns in rendering opinions of the Court. Thus, early Courts employed the *seriatim* method, whereby each justice wrote and delivered an individual opinion. According to Urofsky, “In this way, the justices could openly disagree with each other without explicitly dissenting.” (43) Justice Marshall, however, favored a unanimous opinion rendered in univocally. (45) From this perspective, “dissents can be viewed as undermining the legitimacy of the Court’s voice.” *Id.* Subsequently, though, disagreement with the majority opinion
became acceptable, and, to greater or lesser degrees, justices employed the dissent as a means of memorializing their quarrels with majority opinions. Moreover, setting the stage for future opinions, justices learned to employ the dissent in a strategic fashion at times even laying the grounds for reversals consonant with the changing times.

Next, Urofsky focuses upon the role of the Chief Justice in setting the tone of the Court, but he also pays careful attention to the concurrences and dissents of the other justices. Principally, he scrutinizes landmark cases such as Dred Scott, the Slaughterhouse cases, Olmstead v. United States, Lochner v. New York, et al. He also identifies justices who are known for their dissents, citing, for instance, John Marshall Harlan as “the first great dissenter.” Id. at vii. In particular, he analyzes the language of dissenter Harlan and Holmes in Lochner v. New York and Holmes and Brandeis in Olmstead v. United States. Happily, Urofsky’s analysis covers great cases and dissents up to, and including, the Roberts Court. Romer v. Evans and Lawrence v. Kansas feature prominently here, along with dissents from Justices Scalia and Ginsburg.

Ultimately, Dissent and the Supreme Court is a cogent analysis of dissents as a means of jurisprudential dialogue. Indeed, dissents may be regarded as a sort of dialectic, challenging majority opinions and sowing the seeds engendering a new synthesis, as the law evolves within a shifting sociopolitical culture. Thanks to Urofsky’s superb research, readers can gain insight into the process that catalyzes such dynamic outcomes. In the end, today’s Supreme Court dissent may very well become tomorrow’s law, an inevitability that legal scholars should acknowledge and embrace.

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The period of Iberian history known as the Reconquista, seven centuries of intermittent warfare that ultimately resulted in a collection of Christian kingdoms conquering and replacing the Muslim kingdoms that once occupied modern-day Spain and Portugal, had profound consequences for the cultural development of all of the civilizations that became involved in the conflicts. In Islamic Law and the Crisis of the Reconquista, Professor Alan Verskin of the University of Rhode Island examines one of these consequences: the development of a new concept in Islamic law, that of a Muslim community existing in the absence of an Islamic political authority.

For the reader unfamiliar with the religious history of Islam, Dr. Verskin begins his work by providing the historical context necessary to understand the problems these communities caused for the Islamic jurisprudence of the time. The opposed Islamic religious concepts of tradition and innovation, the significance of the division between Islamic and non-Islamic territory, the role of the fatwā in Islamic jurisprudence and the significance of physical migration in Islam are all introduced before the first numbered chapter; for a reader new to the subject, the book’s introduction alone could be as informative as a full academic paper.
Islamic Law and the Crisis of the Reconquista is of interest for both its religious and its historical scholarship. Though its focus is on a religious question, this work does not neglect to examine the historical and political developments that made examination of this question necessary from the perspective of those involved. Neither does the work ignore how the various answers to the central question of religious jurisprudence were developed under pressure from various parties with conflicting personal stakes in the outcome of the religious debate. Even a reader with no interest in the religious issue might still appreciate reading this book as a cultural history, if only to reflect on how situations that a modern reader might take for granted were once considered radical to the point of impossibility.

The substance of this book focuses on the many answers Islamic jurist-theologians made to the primary question that the Reconquista posed them: was the practice of Islam possible in the absence of an Islamic government? Dr. Verskin examines how this question was answered immediately after the Reconquista concluded in the Fifteenth Century, and how it was answered again when the issue was revived in the Nineteenth Century following the French conquest of the Maghreb and the European colonization of North Africa. Overall, this book is a thorough and well-documented study of how (and why) a particular question of Islamic jurisprudence has historically been addressed by Muslim religious scholars and political theorists; anyone interested in further details would likely enjoy reading the book to find them.

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Congratulations to all the LHRB-SIS members who were honored with 2015 awards from AALL. Laurel Davis (Boston College Law Library) received the Law Library Publications Award, Print Division, for The Law in Postcards (Boston: Boston College Law Library, 2014; with Lily Olson). Penny Hazelton (Gallagher Law Library, University of Washington) was co-winner of the Marian Gould Gallagher Distinguished Service Award. Kasia Solon Cristobal (Tarlton Law Library, University of Texas) earned the AALL/LexisNexis Call for Papers Award, Open Division, with her paper “From Law in Blackletter to Blackletter Law.”

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John Cannan (Drexel University Law Library) was cited in the U.S. Supreme Court’s highly anticipated decision upholding the Affordable Care Act, King v. Burwell, issued on June 25. The majority opinion by Chief Justice John Roberts cites John’s article, “A Legislative History of the Affordable Care Act: How Legislative Procedure Shapes Legislative History,” 105 Law Library Journal 131 (2013).

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Anna Franz (Yale Law Library) gave a talk entitled “When the Old Doesn’t Work and the New Isn’t Yet: Canon Law in Agobard of Lyon’s Failed Anti-Jewish Campaign” at the Conference and Grand Opening, Stephan Kuttner Institute of Medieval Canon Law, May 21, 2015, in the Yale Law School.

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Ryan Greenwood (University of Minnesota Law Library) presented a paper entitled “Gentili, Grotius and the Form of Early Modern International Law Treatises” as part of “Legal Texts and the New Philology: The Fiftieth Annual
Conference on Editorial Problems,” Mar. 20, 2015, at the University of Toronto. He gave the keynote talk, “Magna Carta, 800 Years: Magna Carta and the Pulling Rare Books Collection,” at the annual meeting of the Minnesota Association of Law Librarians, May 20, 2015, in Minneapolis. He spoke on “Natural Rights and Enforceability: The Transition from Medieval to Early Modern Rights Theories” at the 2015 British Legal History Conference in Reading, UK, July 9, 2015.

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Mike Widener (Yale Law Library) and Wilfrid Prest (University of Adelaide) have published 250 Years of Blackstone’s Commentaries: An Exhibition (Buffalo, NY: William S. Hein Co., 2015).

Exhibits

Noelle Sinclair

From the Harvard Law School Library:

“It Was a Dark and Stormy Semester … Portrayals of Harvard Law School in Literature”

One of two exhibits at Harvard Law School this summer, It Was a Dark and Stormy Semester … Portrayals of Harvard Law School in Literature is the featured exhibit. It will be on view through August 14, 2015. The exhibit website has a virtual bookshelf of all the titles known that include depictions of HLS students, faculty, alumni, or the campus itself. If you find one that is missing, there’s a link to add your own title to the list!

As a companion to this exhibit, members of the Harvard community have the opportunity to go on a Blind Date with a Book, selected from titles with some connection to HLS.

“By Popular Demand”

A second smaller exhibit, By Popular Demand, features items selected by HLS students from Historical & Special Collections. It will be on view through the summer.

“The Papers of Abram Chayes”

An online exhibit entitled The Papers of Abram Chayes is also available. Jamie Brinkman, a Processing Archivist hired through a Harvard Library Hidden Collections grant, recently finished processing the papers of Abram Chayes, international lawyer, legal advisor, author, and Harvard Law School professor. She prepared an online exhibit that interprets the collection. Beneath the main text is a timeline of Chayes’ life and activities.

For more about Abram Chayes: https://en.wikipedia.org/wiki/Abram_Chayes

From the Lillian Goldman Law Library, Yale Law School:

“Evidence of Women: Women as Printers, Donors, and Owners of Law Texts”
Women printed, donated, and owned law books— from manuals to treatises to codes— long before women entered legal practice. From queens to unknown women, from the fifteenth to the nineteenth centuries, this exhibit provides a glimpse of women’s involvement with law books both inside and outside of official structures.

The exhibit, "Evidence of Women: Women as Printers, Donors, and Owners of Law Texts," is curated by Anna Franz (Rare Book Fellow, Yale Law Library). It is on display through August 25, 2015, in the Rare Book Exhibition Gallery, located on Level L2 of the Lillian Goldman Law Library, Yale Law School (127 Wall Street, New Haven, CT).

This exhibit provides further evidence of women’s long involvement with the law even at times when they could not practice it. Since the exhibit represents only a small sampling from the vast corpus of law texts, it prompts reflection on the potential depth and breadth of women’s interactions with the law as producers, transmitters, and consumers, instead of as objects or eventually practitioners of law. It especially highlights women’s importance in the dissemination of law texts through their substantial and sustained role as printers and sellers of law books.

For more information, contact Anna Franz at (203) 432-5678, email anna.franz@yale.edu, or Mike Widener at (203) 432-4494, email mike.widener@yale.edu.

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**Recent Acquisitions**

Linda Tesar

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**Acquisition Highlights for 2014-15 at the Yale Law Library**, by Mike Widener, Rare Book Librarian, Lillian Goldman Law Library, Yale Law School

One of the most recent significant additions to the Yale Law Library’s Rare Book Collection is a collection of correspondence between U.S. Supreme Court Justice William O. Douglas and the man Douglas credited with putting him on the road to his legal career, attorney James Thompson Donald (1893-1958) of Yakima, Washington and Baker, Oregon. Donald convinced Douglas to go to law school at Columbia, and he was a mentor, friend, and fishing buddy to Douglas the rest of his life. The collection includes 93 letters from Douglas to Donald, discussing Supreme Court cases, politics, and fishing trips. Among the other items are 45 photographs of Douglas, Donald, and their friends on fishing and hunting trips in the Pacific Northwest.

The library improved its collection of early Italian statutes, already the best outside of Italy. The largest of these acquisitions was the 122-volume *Raccolta generale delle leggi per gli Stati di Parma* (1822-1860), the only complete set registered in WorldCat. Two bound volumes containing 204 individually published Venetian decrees (1574-1675) cover an incredible range of issues: gun control, vagrancy, prisons, jailhouse snitches, taxes, smuggling, coinage, and banking, to name but a few. It is rare to find such volumes before dealers break them up. Another 17 titles, including 11 from the Duchy of Savoy, are the only copies in WorldCat, and 9 others are the only North American copies in WorldCat.

Closely related to the Italian statutes is a collection of 85 mostly printed documents from 31 trials, 1673-1867, in Rome and elsewhere in the Papal States, on issues including marriage, inheritance, parish governance, liturgy, commercial law, land titles, vineyards, debts, funerals, hunting, grazing rights, benefices, taxation, medical malpractice, tithes, and water rights. A separate acquisition was four printed legal briefs from 1689 arguing against restrictions on Jewish merchants in Rome.

The library acquired several lots at the November 2014 auction of books from the New York City Bar. These included a three-volume set of Litchfield Law School notebooks, a notebook of King’s Bench cases from 1740-41, a two-volume *Repertorium utriusque iuris* (Nuremberg, 1476), and a volume of six separate treatises on Roman law printed in northern Italy between 1486 and 1497,
most of them the only North American copies.

The American Trials Collection grew by 43 items, several of which were featured in a recent exhibition, “Murder and Women in 19th-Century America.” Six of these were manuscripts, including a pair of depositions in the 1839 Amistad slave revolt.

An acquisition of special interest to LHRB-SIS members is an annotated 1854 broadside, *Intending to quit the practice of the law, I offer the following valuable library of law books for sale low*. The broadside lists 155 titles belonging to Elisha N. Warfield (1823-1903) of Jacksonville, Illinois, who was leaving Illinois for Missouri.

The most significant additions to the William Blackstone Collection included a letter from Blackstone to Shakespeare scholar George Steevens in January 1780, the last surviving letter of Blackstone’s before his death that year. We acquired volumes 5-7 of the London satirical magazine *Punch*, containing the first, serialized publication of *The Comic Blackstone*. Finally, the collection now has the voucher for Blackstone’s 1759 salary of £200 as Vinerian Professor at Oxford.

“Rebel Trophy” acquired by Boston College Law Library, by Laurel E. Davis, Legal Information Librarian & Lecturer in Law/Curator of Rare Books, Boston College Law Library

Boston College Law Library recently bought a manuscript book of precedents dated 1806, that Curator of Rare Books Laurel Davis is currently working on reading and indexing. The precedents—copied by an unidentified person, presumably a law apprentice—mostly represent form declarations and pleas drafted by well-known New Jersey practitioners in the second half of the 18th century. The bulk of the forms come from Richard Stockton, Sr., a signer of the Declaration of Independence, member of the Continental Congress, and patriot. A small number are from Georgia and some of those cases were presided over by John Marshall, who was riding circuit at the time as a U.S. Supreme Court justice. The precedents provide a fascinating glimpse into the world of legal practice at the time: there are typical cases involving debt and other contract disputes, but there are also juicy slander cases and exciting admiralty cases, including a prize case involving Commodore John Barry. Most interestingly, the cover is labeled “Rebel Trophy” and a notation on the front flyleaf indicates that this book was found under the floorboards of a Hilton Head plantation by a Union soldier in 1861.

*History of Alexander the Great for George Wythe Room at William & Mary*, by Linda K. Tesar, Head of Technical Services and Special Collections, Wolf Law Library, College of William & Mary

William & Mary added a few new pieces to the George Wythe Collection this spring, most notably a 1658 Leiden edition of Quintus Curtius Rufus’s history of Alexander the Great in its original language, *Q. Curtii Rufi Historia Alexandri Magni*. George Wythe, an enthusiastic classics student, referenced this work in his decision for *Wilkins v. Taylor*, a case involving the interpretation of a will. The title was one of the books inherited by Thomas Jefferson and given to his favorite grandson, Thomas Jefferson Randolph. The new William & Mary copy, bound in period vellum with yapped edges, includes a title page hand-tinted in the 17th century.
Jul: 27, 1759

Sir

May please to pay to Dr. William Blackstone two hundred pounds, being the yearly salary, as my honor & pay; & place it to the account of my honors fund.

Tho: Randolph Vice-Cher.

To Mr. Walker
Attorney at Oxford

25th July 1759 Received the contents of the

W. Blackstone

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Q. Curtii Rufi Historia Alexandri Magni., Wolf Law Library, College of Milliam & Mary.

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LHRB at AALL

Morris L. Cohen Essay Presentation
PCC Room 111A
Sunday, 11:30 am - 12:45 pm

LHRB-SIS Business Meeting
Marriott Room 305
Sunday, 5:30 pm - 6:30 pm

LHRB-SIS Reception
McGillin’s Olde Ale House, 1310 Drury Street
Sunday, 7:00 pm - 10:00 pm

LHRB-SIS Host City History Roundtable
PCC Room 104B
Monday, 3:15 pm - 4:30 pm

LHRB-SIS Rare Book Cataloging Roundtable
Marriot Room 304
Monday, 4:30 pm - 5:30 pm

Roman Law Interst Group
Researching the Corpus Juris Civilis
Tuesday, Tuesday, 12:30 pm - 2:00 pm

LHRB-SIS Program
Voices from the Past: Using Rare and Antiquarian Books in the Modern Practice of Law
PCC Room 204BC
Tuesday, 4:00 pm - 5:00 pm