UNBOUND
An Annual Review of Legal History and Rare Books

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UNBOUND
An Annual Review of Legal History and Rare Books

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Phone (612)625-1898
yates006@tc.umn.edu

Cover Illustration: This depiction of an American Bison, engraved by David Humphreys, was first published in Hughes Kentucky Reports (1803). It was adopted as symbol of the Legal History and Rare Books Special Interest Section in 2007.
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DEDICATION

This, the premier issue of

Unbound: An Annual Review of Legal History and Rare Books,

is respectfully dedicated

to

Morris L. Cohen

Librarian
Historian
Scholar
Mentor
Friend
FROM THE EDITOR

The Legal History and Rare Books Special Interest Section began publication of its newsletter, LH&RB, in 1991. In more recent years the newsletter has published an increasing number of scholarly articles and book reviews. Unfortunately, this material has not been readily available to researchers.

*Unbound: An Annual Review of Legal History and Rare Books* is designed to republish this material, thereby making it more easily accessible for scholarly use. We hope that our readers will find this publication to be helpful.

Mark W. Podvia  
*Editor-in-Chief*
Legal literature consists of a variety of secondary sources that assist the researcher in interpreting primary sources. Citators provide a useful tool for researchers needing to find citations to cases, statutes, and other primary sources. Lawyers are of course familiar with Shepard’s citators for almost one hundred years now. But Shepard’s did not always dominate the legal field until after the first decades of the twentieth century. But it was not until the end of the first quarter of this century that Shepard’s

* This article was originally published in the Spring/Summer 2001 issue of LH&RB.


1 For a general history of these works, see ERWIN C. SURENGENCY, A HISTORY OF AMERICAN LAW PUBLISHING 182-183 (1990); for current accounts, see MORRIS L. COHEN, ROBERT C. BERRING AND KENT C. OLSON, HOW TO FIND THE LAW 54-142 (9th ed. 1989); J. MYRON JACOBSTEIN, ROY M. MERSKY AND DONALD J. DUNN, FUNDAMENTALS OF LEGAL RESEARCH 323-360 (6th ed., 1994).

citators gained dominance in Pennsylvania. With over 1,100 volumes of appellate court cases and 1,000 volumes of county court cases, the need to update cases provided a need for a publishers to provide. This article discusses the history of citators from the nineteenth century down to the present for Pennsylvania.

Court reporters began to cite cases to update cases as early as 1830 when Thomas Wharton updated volume 1 of Dallas's Reports. Later editors, like I. Tyson Morris, in Penrose and Watts Reports, continued the practice and expanded the service. Morris's contribution to the reports was to provide a rudimentary citator system, providing citations to cases as overruled by, referred to, distinguished, commented on, commented on and distinguished, and followed. See for instance, 1 P. & W. 81, 252, and 459 (1880).

A. Nineteenth and Early Twentieth Century Citators

The first citator in Pennsylvania was Samuel Linn, An Analytical Index of Parallel References to the Cases Adjudged in the Several Courts of Pennsylvania: With an Appendix Containing a Collection of Cases Overruled, Denied, Doubted, or Limited in Their Application. In his preface, Linn first stated that the published work first began for private use, but "is now offered to the Profession with the hope that they may derive some benefit and assistance therefrom." Recognizing the large number of volumes and number of cases, it has to "render the labor incident to the investigation of questions daily occurring in practice exceedingly irksome; and the contradictory cases which are to be found scattered throughout the books." Acknowledging the benefit of the digests, this work was auxiliary to them. "Its intention is to enable the student to refer from any given case on any given subject, to all the subsequent cases where the principal case has been cited or commented upon by court or counsel, thus bringing into view at a glance, most if not all of the later authorities on the same point." By preparing such a work, "a principle may be readily pursued through the books from its origin to its latest growth--from its infancy until it arrives at full stature." Another advantage "intended to be derived therefrom is the means which it will afford to test the value of any case, as authority for the principle which it purports to decide, by the references to all the subsequent cases wherein it is mentioned or commented upon in the opinion of the court."

5 Philadelphia: Kay & Brother, 1857. 768p. Interestingly, Linn's work is not listed in the National Union Catalog of Pre-1956 Imprints.
6 Id. [iii].
George Sharswood, Chief Justice of the Pennsylvania Supreme Court, observed the necessity of citators in a letter to Linn:

To be able to ascertain almost at a glance, whenever a case is cited, the extent of its authority, will make it an essential vade mecum of the practitioner; while to the student, the counsel and the judge, to be thus assisted by reference to all future cases in which the principal case has been cited and relied on as authority, commented on, explained, qualified, doubted, shaken, or overruled, will so materially assist legal investigation, that its importance can hardly be over-estimated.7

Linn listed cases alphabetically in large type with references to the volume and page cites where they had been cited. Rather than a vertical listing, cases were published on a line with cases separated by semi-colons. Cases with an asterisk after the citation "indicates that the Case has been noticed in the Opinion of the Court; its absence denotes that the case had been cited by Counsel in the Argument, and not mentioned by the Court."8 This initial volume covering the nominative reports down to 21 Pennsylvania State Reports had 668 pages of citations, generally between 8 and 12 citations per page. The appendix contained 101 pages contained cases overruled, denied, doubted, etc. through volume 26 of the State Reports. 477 cases were listed alphabetically containing in the first paragraph the point of law under review and then a following paragraph containing reference to a case and quote from subsequent cases. Linn drew a distinction in the selection of his cases under review:

"There may be, and no doubt are, many cases in effect overruled by subsequent decisions; but it has been thought most safe and prudent to notice only such as have been directly and in terms overruled, qualified, &c. Any other course would tend to mislead the profession, and would be productive of mischief rather than god." When a case is said to have been explained, overruled, &c., care has been taken to give the language of the Court, in justification of the assertion."9

How useful this work would prove to the bar at large was a question asked by the editors of the American Law Register: "If it

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7 Id. [4].
8 Id. [9].
9 Id.
does [accomplish its design], no active practitioner in this State, or perhaps any other State, can afford to be without it. If it does not, it is worthless, and will serve only to mislead and embarrass.”¹⁰

The authors tested the work on four named cases and several pages where up to 123 references were cited. After estimating almost 50,000 references in the work, the editors were laudatory:

“When it is remembered that each reference has been carefully consulted, and most of them necessarily studied, the amount of “patient labor” is truly wonderful. We have taken the pains to study up one or two of the cases to see whether we could discover any omission, but our researches have not enabled us to find that any reference has escaped the diligence of Mr. Linn. It is not often that a professional book falls under our editorial attention that has challenged so much investigation at our hands, and has left us so little to complain of. The design of Mr. Linn is fully and adequately accomplished, and the student hereafter will have nothing to do but to note on the margin of his copy any additional references, and he will always have an index of real practical value to aid him in his researches.”¹¹

Jesse Landis (1821-1873), a member of the Lancaster bar, published a supplement to Linn’s volume in 1873.¹² His dedication was to the Lancaster Law Library Association. Landis had recognized the importance of Linn’s work and had begun immediately keeping it updated. The Lancaster bench and bar understood its value and insisted upon its publication.¹³ The volume contained the reports from volumes 21 to 69 of the State Reports (9 Harris to 19 P.F. Smith’s Reports), 3 volumes of Grant’s Reports, and the first four volumes of the Philadelphia Reports. Landis omitted citations to cases cited by counsel. An appendix contained a list of cases overruled, doubted explained, criticized, etc. (pp. 527-50). The case was provided with a reference to remark or comment or, considered, in with the name of the case and citation. Citations were by nominative name and not by the numbered volume of the State Reports series.

¹¹ Id.
¹³ Id. preface (v).
Landis remarked that "[t]he possession of this book need not necessitate the purchase of the other." Although styled a Supplement, "it is nevertheless complete and entirely distinctive in itself...." 14 Although some cases appeared in the first volume but not in this one, they were of little importance, since they were not cited in the twenty-year period between publications.

James Reid published his Reference Index of Parallel Cases15 in 1891 for which a twenty-year lapse "ought certainly to justify the offering of an entirely new index."16 Reid claimed the work to be entirely his own. He reviewed all cases from 1 Dallas to volume 138 of the State Reports (i.e., 23 Crumrine). He cited cases only cited by the court, but added the "point" in each reference. Rather than have an appendix, for overruled or qualified cases, the author adopted the method of noting the fact conspicuously in the case itself.

The "established popularity" of Reid’s work and numerous inquiries made to the author for a continuation led to a supplement published in 1897 by the Johnson Company.17

William Crowther published a different kind of work in his The Desk Book of Pennsylvania Decisions (1924). Crowther offered his work to the practitioner, who "has felt the need of quick and easy access to the official reports." Following Sharswood’s admonition "that it is not so much to know the law, as to know where to find it,"18 he compiled a work based on the classification system of the West's American Digest System. He listed a digest topic, provided the section names of the subtopics, and then listed cases under each subtopic number. He felt that "as soon as a decision is handed down it becomes an authority and therefore one which may with profit be examined." Given the improved use of digests and citators during this same period, the title must be considered successful to be published for this period of time.

14 Id.
15 James V. Reid. Reference Index of Parallel Cases in the Supreme Court of Pennsylvania, Embracing the Space of Time from 1st Dallas to 23D Crumrine, Inclusive. All Cases, Overruled, Qualified, Etc., So Noted in the Case. (Columbus, Ohio, Printed for the Author. Columbian Printing Company, 1891).
16 Id, preface.
David Clare Good published the first citator for statutory law in his *Reference Index of Decisions on Acts of Assembly from 1679 to 1898*... This work collected more than 15,000 citation references. Coverage included citations to the British statutes in force from *Roberts' Digest*, the Duke of York's Laws, the first seven volumes of *Smith's Laws* (1700-1822), the *Laws of Pennsylvania* (1823-1897), and the Constitution of 1874. In double columns, he provided the reference to the cited statutory reference to the case citation and date of the case. A second edition published ten years later contained references to more than 40,000 citations! Good claimed the citator "gives the practitioner a ready reference to the cases of each particular act of assembly touched upon by the courts, showing the trend of judicial authority—a system which no other digest or other work of citations gives." The publication provided access to acts by page of the Pamphlet Law, by the date of the approval of the act or by its subject. Supreme Court cases were listed if available; if not, lower court cases were listed and grouped together and noted as sc [same case]. Supreme Court cases affecting lower court cases were also identified. Additional supplements were published covering 1908 to January 1, 1912 (over 5,000 cases) and then from January 1912 to June

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20 The remaining part of the title was TOGETHER WITH REFERENCE INDEX OF DECISIONS ON BRITISH STATUTES AND THE CONSTITUTION OF THE COMMONWEALTH OF PENNSYLVANIA OF 1874. (Altoona, H. & W. H. Slep, 1898).
23 *Id.* [iii].
24 *Id.* [x].
In 1916, Good may have attempted to publish a serial update to the set, but it probably did not last any longer because of Shepard’s citators incorporating the information as well in their publications.

**B. Shepard’s Citators**

It was in 1873 when Frank S. Shepard left the E. B. Meyers Company in Chicago to begin his own publications that became known as citators. Shepard’s Citations provide accurate, timely and comprehensive citation coverage for Pennsylvania cases both in hard copy and online (through LEXIS and WESTLAW). Shepard’s citators for cases allow the researcher to obtain the parallel citation for the case, history of the case, the treatment of the case and references to secondary sources covered in periodicals, American Law Reports annotations, and Shepard’s legal treatises. Shepard’s citators verify whether a cited case has been affirmed, overruled, cited in dissenting opinion, criticized or distinguished in citing cases. The treatment of the case provides citations to later cases citing the cited case in court cases reported in the various federal, regional and state reporters.

Shepard’s citators for Pennsylvania have a confusing publishing history, since the early volumes dealt with different reports. The first citators were stamps that one cut from a book and pasted into the volume next to the appropriate case citation.

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25 Suplement to Good’s Index. An Index of Cases Construing the Statutes of Pennsylvania, the Constitution of Pennsylvania and the British Statutes from January 1908 to June 1912 (1912) and Supplement to Good’s Index 1915. An Index of Cases Construing the Statutes of Pennsylvania, the Constitution of Pennsylvania and the British Statutes from January 1, 1912 to June 1, 1915 (1915).

26 The National Union Catalog of Pre-1956 Imprints provides citation to a serial publication that stated in a note to be published three times a year.

27 Surrency, supra note 1, at 182-183.

28 Shepard’s National System of Adhesive Annotations. Pennsylvania Superior Court Decisions (1901). The following Directions appear on the title page:

Annotate one Volume at a time. Each page of the annotations contains one Volume of Reports.

The entire page can be pasted on the inside cover of its proper volume, or cut off, one column at a time, the rules for a guide, and moisten and paste the reference at the head or margin of the case referred to. The work can be done by any office boy,
vania citations began in 1901 in the first two editions. A second edition followed the following year as *Shepard's Citations of All Cases in the Pennsylvania State Reports Which Have a Subsequent Citation*. The preface highlighted the changes between the first and second editions. The print was new and larger type, with the page number listed in bold-faced type. Second, besides official reports, *Atlantic Reporter, American Reports, American State Reports, and Pennsylvania Superior Court Reports* were covered. Third, citations to cases appealed to the U. S. Supreme Court were now covered. Fourth, "It not only gives all the subsequent citations of each case, but also shows the exact point in the syllabus to which it has been cited....This feature alone being something which no table of cases and no other work on citations will give you." Fifth, letters at the left of the volume number showed the history and treatment of the case as we understand it in today's current citator. Finally, all of the supplements have been incorporated into a single listing to make it complete and up to date.

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it being impossible to make a mistake, as the page is given in every instance where the reference is to go. Example--The large bold face type refers to paging of volume. The case on page 187 of volume 1 has been cited six times. It shows that paragraphs 2, 3, and 4 of the syllabus have been considered in subsequent cases on the questions of "What constitutes a record, cited in 1 Pa. Sup. 319. Practice, presumption of regularity cited in 2 id. 305, Foreign attachments, Rule to quash, affirmed in 13 id. 288, followed in 9 id. 414, 14 id. 255 and cited in 179 Pa. St. page 68."

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29 Gregory Harris, former librarian at Shepard's/McGraw-Hill, kindly provided me with title pages of the different citators for Pennsylvania for which some of the following information is based upon. He also informed me that the paste citations can be found in the second edition of the two titles discussed. Telephone conversation with Gregory Harris (February 14, 1996).

30 *Shepard's Citations of All Cases in the Pennsylvania State Reports* preface (2d ed. 1902).
Two citators dealing with the Supreme Court appeared in third editions in 1907: *Shepard’s Pennsylvania State Citations: A Compilation of all Cases Reported in the Pennsylvania State Reports* and *Shepard’s Early Pennsylvania Citations* covering the nominative reports (but not Sadler). The two sets appear to be combined in the 1916 edition (also listed as third edition) under the new title, *Shepard’s Pennsylvania Supreme Court and Statutory Citations*. This volume consisted of combined Supreme Court cases, the four Constitutions and pamphlet laws (i.e., *Laws of Pennsylvania*) cited in Pennsylvania Supreme and Superior Court Reports, *Atlantic Reporter*, *U. S. Reports*, *Federal Reporter*, *New York Reports*, and *Massachusetts Reports*. Supplements were eventually converted to a second bound volume covering from 1916 to 1933 and a third bound volume supplement from 1933 to 1945. Supplementary pamphlets brought the set down to 1956 incorporating reports from Supreme, Superior and county or lower courts.

In a third publication, Shepard’s covered the Superior Court sometime in 1901 as *Shepard’s National System of Adhesive Annotations: Pennsylvania Superior Court Decisions* with a second edi-

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31 Shepard’s Pennsylvania State Citations. A Compilation of Citations of all Cases Reported in the Pennsylvania State Reports (3rd ed. 1907). For a study of the various reports of the Supreme Court, see Fishman, *Reports, supra* note **

32 Shepard’s Early Pennsylvania Citations: A Compilation of Citations of all Cases Reported in the Early Pennsylvania Reports including Dallas, Addison, Yeates, Binney, Sergeant & Rawle, Rawle, Penrose & Watts, Watts, Wharton, Watts & Sergeant, Grant’s Cases, Monaghan, Walker, and Pennypacker (3rd ed., 1907). The second editions (1902) for each work are listed in the Allegheny County Law Library’s card catalog.

33 Shepard’s Pennsylvania Supreme Court Citations (Supplement 1916-1933, 1933).

34 Shepard’s Pennsylvania Supreme Court Citations (Supplement 1933-1945, 1945).

tion published in September 1907. In 1916, a third edition added lower court opinions, *Shepard’s Pennsylvania Superior Court and Lower Court Citations*. Supplements grew until a single volume covered from 1916 to 1944. Thereafter, the advance sheets covered all three levels of reports as shown in the previous paragraph.

Another citator volume was *Shepard’s Pennsylvania Classified Topical Index* (1924) followed by a bound volume supplement after ten years (1924-1934).

*Shepard’s Pennsylvania Table of Cases* (1925) numbered to the classified index published previous year.

*Shepard’s Pennsylvania Citations*, fourth edition, dated 1956, was divided into the Case Edition (1 part) and Statute Edition (1 part). The Case Edition covered the early nominative reports and volumes 1 to 380 of the *Pennsylvania State Reports*, volumes 1 to 177 of the *Pennsylvania Superior Court Reports*, *Atlantic Reporter* 1st series to volume 111 of the *Atlantic Reporter 2d* series, and *Pennsylvania District & County Reports* 1st series to volume 1 of the second series. The Statute Edition contained the federal and state constitutions, statutory materials, and court rules similar to the more recent editions. This edition covered 1 to 380 Pa., 1 to 177 Pa. Super., and county court reports.


It took over twenty years before the fifth edition was published in 1987 consisting now of seven volumes, five parts for the Case

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36 *Shepard’s Pennsylvania Superior Court Citations A Compilation of Citations of all Cases Reported in the Pennsylvania Superior Court Reports* (2d ed., September, 1907).

37 Shepard’s Pennsylvania Superior Court and Lower Court Citations: A Compilation of Pennsylvania Superior Court Reports Pennsylvania County Court Reports Pennsylvania District Court Reports and Miscellaneous Local Inferior Court Reports (3rd ed. 1916).

38 *Shepard’s Pennsylvania Superior Court and Lower Court Citations* (3rd ed., Supplement 1916-1944). The subtitle includes the list of court reports and periodicals used for citations.


40 *Shepard’s Pennsylvania Classified Topical Index and Table of Cases* (1st ed., Supplement, 1924-1934).

41 *Shepard’s Pennsylvania Table of Cases* (1925).


In 1994, *Shepard's Pennsylvania Citations*, sixth edition, was published. The Case Edition is broken down into seven parts or volumes, two more than the previous 1987 edition. Part 1 covers the early nominative reports from 1754 to 1845 and the *Pennsylvania State Reports* for volumes 1 to 255, while part 2 covers volumes 256 to 490. Part 3 covers volumes 491 to 534 of the *State Reports*, the five sets that comprise the *Miscellaneous State Reports*, and volumes 1 to 240 of the *Pennsylvania Superior Court Reports*. Part 4 covers volumes 241 to 430 of the *Pennsylvania Superior Court Reports*, followed by volumes 1 to 160 of the *Pennsylvania Commonwealth Court Reports*, and the *Pennsylvania County Court Reports*. Part 5 covers the *Pennsylvania District Court Reports* in its four series, followed by *Atlantic Reporter*, 1st series, and volumes 1 to 44 of the *Atlantic Reporter 2d* series. Part 6 and 7 continue *Atlantic Reporter 2d* series with volumes 45 to 380 and 381 to 637, respectively.


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This new edition changes format with six columns to a page. Case names are now included for each of the courts, but begin with volume 110 of the Pennsylvania State Reports and volume 109 of the Pennsylvania Superior Court Reports. Shepard’s therefore, omits several Supreme Court cases from volumes 108 and 109 of the State Reports that are reported in the Atlantic Reporter.43 I am not sure why the complete set does not have the names listed for each case. Another major change, for the better, is the breaking down of the Constitution section into the 1874 and 1968 sections; this will assist researchers as state constitutional history becomes more important as defined in the Commonwealth v. Edmunds.44 (Ironically, the 1916 edition did distinguish citations among the various constitutions.) In addition, the court rules are now broken down at the top of the pages to easily identify which court rules section one is looking for.

Two important portions of the earlier edition are however missing in this new edition: the individual county reports or side reports and the home rule charter/ordinance section. Shepard’s stopped citing to the individual county reports back in the early 1970s. The 1987 edition reflected this stoppage but at least included those citations in the Case Edition. Now, probably because of the long time period separating their publication and this new edition, the county reports are excluded.45 However, these county

43 Appeal of Whelan et al., 108 Pa. 162 (decision on November 14, 1894) is the earliest case reported in 108 A., though it is not the first case listed in the Atlantic Reporter volume.  
45 The company did not notify its subscribers when it sent in the new 1994 edition that two sections (individual county courts and the home rule charter/ordinance section) were not recom-
cases are still cited in West's digests for Pennsylvania down to 1976 and they are still cited by lawyers. Practitioners still "shepardize" these cases up to 1972, and if a District & County Report citation exists, it can still be "shepardized" under that cite. This leaves the researcher to check cases only by using LEXIS or WESTLAW.

By eliminating the home rule/ordinance section of the Statute Edition, researchers are limited in their ability to search home rule charters and local ordinances for case law on various topics. Secondary treatise sources for Pennsylvania municipal law are limited.46

The Pennsylvania edition is also available on LEXIS and WESTLAW or as a CD-ROM database. The latter is published bi-weekly with the Shepard's Pennsylvania Express Citations included on the disk.

Shepard's Pennsylvania Express Citations. Beginning in 1992, Shepard's began updating its Pennsylvania citator with twice monthly paperbound blue pamphlets. Besides updating the Case and Statute Editions, the service provides abstracts of cases providing treatment of the cited cases. This service is a separate subscription service from the regular supplementary pamphlets. The company has expanded this new service to many of its other citators as well.

Shepard's Atlantic Reporter Citations. The first edition of this publication occurred in 1915 with two supplementary volumes covering 1915-1934, and 1934-1943. A pamphlet update continued until 1957 when a second edition was published. This new edition covered Atlantic Reporter cases down to volume 124 Atlantic Reporter 2d series along with volumes 1 to 101 of the Pennsylvania Superior Court Reports. A third edition was published in 1986. This edition contained seven parts covering the Atlantic Reporter 1st and 2d series down to 498 A.2d. Two supplementary bound volumes brought citations down to 606 A.2d.

The new fourth edition of Shepard's Atlantic Reporter Citations (1994 date on spine of volumes) consists of eight books down to 634 A.2d. The set will be kept up to date with monthly advance sheets, and semi-annual pamphlets. The chief differences compiled. Almost everyone automatically discarded their older set. Only some libraries have managed to maintain these volumes, i.e., part 4 of the Case Ed., and part 2 of the Statute Ed., plus the two-volume supplements for the home rule/ordinance sections down to 1993.

46 SUMMARY OF PENNSYLVANIA JURISPRUDENCE 2D, volumes 22 and 23 cover municipal law (1995), while the Pennsylvania Bar Institute publishes every two years a COLLOQUIUM ON MUNICIPAL LAW (1995).

tween Shepard’s Pennsylvania Citations and Shepard’s Atlantic Reporter Citations are that the former contain references to the county court reports such as District & County Reports, and the academic legal periodicals, while Shepard’s Atlantic Reporter Citations only cites to the other regional reporters. The citator no longer even cites to the ABA Journal since it is not mentioned on the title page. The regional reporter citators are also available online through LEXIS and WESTLAW and in CD-ROM format.

Shepard’s Pennsylvania Case Name Citator. The first edition of this publication contained cases listed by alphabetically either by plaintiff or defendant with their parallel citations decided from 1940 to 1984 in two volumes. A second edition, published in 1993, covered from 1910 to 1993 in three volumes. The county court cases are those cited in the county side reports down to 1971-72 and the Pennsylvania District & County Reports, all four series.

For Federal court cases, one should consult Shepard’s Federal Citations which covers both the Federal Reporter and Federal Supplement. This work is also published in new editions every few years and updated with annual bound volumes, semi-annual gold paperback supplements and monthly red supplements. The supplements are divided into two parts, one for the Federal Reporter and one for the Federal Supplement.

For the United States Supreme Court, Shepard’s United States Citations is in a new revision in 1994. Rather than have the three major court titles—U. S. Reports, L.Ed., and Supreme Court Reporter—divided in each volume by parallel citation as the company had done in its previous edition from 1943 to 1994, this new set now consists of a separate set for each title: U. S. Reports, volumes (1-1.10); L.Ed., volumes (2-2.10), Supreme Court Reporter, vols. (3-3.10); and volume 4 that provides parallel citations from the U.S. citation to L.Ed. and Supreme Court Reporter citations. To look up citations for one citation will now require looking in three different volumes for the three titles. The federal citators are all available in LEXIS and WESTLAW for online access and in a CD-ROM format.


C. Other Citators

The failure to continue the county court reports in the citators led this author to compile Pennsylvania Citation Tables: Parallel Citations Between the Pennsylvania County Court Reports and the District & County Reports (1985-). This is a list of parallel citations between each county report and D. & C. Report and vice versa. Since the county reports can still be “shepardized” as a D. & C. citation, the parallel tables provide the researcher with those citations. The Fiduciary Reporter has also had parallel tables compiled between the series and the D. & C. Reports as well.

West’s Pennsylvania Law Finder. For those states that West Publishing Company produces their statutes, West publishes an annual Law Finder that provides an index to topics found in Purdon’s Statutes, the digest system, Corpus Juris Secundum, Pennsylvania Law Encyclopedia, and some of its multi-volumes treatise sets.

In conclusion, case-finding tools have evolved, but are still relatively the same as more than one hundred years ago. These legal resource tools have had a long history that will continue as long as these products are made available to the legal profession. The delivery of services has changed with the addition of online and CD-ROM products making citators easier to use, but still needed by legal researchers even as we move into the twenty-first century.

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Linn, Samuel. An Analytical Index of Parallel References to the Cases Adjudged in the Several Courts of Pennsylvania: With an Appendix Containing a Collection of Cases Overruled, Denied, Doubted, or Limited in Their Application. Philadelphia: Kay &

50 During the late 1970s and early 1980s, there were still frequent questions by library patrons concerning the need to provide parallel citations between the county reports and the District & County Reports. See Joel Fishman, “Shepard’s Citations and a Parallel Citation Index between the Pittsburgh Legal Journal and the District and County Reports (1971-1979),” 127 Pitts. Legal J. 12+ (10p.) (November 1980); Id., “Shepard’s Citations and a Parallel Citation Index between the Pittsburgh Legal Journal and the District and County Reports: 1980 Update,” 128 Pitts. Legal J. 10-11 (July 1981).

Brother, 19 South Sixth Street, Law Booksellers, Publishers and Importers. 1857. 768p.


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*Shepard’s National System of Adhesive Annotations. Pennsylvania Superior Court Decisions. [Patent Applied For.]* Copyright, 1901 By The Frank Shepard Co., New York.showing by parallel references if the same has been approved, criticised, denied, distinguished, explained, followed, harmonized, limited, modified, over-

Shepard’s Citations of All Cases in the Pennsylvania State Reports Which Have Had a Subsequent Citation. Copyright, 1902, by The Frank Shepard Co., New York. Showing by parallel references if a case has been affirmed, criticised, distinguished, explained, followed, harmonized, limited, modified, overruled, reversed, questioned or the same case. Also the exact point in the syllabus to which a citation refers. New York The Frank Shepard Co., Law-Book Publishers, 1902.

At the top of the page is underlined KEEP IN A DRY PLACE. National System of Adhesive Annotations. Second Edition.


Shepard’s Pennsylvania Supreme Court and Statutory Citations. A Compilation of All Citations of Pennsylvania Supreme Court Cases Pennsylvania Constitutions of 1776, 1790, 1838, and 1874 and Pamphlet Laws through Pennsylvania Supreme Court Reports, Pennsylvania Superior Court Reports, Atlantic Reporter, United States Supreme Court Reports, Federal Reporter, New York Reports and Massachusetts Reports Showing All Affirmances, Reversals and Dismissals of Pennsylvania Supreme Court Cases by the United States Supreme Court and noting all References to Pennsylvania Supreme Court cases found in the notes to Lawyers' Reports Annotated (First and New Series) and "Cyc". Third Edition. 1916. The Frank Shepard Company, 140-148 Lafayette Street. New York. Established 1873. Incorporated 1900.


THE HARVARD LAW SCHOOL
NOTEBOOKS (1939-1942) OF
GEORGE MEANS HEINITSH, JR.*

Joel Fishman, Ph.D.**

In the mid-1980s, the Allegheny County Law Library received the Harvard Law School student notebooks of the deceased attorney George M. Heinitsh, Jr. from his daughter. I had never received a donation like this before and thought it might be worth keeping because of the Harvard connection and the total amount of books (27).

Recently, Karen Beck wrote “One Step at a Time: The Research Value of Law Student Notebooks.” 91 Law Libr. J. 29-138 (1999) which piqued my interest in Heinitsh’s volumes that have remained in the collection all these years. In this informative article, she discusses early legal education in the United States, the role of students’ notebooks as a source for legal education and information about the law at a certain time and provides a bibliography of 492 notebooks available in the major law school libraries. For the time period of the late 1930’s early 1940’s, only George Heinitsh’s books appear to cover this single period of three years. Also, it appears to be one of the larger collections of notebooks compared to the others listed. Thus, I felt that I had an interesting collection of law school notebooks that might help fill a void in the legal education of Harvard Law School!

The obituary notice provided in 129 no. 6 Pitts. L. J. 30 (June 1981) provides the following biographical information (except it lists his law school as Howard, not Harvard!). George M. Heinitsh, Jr. was a prominent specialist in taxation and corporate law in Pittsburgh, Pennsylvania. He was born on March 20, 1919 in Philadelphia and he died in Pittsburgh on April 24, 1981. His father was George Means Heinitsh and mother was Ethel Violet Sabin Heinitsh. He attended Peabody High School in Pittsburgh, received his B.A. degree (Phi Beta Kappa) from the University of Virginia, and his LL.B. from Harvard Law School in 1942.

He served a preceptorship under John T. Duff, Jr. and was admitted to the county and state bar on November 5, 1942. He was later admitted to the United States Tax Court (1942), United States Court of Appeals for the Third Circuit (1952), the United

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** Assistant Director for Lawyer Services, Duquesne University Center for Legal Information/Allegheny County Law Library, Pittsburgh, Pennsylvania.
States Supreme Court (1952), and the United States Court of Claims (1955).

During World War II, he was a lieutenant in the U.S. Navy Reserve. He joined the law firm of Buchanan, Ingersoll, Rosewald, Kyle and Buerger (currently Buchanan Ingersoll with headquarters still in Pittsburgh) and was a senior partner in the firm at his death. He was a member of the Board of Directors of O. Hommel Company of Carnegie, Oberg Manufacturing Co. of Freemont, and Senior Industries, Inc. of Pittsburgh.


George Heinitsh's law school notebooks consist of 27 bound volumes, 8 ½” x 11” notebooks with red covers along the spines. His name appears in the front of each volume with the “class of 1942.” The pages are numbered by stamp and regular lined paper. He provides the title of the course and wrote the full name or an abbreviation on the top and bottom of each book for identification purposes. Each course had its own notebook. Each notebook has handwritten notes along with handwritten or typed pages of cases briefs interfaced throughout. Heinitsh took excellent notes and his handwriting is fairly legible.

The following titles and page numbers are listed. I wish to thank David Warrington, Special Collections Library at the Harvard Law School, for his help in identifying the school faculty for each course during the time period. Since Heinitsh did not list his professor, Warrington provided professors for two divisions that might have been available at that time. Harvard students were divided into two divisions of approximately 250 students each.

ADMINISTRATION LAW (352 p.) Sept. 1941, Prof. Landis
AGENCY (362 p.) Jan. 1940, 1st div.: Prof. Hall; 2nd div.: Prof. Seavey
BUSINESS ASSOCIATIONS (276 p.) Sept. 1941, Prof. Dodd
BUSINESS ASSOCIATIONS II (330 p). Feb. 1941, Prof. Dodd
BUSINESS ASSOCIATIONS II (105 p.) April 1942, Prof. Baker
COMMERCIAL LAW (359 p.) Sept. 1940, Profs. Campbell and McCurdy
COMMERCIAL LAW II (359 p.) Jan. 1941, Profs. Campbell and McCurdy
CONTRACTS (362 p.) Sept. 1939, 1st Div.: Professor Fuller; 2nd Div. Professors Gardner and McCurdy
CORPORATION FINANCE (351p.) Sept. 1941, Prof. Dodd
CORPORATION FINANCE II (77 p.) April 1942, Prof. Dodd
EQUITY (363 p.) Sept. 1940, Profs. Chafee and Simpson
EQUITY II (252 p.) Feb. 1941, Profs. Chafee and Simpson
EVIDENCE AND TAXATION (357 p.) Sept. 1941, Evidence: Prof. Morgan; Taxation: Prof. Maguire
EVIDENCE AND TAXATION II (134 p.) April 1942 Evidence: Prof. Morgan; Taxation: Prof. Maguire
FEDERAL JURISDICTION (225 p.) Sept. 1941, Prof. Hart
JUDICIAL REMEDIES (358 p.) Sept. 1939, 1st div.: Prof. Morgan; 2nd div.: Profs. Scott and Simpson
JUDICIAL REMEDIES (160 p.) March 1940, 1st div.: Prof. Morgan; 2nd div.: Profs. Scott and Simpson
PROPERTY (357 p.) Sept. 1939, 1st div.: Prof. E. H. Warren; 2nd div.: Profs. Leach and Casner
PROPERTY (2) (337 p.) March 1940, 1st div.: Prof. E. H. Warren; 2nd div.: Profs. Leach and Casner
PROPERTY II (359 p.) Sept. 1940, Profs. Joseph Warren and Leach
PROPERTY II (2) (316 p.) March 1941, Profs. Joseph Warren and Leach
SALES (COMMERCIAL LAW) (136 p.) April 1941, Profs. Campbell and McCurdy
TAXATION (356 p.) Sept. 1941, Prof. Maguire
TORTS (361 p.) Sept. 1939, 1st div.: Profs. Thurston and Seavey; 2nd div.: Prof. Magruder
TRUSTS (361 p.) Sept. 1940, Prof. Scott
TRUSTS II (209 + 5 p.) Feb. 1941, Prof. Scott
JAMES HUGHES: KENTUCKY’S FIRST NOMINATIVE REPORTER*

Kurt X. Metzmeier**


The legal system of the new state of Kentucky was birthed in 1792 amidst a thicket of thorny disputes over confused land claims, fuzzy boundaries and unsettled law. Into this wilderness stepped James Hughes, who drafted laws to reform the muddled property laws inherited from Virginia and litigated the myriad land cases that clogged the new commonwealth’s courts. While waiting to have his many cases heard in the Kentucky Court of Appeals, he took detailed notes on the cases before him. To these accounts, he added notes for his own arguments and similar notes from his friend George Nicholas, and from these scraps of foolscap, Hughes fashioned the first case reporter for the state of Kentucky, HUGHES REPORTS. The work—not surprisingly—dealt entirely with land law. The finished octavo volume is beautiful; filled with detailed engravings by the artful silversmith who would later design the seal of the commonwealth of Kentucky. Alas, the splendid tome was a financial bust. Like many similar projects financed by subscription, it fell prey to the state’s volatile population; pledged buyers had either followed the expanding frontier or experienced a cruel change of fortunes. Nonetheless, it struck a path that would be followed by others.

The career of Kentucky’s first law reporter spanned the state’s transition from its early existence as a frontier territory of Virginia to that a thriving new commonwealth. Little is known of James Hughes’ early life, but his contemporaries report that he was born in England and immigrated to Kentucky in his youth.1 His date of birth in unknown, but at his death in 1818 he was counted among the generation of George Nicholas (1754-1799) and John Breckinridge (1760-1806).2 Referred to as a barrister by his con-

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** Associate Director, University of Louisville Louis D. Brandeis School of Law Library.
1 Communicated: Obituary Notice, KY. GAZETTE, Aug. 28, 1818.
2 Id.
temporaries, it is possible he that received his legal training in one of London’s Inns of Court.³

Hughes spent the large part of his productive life in Lexington. In 1788, he helped organize the Lexington Light Infantry and in 1789 Lieutenant Hughes was promoted to captain and given command.⁴ Although the unit was by mid-century mostly known for its smart uniforms and crisp parade drills (both of which soon wilted in the gunsmoke and gore of the Civil War), back in the 1780s the still potent threat of Shawnee raiders gave the Light Infantry a very real purpose. In 1793 Hughes was elected trustee of the city for the first time; he would be returned four more times and in 1795 served as chairman.⁵ He also represented Fayette County in the Kentucky House of Representatives from 1793 to 1797 and from 1801-1803.⁶

³ Id.
⁵ Ky. Gazette, Jan. 24, 1795; Ky. Gazette, Jan. 9, 1796.
Hughes was active in the city’s social and cultural affairs, supporting the building of a public library and encouraging the growth of educational institutions as the city grew from a frontier outpost into the Athens of the West. Politically, James Hughes embraced the democratic ideals of his friends Nicholas, Breckinridge and John Bradford, publisher of the Kentucky Gazette. Hughes, Breckinridge and Bradford joined with the brothers Robert and Thomas Todd to found the Democratic Society of Kentucky, which advocated the end of slavery, fought for free navigation of the Mississippi River, and supported the presidential campaign of Thomas Jefferson.

Despite his political and civic activities, it is as one of the state’s foremost lawyers and legal scholars that Hughes was best known to his contemporaries. He was one of the leading appellate lawyers of his day. In 1811 Hughes moved to Frankfort where he continued to apply his considerable forensic skills in the state capitol. He was an expert in the law of property and was especially adept at navigating the tangle of land titles that the Kentucky inherited from its time as territory of Virginia.

7 He was a supporter of Lexington’s first library, Ky. Gazette, Feb. 18, 1812, and a trustee of the Transylvania University, 2 Collins, History of Kentucky 511.

8 Samuel M. Wilson, The "Kentucky Gazette" and John Bradford, Its Founder ([Chicago: The Society, 1937].


The Old Dominion’s colonial and republican governors had dispensed willy-nilly land patents on the Kentucky frontier to veterans of the French and Indian and Revolutionary Wars. The patents did not convey land itself but only the right to enter, survey and record claims to land. If any of these steps were faulty, the title was not perfected. This, along with poor surveying and some chicanery by some land speculators, left the Kentucky territory’s land titles in a mess of overlapping claims. The resulting chaos filled the new state’s courts with lawsuits.\textsuperscript{11} As a legislator, Hughes was able to rewrite Kentucky’s land laws to alleviate some of the problems, but most of the damage had been done.\textsuperscript{12} He would spend many hours arguing the land claims of his clients before the Court of Appeals, Kentucky’s first court of last resort. He was not blind to the advantages his vast knowledge gave him in the “great game” of land speculation and soon acquired land holdings around the state.\textsuperscript{13}

Beloved and respected in his time, James Hughes would nonetheless be unknown in ours but for his single volume of law reports, which inaugurated case law reporting in the commonwealth of Kentucky. Covering the years 1785-1801, the reports recount judicial decisions of the numerous land cases that clogged Kentucky court dockets before and after statehood. In many of the cases Hughes was also engaged as an advocate; in others he made good use of the time that lawyers of his day spent lingering in courtroom listening to colleagues argue their cases while they waited for their own matters to come before the court.

In his preface, Hughes notes that the work “was undertaken by Thomas Todd and the author jointly,” and knowing the work was going to be expensive, the two men agreed to “join in the expense and risk” of the project, which was to be partially funded by subscription.\textsuperscript{14} A “different arrangement” was later made and,

\begin{itemize}
  \item \textsuperscript{12} \textit{Communicated: Obituary Notice}, Ky. Gazette, Aug. 28, 1818.
  \item \textsuperscript{13} A survey of Willard Rose Jillson’s \textit{Old Kentucky Entries and Deeds} (see supra) and \textit{The Kentucky Land Grants; A Systematic Index to All of the Land Grants Recorded in the State Land Office at Frankfort, Kentucky, 1782-1924} (Baltimore: Genealogical Pub. Co., 1971) finds Hughes name widely represented.
  \item \textsuperscript{14} Preface, James Hughes, \textit{A Report Of The Causes Determined By The Late Supreme Court For The District Of Kentucky, And By The Court Of Appeals, In Which The Titles To Land Were In Dispute} [1785-1801] (Lexington: Printed by John Bradford, 1803).
\end{itemize}
with Todd’s assent, Hughes published the work at his own risk.\textsuperscript{15} As Todd and Hughes appear to have remained friends, it is possible that Todd’s elevation in 1801 to the Court of Appeals caused him to withdraw. Todd was later named chief justice of that court in 1806 and in 1807 was appointed by President Thomas Jefferson to the United States Supreme Court.\textsuperscript{16} Or perhaps Todd was a shrewder investor; in the introduction to his law reports, Martin D. Hardin says Hughes lost money on the book, something that discouraged the publication of law reports for nearly a decade.\textsuperscript{17}

The volume by Hughes was 236 pages, exclusive of front matter, and contained 41 plats masterfully engraved by Lexington silversmith and engraver David Humphreys.\textsuperscript{18} In 1792, Humphreys had been paid twelve pounds sterling by the state legislature to create a state seal with the vague instruction that it show “two friends embracing, with the name of the state over their heads and around about the following motto: United we stand, divided we fall.”\textsuperscript{19} His version depicted two men in formal dress; only

\textit{Plat Engraved by David Humphreys}

\begin{flushright}
\textsuperscript{15} \textit{Id.} \\
\textsuperscript{16} Woodford L. Gardner, Jr. \textit{Kentucky Justices on the U. S. Supreme Court}, REG. OF THE KY. HIST. SOC’Y 70 (1972): 121-142. \\
\textsuperscript{17} Preface, Martin D. Hardin. Reports of Cases Argued and Adjudged in the Court of Appeals of Kentucky from Spring Term 1805 to Spring Term 1808 Inclusive (Frankfort [Ky.]: Printed by Johnston and Pleasants for the author, 1810). \\
\textsuperscript{18} CHARLES RICHARD STAPLES, \textit{The History of Pioneer Lexington (Kentucky)} 1779-1806 (Lexington, Ky: Transylvania Press, 1939) 63. \\
\textsuperscript{19} “An Act to Provide a Seal for this Commonwealth,” 1792 KY. ACTS. Ch. 37 (Dec. 20, 1792).
later did one of the men take on the frontier garb and coonskin cap now found on the state seal and flag.20 Today, Humphries silver work is as highly regarded as his engraving.21

The reports were printed by Hughes’ close friend, John Bradford. Bradford was the pioneer printer of the state. Anticipating that the new state would need a state printer, the intrepid entrepreneur had bought a press in Pittsburgh and carried it by raft down the Ohio and overland from Maysville to Lexington over the buffalo trace that would later become the Maysville Turnpike.22 Bradford thus received the contract to print the acts and journals of the new state legislature when it began work in 1792, published the leading newspaper, the KENTUCKY GAZETTE, as well many early law books, including the first collection of statutes.23

Few will see the elegance of the original work, which counts as among the rarest of law books. Most libraries carrying KENTUCKY REPORTS have the 1869 “century edition” by Cincinnati publisher Robert Clarke & Company. Hughes’ work, numbered as 1 Ky., was re-set by Clarke in a more uniform typeface and the plats re-engraved to fit a smaller, but more standard, 22 x 14 cm page size (compared with the 20 x 25 cm original). The reconfiguration

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dramatically changed the pagination and the Clarke volume ballooned to 458 pages.\textsuperscript{24}

Hughes’ first volume of cases would be his last. No doubt he decided that the practice of law, land speculation--even a game of vingt-et-un with his friend Henry Clay--was a better gamble than law publishing.\textsuperscript{25} After a successful career, Hughes died in 1818 and was mourned by his contemporaries.\textsuperscript{26} But he will be forever remembered for the beautiful, squarish volume that started case law reporting in Kentucky, HUGHES REPORTS.

\begin{footnotesize}
\begin{enumerate}
\item Decisions of the Court of Appeals of the State of Kentucky. Cincinnati: Robert Clarke & Co., 1869.
\item Vingt-et-un was an early version of the card game we today call blackjack. Henry Clay was a notoriously proficient card player, so this would be a risky venture. See \textsc{Steven Lubet, Lawyers’ Poker: 52 Lessons that Lawyers Can Learn from Card Players} (New York: Oxford University Press, 2006) 213-15.
\item The Lexington bar passed a resolution in tribute to Hughes’ memory that resolved that the legal community would “for one month wear black crepe on the left arm.” \textit{The Late Mr.Hughes}, Ky. Gazette, Aug. 28, 1818.
\end{enumerate}
\end{footnotesize}
An Early Pennsylvania Legal Periodical

Journal of Law, 1830-31*

Joel Fishman, PhD.**

There has been much written on the history of legal periodicals, especially academic law reviews, but the early history of legal periodicals in the United States has only received cursorily review in two older articles.¹ Frederick Hicks lists forty-eight periodicals published in antebellum America, of which twelve were published in Pennsylvania, four before 1831, including no. 1 (American Law Journal, 1808-12), no. 6 (Journal of Jurisprudence, 1821), no. 11 (United States Law and Legal Intelligence, 1829-31) and no. 14 (Journal of Law, 1830-31).² This article will review this last periodical as an ongoing project to appraise Pennsylvania legal periodicals.³

In 1830-31, the Journal of Law was published in Philadelphia. It was a sixteen page publication, octavo in size, and published bi-weekly on the first and third Wednesdays of each month from July 7, 1830 to June 24, 1831. The lofty purpose of the journal was to “afford to our readers instruction without tediousness and amusement without frivolity.”⁴ In its opening article, the editor further stated:

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¹ This article was originally published in the Summer/Fall 2005 issue of LH&RB.

² Assistant Director for Lawyer Services, Duquesne University Center for Legal Information/Allegheny County Law Library, Pittsburgh, Pennsylvania.

¹ American Law Periodicals, 2 ALB. L. J. 446-52 (1870); Marion Brainerd, Historical Sketch of American Legal Periodicals, 14 L. LIBR. J. 64-69 (1921). Albany does not mention the Journal at all; Brainerd just provides its name and that it was published semi-monthly (p.68).

² Frederick C. Hicks, Materials and Methods of Legal Research 204-05 (3d ed. 1942).


⁴ 1 J. OF LAW 2 (1830).
The Journal of Law addressing itself to the People of the United States, will be principally devoted to the exposition, popular language, of the philosophy, history, and actual state of law and government in different countries—of our own constitutions—of our own constitutions, state and national—laws, civil and criminal—judicial systems and modes of procedure—together with particular essays on those branches of the law, a knowledge of which may be most practically useful to men engaged in active pursuits: as for instance, the law of corporations, patents, insurance, bills of exchange, and commercial and other contracts, in all their varieties, real estate, with the modes of conveying it, insolvency, wills, descents, intestacy, &c. &c. &c.  

In addition, it was expected to add "[r]eports of interesting decided cases, biographies of eminent lawyers and others, medical jurisprudence, sketches of the legal, literary, and benevolent institutions of various countries, anecdotes, and the various topics of general literature will be considered within the scope of this Journal."  

To further this aim there was an appeal to lawyers in other states to participate in the journal with a "suitable remuneration for their labours."  At the end of each issue was a list of agents from all of the states who were resellers of the Journal.  

The Journal, printed in sixteen pages each issue, contained 384 pages in total with a two unnumbered pages with a double-columned index. The general organization of each issue was to present at least one lead article on a legal topic that may have from one to six parts to it spread over succeeding issues. These articles are of a general nature, not Pennsylvania specific, with citations to case law from both federal and state courts depending on the topic surveyed. This was followed by shorter articles of a page or two, anecdotes on judges and lawyers chiefly from the Anglo-American world in a paragraph or two.  

There was no listing of who the owner or contributors to the articles. In a little known biographical sketch written by S. L. Ashhurst on William Morris Meredith, one of the leaders of the mid-nineteenth century Philadelphia bar, Ashhurst relates that unnamed contributors included Meredith, James C. Biddle, George M. Wharton, Judge Hopkinson, William T. Dwight, James

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5 Id.  
6 Id.  
7 Id.
S. Smith, John M. Scott and Joseph R. Ingersoll. Meredith wrote the first article which was an introduction to the periodical and an article on “Dies Juridici” giving a supposed verbatim account of a day’s proceedings in a court. No other person was specifically listed for writing a particular article. Of the other people mentioned, Joseph Hopkinson was the district court judge for the Eastern District of Pennsylvania and Joseph R. Ingersoll was another leader of the Philadelphia bar at this time.

The major articles with their total number of pages included “Insurance Law” (41p.), “Patents” (12p.), “Independence of the Judiciary” (31p.), “Principal and Agent” (29p.), “Usury” (29p.), “Insurance Law” (41p.), “Naturalization Laws” (9p.), “Imprisonment for Debt” (15p.), and “Maritime Law” (27p.). Although it is not possible to comment upon all of the articles, it is interesting to note that the independence of the judiciary article is based on a complete view of all states constitutions and provisions, the author stating his desire for a independent judiciary:

Judges must not be made the subjects of dependence upon any quarter, – they should be place above the stormy wave of popular commotion, or the blighting atmosphere of executive or legislative patronage. Where this is done, we may look for the learned and the upright to administer the law in

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8 Richard L. Ashhurst, William Morris Meredith, REPORT OF THE SEVENTH ANNUAL MEETING OF THE PENNSYLVANIA BAR ASSOCIATION HELD AT BEDFORD SPRINGS, PA JUNE 25, 26, AND 27, 1901 270 (1902); James T. Mitchell called him from 1853 to 1873 the “un-disputed head of the bar not only in Philadelphia, but of the State,” James T. Mitchell, Historical Address, THE LAW ASSOCIATION OF PHILADELPHIA 55 (1902). For Ingersoll, see Id. 53-54. Mitchell was Chief Justice of the Pennsylvania Supreme Court at time of his address in 1902.

9 Id.


12 Patents for Useful Inventions, Id. 36-41, 53-58 (1830).

13 Independence of the Judiciary, Id. 104-08, 113-19, 137-41, 152-57, 167-72.

14 Principal and Agent, Id. 129-36, 145-51, 161-67, 177-83.

15 Usury Laws, Id. 49-53, 65-72, 81-88, 97-104 (1830).

16 Naturalization Laws, Id. 75-80, 108-110.


the true spirit of their station; where it is not done, the bar and the public will too often be compelled to use very different epithets when describing the character of the tribunals.\textsuperscript{19}

The “Naturalization Laws” drew a letter from a reader pointing out that the act of 1828 had been omitted from the article and a correction was made as to the effects of this act upon naturalization laws.\textsuperscript{20} The author of “Imprisonment for Debt” was against imprisonment for debt unless it was for fraud:

We consider this subject much in the same light at that of capital punishment; deeming it unjust, because inexpedient: as useless in practice as it is unsound in theory. Useless, because the ready discharge of the debtor under the insolvent laws, as we hinted above, takes away all the benefit, if any is supposed to be contained in the imprisonment of a defendant’s body. In this it universally results, how much to the good of the creditor and of society we shall see. This subject, however, from its importance, may well demand a separate examination.\textsuperscript{21}

These articles totaled more than half of the volume, being published in parts published in two to six issues. These articles are learned articles, generally containing references to cases and treatises either within the article or in footnotes.\textsuperscript{22} Among the citations include treatises like \textit{Kent’s Commentaries} (p.161, 203), Story’s edition of \textit{Abbott’s Merchant Ships and Seamen} (p.194, 199, 213), \textit{Phillips on Insurance} (p.309). and Stephen Du Ponceau’s translation of Cornelius van Bynkershoek’s \textit{A Treatise of the Law of War} (p.371).\textsuperscript{23} Court cases derive from various federal and state courts including citations to Bushrod Washington’s \textit{Circuit Court Reports}, Richard Peters’ \textit{Circuit Court Reports}, Mason’s \textit{Reports}, Cowen’s \textit{Reports} and Johns’ \textit{Reports} for New York, Dallas, Yeates, Binney, Rawle, and Sergeant & Rawle for Pennsyl-

\textsuperscript{19} \textit{Independence of the Judiciary}, Id. 170.

\textsuperscript{20} \textit{Naturalization Laws}, Id. 108-10.

\textsuperscript{21} \textit{Imprisonment for Debt}, Id. 271.

\textsuperscript{22} Although the titles of treatises and court reports cited in the articles may have been owned by the individual contributors, the Law Library Company, created in 1802, served as the bar’s library down to today (currently known as Jenkins Law Library). For its early history, see Mitchell’s address, \textit{supra} note 8.

\textsuperscript{23} Du Ponceau’s translation appeared in both book form and in 3 no. 2 \textit{AM. L. J. AND MISCELLANY REPORTORY} (1810).
vania, and *Pickering's Reports* and *Massachusetts Reports* for Massachusetts. Given that there legal literature at the time was limited in this type of format, the scholarly articles are an important contribution to legal literature and the general knowledge acquired by practicing members of the bench and bar.

As a Pennsylvania publication, there are several articles dealing with Pennsylvania law. Some of the longer acts cited above were more general in nature and possessed citations to Pennsylvania cases. Shorter articles appear on arbitration procedure based on the 1806 arbitration act, a reprinting of the religious laws from the Charter of Privileges of 1701, public education in Pennsylvania, An article on the Penitentiary System of Pennsylvania contains a letter from Roberts Vaux to the three original founders still living of the penitentiary system in Pennsylvania followed by Franklin Bache's letter on the success of the prison during its first year. The prison was successful in maintaining the health of the prisoners who are within solitary confinement but receiving food, exercise and other needs compared to the more stringent conditions that had taken place at the Walnut Street Prison. There is the report of an interview by one of the unidentified author of an interview that he had with Bushrod Washington, Associate Justice of the United Supreme Court, just six days before his death. There were only a couple of Pennsylvania court cases reported, *Corporation v. Wallace* of the Pennsylvania Supreme Court, *Worral v. Harper*, and *Farmers' and Mechanics' Bank v. Browne* of the District Court of Philadelphia.

There is one substantial book review on Ashmead's *Philadelphia Reports*, covering the period of 1814-31 for Philadelphia

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24 *Arbitrations and Arbitrators*, Id. 22-27.
26 *Education*, Id. 216-21.
28 *Judge Washington*, Id. 88-91.
29 *The Corporation for the Relief of Poor Distressed Presbyterian Ministers v. Wallace*, 3 Rawle 109 (1831) reported in Id. 323-32, 343-48. The case is cited in 31 C.J.S. Estates §176 (1996); “The right of contribution exists in favor of a part owner of land subject to ground rent, when he is compelled to pay the whole of the rent.”
30 *Worral v. Harper*, 1 J. OF LAW 333-35. The case deals with bail and is only reported in this periodical according to VALE PENNSYLVANIA DIGEST.
31 *Id.* 282-83. The case was decided February 24, 1831 and was published in the issue 18 for March 23, 1831. This case is not even listed in VALE PENNSYLVANIA DIGEST.
32 [Book Review], Id. 348-51. (Reviewing JOHN W. ASHMEAD, *REPORTS OF CASES ADJUDGED IN THE COURTS OF COMMON PLEAS,"*
County court reports, including the Common Pleas, District Court cases. After Addison’s Reports (1800), this is the second set of county reports published in Pennsylvania. In the review the authors presented a description of the Philadelphia court system and a commentary upon the judges, most notably Edward King—“eminent judge” and called the “father of equity” in Pennsylvania—“his judicial career thus far is remarkable for the vivacity and soundness of his decisions, and his readiness and energy in the despatch of business, is admitted on all hands, and if there were any doubted, this volume would furnish conclusive testimony.”

The review concludes with “Mr. Ashmead appears to have performed his task with accuracy and general care. It is to be regretted, however, that he has omitted the dates of the several decisions reported; time being often in reporting, as well as in equity, of the essence of the proceeding.”

The periodical also announced new books to be published: Thomas S. Smith and Francis J. Troubat, Digested Index to the Reported Decisions of the several Supreme Judicial Courts in the United States, $5 in sheep, volume 5 covering cases from 27 volumes of state court reports, which the editors, stated “That after a careful examination of this work, we cordially recommend it to the patronage of the public, as a highly useful compilation.” They also publicized the publication of John Reed’s Pennsylvania Blackstone, 2 vols., at $4 per volume, and Kent’s Commentaries, vol. 4.

Shorter articles also appeared on poisoning in medical jurisprudence, administration of criminal justice, discussion on Quarter Sessions, Oyer and Terminer, and Orphans’ Court Off the First Judicial District of Pennsylvania: With Notes and References. Volume 1 (1831)).

Reed was president judge of the court of common pleas of the Ninth Judicial District in Pennsylvania. This work had three volumes and served as a major contribution to how Blackstone’s Commentaries were affected by the Pennsylvania laws, similar to Tucker’s commentaries upon Blackstone’s Commentaries for Virginia. However, more commentary has been given to Hugh Henry Brackenridge’s short commentaries in his Law Miscellanies (1814) for which he has received the designation of being Pennsylvania’s Blackstone; but I believe Reed should probably have this designation based on the length of treatise. An article on Reed’s volumes is needed.

Medical Jurisprudence, Id. 60-62.

Administration of Criminal Justice, Id. 266-68.
mandamus decided by Judge Brackenridge of Florida, a letter from Edmund Burke to French Laurence of Feb. 15, 1797, reprinted Matthew Hale’s resolutions upon ascending to the bench as Chief Baron in 1660, duties of jurors, and duties of attorneys. One anecdote dealt with dumb day at Westminster and another paragraph was on tar and feathering during the time of Richard I. There were at least two English court cases reprinted in whole or part.

The journal attempted to provide lighthearted articles by providing anecdotes from both English judges, e.g., as Lord Thurlow, Lord Holt, Lord Ashburton, and Lord Mansfield, and American judges such as Richard Peters, Hugh Henry Brackenridge, Jasper Yeates and Judge Chase.

In conclusion, the Journal of Law served as an important source of information for the practicing bench and bar of Philadelphia and other locations. With less than five other legal periodicals available to the profession throughout the country, the authors and editors of this journal tried to provide an informative periodical that contained significant analysis of major legal topics and shorter articles and commentary. It is unknown why the periodical failed; probably those attorneys involved in the project became too busy to keep it going; or, there was not enough of a subscription base to keep it financially secure. Regardless of the reasons, the short-lived periodical served as a useful contribution to legal literature in the antebellum period.

40 Mandamus, Id. 313-18.
41 Burke’s Opinion of English Courts of Justice, Id. 205-6.
42 A Good Judge, Id. 21-22.
43 Duties of Jurors, Id. 73-75.
44 The Good Advocate, Id. 58-60.
45 The Bench and the Bar, Id. 41-44.
46 Tarring and Feathering, Id. 286.
47 King v. Turner in the Vice-Chancellor’s court, Id. 319, Everett v. Williams in Chancery Court, Id. 361-2; a third case was part of Lord Mansfield’s decision in Rex v. Wilkes, Id. 376-78.
48 Lord Thurlow, Id. 92-93.
49 Lord Chief Justice Holt, Id. 269.
50 Lord Ashburton, Id. 143.
51 Anecdotes on Lord Mansfield, Id. 380-82.
52 Judge Peters, Id. 286.
53 Judge Brackenridge, Id. 92.
54 Justice Yeates, Id. 188.
55 Judge Chase, Id.
Editor's Note: The following review of the Journal of Law was originally published in the August 21, 1830 issue of Hazard's Register of Pennsylvania, vol. 6, no. 8:

Three numbers of a semi-monthly paper, called the Journal of Law, have been published in this city. The Journal proposes to expound in popular language, the philosophy, history, and actual condition of the law in this, the sister states, and in foreign countries; and to embrace in its range of subjects, biographical notices of eminent jurists; medical jurisprudence, some account of literary and benevolent men in different parts of the world, and various topics of general literature. Its design is comprehensive enough, and admits of sufficient diversity to enable the Editors to render it a highly useful and amusing publication. The success of the work must depend upon the amount of ability enlisted in its support, and the selection of suitable topics for discussion. We understand that it is the intention of the enterprising gentlemen at the head of the undertaking, to conduct it upon correspondent principles with the Journal of Health; that is, as is the object of this, is to make every man his own physician, The Journal of Law is intended to make every man his own lawyer. Though we doubt whether any such prodigies will be accomplished by these periodicals, yet as their design is to communicate, in familiar language, such kinds of information as has hitherto been accessible or intelligible only to the professed lawyer and physician, we hope they will receive encouragement. If nothing more be done, they will assist the public eye in discerning, with greater clearness, the depths of medical and legal science, and the public judgment, in duly appreciating the labours, privations, difficulties, dangers, and responsibilities incident to professional life.
SPECIAL COLLECTIONS CATALOGING

A BRIEF OVERVIEW OF DESCRIPTIVE CATALOGING OF RARE BOOKS (AND WHAT THE RULES MEAN FOR NON-CATALOGERS)*

Sarah Yates**

Catalogers are notoriously crazy about rules, especially rules we can refer to by acronyms. The two most important acronyms for a discussion of rare book cataloging are AACR (with or without a 2 at the end) and DCRB.

AACR(2), of course, stands for Anglo-American Cataloguing Rules (second edition). It is the basic set of descriptive cataloging rules, as opposed to subject cataloging or classification rules, that catalogers in most North American libraries follow.

DCRB stands for Descriptive Cataloging of Rare Books. This rule book is meant to supplement, not replace, AACR. The Library of Congress follows DCRB for its descriptive cataloging of books published before 1801; other libraries follow it to varying extents. Its use is not mandatory, so many rare books are cataloged according to “regular” cataloging rules.

The most noticeable difference between AACR cataloging and DCRB cataloging is that DCRB cataloging is, well … more descriptive. Here I use the word descriptive not just in contrast to subject cataloging and classification, although it is true that subject cataloging and classification tend to be less emphasized in rare book cataloging than in regular cataloging. The reason for this is fairly clear. Patrons of rare book collections are less likely to use subject as a primary means of access to the materials. And as for classification, many rare book collections are not classified at all. One of the great advantages of classification is that it facilitates browsing in the stacks, but users do not have this option with most rare collections anyway.

But what I really mean by descriptive is that rare book cataloging aims to describe the physical characteristics of the book in much greater detail than plain AACR cataloging. According to Deborah J. Leslie, Head of Cataloging at the Folger Shakespeare

* This article was originally published in the Fall 2004 issue of LH&RB.

** Cataloging Librarian, University of Minnesota Law Library.
Library and the instructor of the Rare Book Cataloging class I attended, “anything for which the physical properties [are] of interest (more than just identifying the manifestation) is game for DCRB cataloging.” In fact, for some users the physical properties are more important than a book’s content. (Watching my one-year-old son chew on his board books and shake the rattles that are sometimes attached to them makes me very proud to realize that he is already on the same intellectual level as some rare book scholars. Not that we should start allowing patrons to chew on or shake the rare books.)

There are four specific “areas” of description for which DCRB requires a higher level of detail than AACR. These are the Title and Statement of Responsibility Area; the Edition Area; the Publication, Etc. Area; and the Physical Description Area, which refers to the pagination, size, and format. Certain notes related to these areas are also mandatory; for example, if the imprint information is not transcribed from the title page, its source must be given in a note. However, other types of notes that one often thinks of as being part of rare book cataloging, such as signature statements, are optional.

With the exception of pagination and size/format, most of the information from these areas is transcribed from the title page when possible. And whereas AACR calls for certain omissions and abbreviations, DCRB requires that most of the text on the title page be transcribed as it appears, except that punctuation and capitalization – but not spelling – are normalized. DCRB does allow some information to be omitted, for example in the case of very lengthy subtitles or statements of responsibility, but with very few exceptions omissions must at least be marked with ellipses.

Compare the following DCRB publication statement with the publication statement for the same book as formulated according to AACR:

DCRB
London : Printed by Benj. Motte, for Charles Harper, at the Flower-de-luce over-against S. Dunstan’s Church, Fleet-street, and John Jones, at the Dolphin and Crown in St. Paul’s Church-yard, MDCXCVIII [1698]

AACR

So why is it worth the cataloger’s time to type so much extra information? For one thing, someone might have another book printed for Charles Harper or John Jones and want to know whether it is the same person. If Harper or Jones were the au-
thor, one would hope to find an authority record to serve this purpose. But authority records are only created for names that serve as searchable headings in the catalog. Printers’ and publishers’ names are not usually traced as headings and so are less likely to have authority records.

Another reason is that a high degree of fidelity to the title page has an importance in rare book cataloging that is less relevant when dealing with modern books. Books from the hand-press era are more likely to exist in varying issues and states, so a slight variation between two copies in the wording of the title page might be of distinct interest to a book’s potential users. In the case of such variations, it is helpful if the catalog record can indicate which issue or state a particular library owns.

When looking in the catalog, it is helpful to know whether a particular record was cataloged according to the more descriptive DCRB rules or not. This will tell the researcher, among other things, whether she can really trust that the description in the record accurately and completely reflects the title page. Fortunately, there is an easy way to tell whether a record is DCRB-compliant: look at the 040 field. (This does require looking at the full MARC record, which many non-catalogers may be loath to do; however, in most catalogs this requires just one extra mouse click.) If the 040 field contains the letters “dcrb” in subfield e, the record was cataloged according to DCRB rules.

Records cataloged according to DCRB rules contain a wealth of information not included in regular AACR cataloging. However, it is not my intent to disparage AACR cataloging. AACR contains widely recognized cataloging rules that are considered standard for materials in many formats, including early printed books. And in fact, since many libraries (my own included) still do not have any online records at all for parts of their rare book collections, any record at all is a step in the right direction.
In the previous article, I discussed the differences between the descriptive cataloging rules for rare books (DCRB) and the standard descriptive cataloging rules (AACR). DCRB is at the core of rare book cataloging. Beyond DCRB, there are certain rare book cataloging conventions that catalogers and their institutions may or may not choose to implement. One of the most potentially helpful – though time-consuming – of these conventions is the use of copy-specific notes, also called local notes.

Copy-specific notes record information that pertains only to a particular copy of a work. Types of information frequently included in copy-specific notes for rare books include the condition of the book, binding descriptions, and evidence of provenance. Such notes are particularly important in rare book cataloging because there is more variation among individual copies of rare books than among individual copies of modern books and because users care more about the differences that exist. Consider binding, for example. In the hand press era, there was no standard binding for a given edition, as there is with modern books, since binding styles were usually determined by individual booksellers and/or book buyers. Furthermore, the craftsmanship involved in early book bindings makes them more interesting to users.

DCRB provides for, but does not mandate, copy-specific notes. Rule 7C18 states:

Make notes on any special features or imperfections of the copy being described when they are considered important. Carefully distinguish such notes from other kinds of notes that record information valid for all copies of an edition. (For many older publications, however, it will not be readily ascertainable whether the characteristics of a single copy are in fact shared by other copies.)

* This article was originally published in the Spring 2005 issue of LH&RB.
** Cataloging Librarian, University of Minnesota Law Library.
Features that may be brought out here include rubrication, illumination and other hand coloring, manuscript additions, binding and binder, provenance (persons, institutions, bookplates), imperfections and anomalies, and copy number.

“When they are considered important” is a phrase catalogers immediately recognize as meaning that a “rule” is really optional; the decision to use a copy-specific note in any given circumstance is left to cataloger’s judgment or to institutional policy. This flexibility benefits catalogers and libraries. Individual catalogers can best judge the importance of a given feature of a book, since they are the ones examining the book. Likewise, individual libraries can best judge not only what features their patrons consider important, but also the most appropriate way to allocate limited cataloging time.

Problems can arise when the decision is left entirely to individual catalogers – that is, when libraries have no policy regarding the use of local notes. One obvious problem is that if a library has two or more rare book catalogers, one may spend inordinate amounts of time recording every detail of the binding, inscriptions, marginalia, etc., while another makes no notes at all. Consistency within the catalog is important on a practical as well as a theoretical level. Consider the hypothetical case of a researcher finding the following notes in two separate records in the same library’s catalog:

A true narrative of the trial of Sir Henry Wyndham, for criminal conversation with Ernestina Louisa Erskine, wife of Captain Archibald Erskine – notes as cataloged by Thelma Thorough:

500 Signatures: A-S4 T2.
500 Publisher’s device on t.p.
500 Limp vellum binding, ties lacking. $5 AcU-L
500 Imperfect: lacks leaves C1 and C4; leaf H3 torn. $5 AcU-L
500 Ms. notes in margins. $5 AcU-L
500 Bookplate of Ulysses N. Witherspoon $5 AcU-L

The tryal of Hugh Jenkins for piracy, murther, villainous robberies and barbarities, &c., committed by him, near the coast of the East-Indies and several other places on the seas – notes as cataloged by Quentin Quick:

500 Signatures: a2 A-R4 S2.
500 Head- and tail-pieces; initials.

The researcher would naturally assume – more so than if none of the records in the catalog had copy-specific notes – that
The tryal of Hugh Jenkins a) has unremarkable binding, b) has no imperfections or manuscript additions, and c) has unknown provenance. She would never guess that the difference in the number and types of notes simply reflected which cataloger created each record. If our hypothetical researcher were particularly interested in bookplates, for example, she would not bother to look at The tryal of Hugh Jenkins, although it might have an extraordinary bookplate of a well-known contemporary lawyer that Quentin ignored as a matter of routine.

It may not even be a matter of some catalogers making lots of notes and others making very few. Two or more catalogers may each make approximately the same number of local notes but differ on which types they consider important. Even in a library where only one cataloger handles the rare books, having a policy on local notes is a good idea. Such policies can ensure consistency over time. They can also make the cataloging process easier than if the cataloger has to make a judgment call as to whether to include each possible note for every book.

My library does not yet have a written policy on local notes (though it is on our to-do list), and I will admit that I make lots of provenance notes and few binding notes. Why? Well, I could claim that provenance is of more interest to my library’s users, but really it is largely because I find leather distasteful and don’t like to examine bindings to determine what species of animal they were made from. I mention this to illustrate how, in the absence of institutional guidelines, catalogers can make decisions based on completely unexpected factors. Of course, policies don’t eliminate the need for cataloger’s judgment. A guideline such as “Make a note for remarkable bindings” still requires the cataloger to distinguish between the remarkable and the ordinary, but at least it would lead to greater consistency than the unstated, personal guideline, “Make a note about bindings that don’t gross you out.”

Aside from outlining what situations warrant copy-specific notes, a library’s policy needs to address the MARC coding of such notes. As DCRB rule 7C18 mentions, copy-specific notes must be distinguished from notes that pertain to all copies. There are at least three ways to do this with MARC coding: a 590 Local Note field in the bib record, a 500 General Note field in the bib record with the library’s code in subfield $5 (as shown in the examples above), or a note in the holdings record (field tags may vary by system). Above all, a library must consider its system requirements; a field or subfield that cannot be accepted, read, or displayed by the system is clearly not a viable choice.

Assuming system requirements are met, each of the options has advantages and disadvantages. The advantage to the 500 or 590 field is that, since it is in the bib record, patrons will see it more easily. The main disadvantage to local notes in the bib record arises when libraries import records from the utilities. If the
cataloger neglects to delete another library’s local notes, patrons who see those notes will naturally assume they apply to the local copy – unless they are formulated so clearly as to remove all doubt, e.g., “Library of Congress’s copy lacks t.p.” In a worst-case scenario, a record could be found in the local catalog with such a generic 590 note, e.g. “Library’s copy signed by the author,” that even staff wouldn’t know for sure whose copy it applied to. In a properly coded local 500 note, the library’s code would be in the subfield $5, which would at least tell staff what library the note applied to. However, the subfield $5 usually does not display in the OPAC, so this would not help patrons seeing the note.

Notes in the holdings record are much less susceptible to inadvertent importation by or from other libraries. And if a library records local notes exclusively in the holdings record, any such notes found in the bib record can be deleted automatically. A possible disadvantage to having notes in the holdings record is that they are usually not searchable by patrons or even staff. In fact, users may not even see them if they do not opt to look at the holdings. However, this is not always a disadvantage. If a library does not want certain local notes seen by the public, a suppressed field in the holdings record is usually the best place for such notes.

Why would a library bother to make copy-specific notes but then suppress them from public view? Perhaps there is information that is considered likely to make an item a target for theft, such as the signature of a famous author. Although it might be tempting to refrain from making notes in such situations, the information is likely to be useful to staff, who can view suppressed notes. Also, there is a potential security reason for making local notes about valuable books: in the event that an item is stolen and later recovered, any copy-specific notes in the record may help establish ownership of the recovered item.

To return to the issue of searchability, another decision to be made is whether to add traceable local headings for copy-specific information. The subfield $5 can be applied to fields other than the 500 note field; for example, it can be used in 655 fields to trace genre headings such as Autographs (Provenance) or Clasps (Binding), or in 700 fields to trace the names of previous owners.

The Association of College and Research Libraries has established and collected headings for 655 fields in rare book and special collections cataloging in several thesauri, including two that are particularly useful for copy-specific information: Binding Terms and Provenance Evidence. 655 fields with terms from these thesauri are coded with the second indicator 7 (Source specified in subfield $2); subfield $2 is coded rbbin for terms from Binding Terms and rbprov for terms from Provenance Evidence. For example:
Genre terms in 655 fields use a controlled vocabulary thanks to the thesauri. Personal and corporate names in 700 and 710 fields, on the other hand, are much more difficult to control. Since inscriptions, bookplates, etc., often contain no more than a name, it is often impossible to establish with certainty that the name represents the same person or body as a heading in the authority file – if indeed there is an established heading at all. The difficulty of authority control is one reason some libraries may choose not to trace name headings related to provenance or to do so only in a limited number of situations, such as in the case of major donors.

Libraries that do choose to trace such names face yet another decision: whether to include a relator term or code. Relator terms are words or phrases that describe the relationship of a person or body to the work, such as compiler and editor. They fell out of wide use when the Library of Congress stopped using them in standard cataloging. However, LC and many other libraries still use both general and copy-specific relator terms in rare book cataloging. Copy-specific relator terms are usually related to provenance and include former owner and donor. Alternatively, libraries may choose to use relator codes, such as fmo for “former owner” or dnr for “donor”. Relator terms are entered in subfield $e; relator codes are entered in subfield $4. For example:

700 1# Osgood, DeWitt Satterfield. $e former owner. $5 AcU-L
or
700 1# Osgood, DeWitt Satterfield. $4 fmo. $5 AcU-L

Of course, the argument against the necessity of relator terms in standard cataloging, namely that the relationship of the person or body to the book should be obvious from the description and/or notes in the AACR2 record, can also be made against their use in rare book cataloging. However, they do make the functions immediately obvious to patrons who might otherwise have to read many lengthy descriptive and note fields to determine what a given person or body had to do with the book.

The use of copy-specific notes is an issue that deserves careful consideration by libraries with substantial rare books and special collections. While the easiest way to deal with the wide variety of options available would be to make a blanket policy against using copy-specific notes under any circumstances, the potential advantages of such notes makes them worth the trouble of adding at least some of the time. And the various degrees to which local notes may be used, as well the variety of methods
available for adding such notes, makes the formulation of a policy on the matter worthwhile for any library that does a significant amount of rare book cataloging.
For the past several months, most of my rare book cataloging has been devoted to a collection of pre-Soviet Russian law books. Most of the materials in this collection are from the nineteenth and early twentieth centuries, so they are not old enough to catalog according to the rare book cataloging rules. So rest assured—this is not another column about DCRB rules!

Nor is it a description of our pre-Soviet Russian collection. Such a description would no doubt be interesting, but the fact is that I haven’t yet analyzed the collection in enough depth to be able to report on it. My approach to cataloging the collection so far has been to plow right in, taking a truck of books at a time and cataloging them in the order in which they were shelved (i.e., in no particular order).

Some day I plan to set aside the time to determine in detail what we have and how, when, and why we happened to acquire it. Another future research topic is the nature of other North American libraries’ collections in pre-Soviet Russian law. Searching in RLIN seems to indicate that few libraries have as extensive a collection as we do. But then, RLIN doesn’t reflect our holdings either, since they are mostly still uncataloged, or at least not yet online.¹

While I don’t yet have a lot of information about the collection as a whole, I have made some interesting discoveries about individual volumes that I have cataloged. I have noted these in local notes in the holdings records, but I fear very few people will ever see them. Local notes are searchable in our OPAC, but only with a search no patrons and few librarians are likely to try. And so I will share a couple of my favorite discoveries with the readers of LH&RB.

My personal favorite was an 1871 book on young offenders called Molodye prestupniki. On the inside front cover I discovered the bookplate of one Vladimir Dmitrievich Nabokov!

¹ If your library has an uncataloged (or cataloged but not online) collection of this nature, I would be very interested in hearing about it: yates006@umn.edu.
Surely this wasn’t the bookplate of the Vladimir Nabokov, I thought. And, in fact, it wasn’t. I looked up the authority record for the Nabokov and found that the Lolita author was Vladimir Vladimirovich, not Vladimir Dmitrievich. Oh well.

But wait! I have forgotten a lot from my Russian language classes, but I do remember how Russian names work: the “middle name” is a patronymic formed from the father’s first name. So if Nabokov was Vladimir Vladimirovich, then his father must have also been named Vladimir. A little additional searching showed that Nabokov’s father was named Vladimir Dmitrievich, and that he was prominent in law and politics and wrote about criminal law. It seems likely that the book actually belonged to him and not some other Vladimir Dmitrievich Nabokov.

I got a great thrill out of cataloging a book that Nabokov may have seen in his father’s office—or even touched! (Okay, I need to get out more.) I added the following note to the holdings record: “Provenance: Bookplate of Vladimir Dmitrievich Nabokov”—and I repressed the urge to end the note with an exclamation point.

While I consider the book owned by Nabokov’s father a highlight of the collection, some of the other volumes I discovered are arguably of greater general interest. For example, a few of the books I haphazardly chose to catalog had beautiful, elaborate bindings with the tsar’s coat of arms on the front.
I had never encountered such a binding before, so I turned to one of my favorite quick reference books, Carter's ABC for Book Collectors. Under the entry for royal bindings, I learned that just because a binding bears a royal coat of arms, this does not mean that the book was ever actually owned by royalty.

This news left me disappointed, until I cataloged an 1885 collection of criminal statutes called Свод законов уголовных. This book had the same black leather binding embossed with the tsar’s coat of arms that the others did. But it also had a stamp on the title page. The stamp was very plain, and it read: “Собственная его Величества библиотека в Зимнем дворце.” I dutifully transcribed the text of the stamp in a copy-specific note and almost left it at that. But the wording was a little different from that of most ordinary Russian library stamps, so I opened up the Russian-English dictionary and managed the following rough translation: “His Majesty’s own library at the Winter Palace”!

I later found one volume of a set of maritime law cases called Свод морских постановлений (this one nicely but plainly bound), with “Harvard Law Library 1887” stamped on the spine. A Harvard stamp is unremarkable, of course, especially given the large number of volumes in our pre-Soviet Russian collection that were previously owned by Harvard.

On the inside front cover was my own library’s bookplate, which partially obscured another bookplate. Fortunately our bookplate was only glued on at the top, so I was able to lift it to reveal the earlier one, which bore the royal coat of arms. Because
of the ornate script and odd placement of the letters within the words, the writing was difficult to decipher. I did figure it out eventually, and it, too, translates roughly as “His Majesty’s own library at the Winter Palace.” I am happy to report that our bookplate is no longer obscuring this much more interesting one.

I can’t help but wonder how all these books made their way to our library, particularly the ones from the Winter Palace. Obviously by way of Harvard in one case, but what about before that? When the Bolsheviks stormed the Winter Palace in 1917, the tsar’s law books probably weren’t their primary concern. But did any of the revolutionaries wander into the library and look around—maybe actually handle some of the books? Or were our books not even there any more at that point? At some point, someone must have packed up some books and shipped them overseas, but I don’t even know if this happened before or after the revolution.

I was able to learn a little about the book with the tsar’s bookplate. It was part of a 405-volume lot we purchased in 1944 (not from Harvard) for an average price of about $3.09 per volume. Many of the books that remain to be cataloged were probably part of the same lot, but I’m sure most of them belonged to neither the tsar nor the father of a famous writer. Still, I’m looking forward to making additional discoveries about this collection.
CATALOGING TRENDS AND ACRONYMS:
OF DCRM(B), RDA, AND FRBR*

Sarah Yates**

Readers of this column already know about Descriptive Cataloging of Rare Books (DCRB), the rules for cataloging rare books. And you also have at least a passing familiarity with the Anglo-American Cataloguing Rules, 2nd ed. (AACR2).

What you may not know is that both sets of rules will soon be outdated. DCRB and AACR2 are both being revised. Drafts of at least part of each are available online. The draft of part one of the new general cataloging rules are at http://www.collectionscanada.ca/jsc/rdadraftpt1.html, and the zeta draft of the new rare book cataloging rules are at http://www.folger.edu/bsc/dcrb/dcrmbzeta20060108cleancopy.pdf. The rare book rules are also available at http://www.rbms.nd.edu/, the Web site of the ALCTS Rare Books and Manuscripts Section, the organization responsible for the revision, but there is no direct URL to the draft.

If you look at these drafts, the first thing you may notice is that the rules are not just being revised; they are being renamed as well. AACR2 is becoming RDA, which stands for Resource Description and Access. The first draft of the revision was called, predictably enough, AACR3. When AACR3 was scrapped, the new name, RDA, was introduced. And a new name is certainly appropriate; while many of the actual rules are not changing much (at least in the draft of the part that is publicly available), the organizational changes alone make RDA more a rewriting than a revision.

The DCRB name change, like the revision itself, is a less drastic one: from Descriptive Cataloging of Rare Books (DCRB) to Descriptive Cataloging of Rare Materials (Books) (DCRM(B)). The name change is intended to accommodate standards for other formats that are also in process: DCRM(S) for rare serials and DCRM(M) for rare music.

Another similarity between RDA and DCRM(B) is their FRBRization. The principles of FRBR (commonly pronounced “ferber”) were laid out in a 1997 International Federation of Library Associations and Institutions (IFLA) report titled Functional Requirements for Bibliographic Records (hence the acronym). The full report is available at http://www.ifla.org/VII/s13/frbr/frbr.pdf; it is definitely worth looking at if you are a cataloger who will soon need to start incorporating FRBR principles into your everyday

* * This article was originally published in the Winter 2006 issue of LH&RB.
** Cataloging Librarian, University of Minnesota Law Library.
work, or if you sometimes fraternize with catalogers and want to know what the heck they are talking about.

One FRBR concept that will have special implications for rare book catalogers is the distinction between *works*, *expressions*, *manifestations*, and *items*. Of these four, the differences among various *manifestations* of an expression of a single work may indicate the greatest need for special cataloging standards for rare books. The IFLA report defines a manifestation as representing “all the physical objects that bear the same characteristics, in respect to both intellectual content and physical form” (p. 20). The document further explains that “changes that occur deliberately or even inadvertently in the production process that affect the copies result, strictly speaking, in a new *manifestation*. A *manifestation* resulting from such a change may be identified as a particular ‘state’ or ‘issue’ of the publication” (p. 22). The “strictly speaking” may let general catalogers off the hook when it comes to making distinctions in the catalog between certain different manifestations. However, this a hook that rare book catalogers have always been on and will remain on.

In fact, one of the factors necessitating a supplementary cataloging code for rare books in the first place was the inadequacy of AACR in distinguishing among different states and issues. And indeed there was no reason for AACR to provide for this level of detail for most general cataloging. For one thing, there is much greater uniformity among books published in the machine-press era. For another thing, even when slight differences do exist among mass-produced books, these differences are less likely to be of particular interest to patrons.

So while descriptive cataloging rules have always placed added emphasis on enabling users to distinguish among different manifestations, this goal is detailed much more explicitly in DCRM(B)—using FRBR terminology—than it was in DCRB. For example, a keyword search of the latest draft of DCRM(B) yields eighteen hits for the word *manifestation*; the same keyword search in DCRB on Catalogers’ Desktop yields zero hits. (Similarly, the December 2005 draft of part one of RDA contains twenty-four instances of the word, compared with five in the entire text of AACR2.)

Besides a new emphasis on FRBR concepts and terminology, how will DCRM(B) be different from DCRB? As someone who was not involved in the revision process, I hesitate to give anything that may sound like a definitive answer to this question. However, based on a more-than-cursory, yet less-than-thorough, glance at the zeta draft, I will share a couple of my general impressions.

First, DCRM(B) is much more explicit in its instructions. For example, rule 0F (Language and script of the description) in DCRB is one (short) page. In DCRM, it is three full pages and includes subrules 0F1 (Romanization), 0F2 (Letters, diacritics, and
symbols), 0F3 (Punctuation), and 0F4 (Spacing). None of these subrules exists in DCRB.

Second, DCRM(B) seems to be moving even further in the direction of faithfulness to the way information is presented in the book. To this end, certain optional provisions of DCRB, such as using Roman numerals to transcribe dates that appear in that form, are being made mandatory in DCRM(B). Rare book catalogers who already follow these optional provisions may notice little change in the way they catalog. (I was lucky enough to be trained in rare book cataloging by Deborah J. Leslie, chair of the RBMS Bibliographic Standards Committee; she tipped the class off as to which provisions would become mandatory so we would be prepared for DCRM(B).)

Aside from the actual changes in the rare book cataloging rules, perhaps the most interesting thing about them is that the revision is taking place at the same time as the revision of the general cataloging rules. This fact would not be remarkable in itself, were it not for DCRM(B)'s intended compatibility with AACR2 in matters where the rules do not differ for a specific rare-book reason. In fact, the fifth stated principle of DCRM(B) (zeta version) is: “Rules shall conform to the structure and language of the latest revision of AACR2 to the extent possible...”

This raises an obvious question: Will DCRM(B) need to be rewritten (again) in order to provide for compatibility with RDA?

It is probably too early to answer this question. RDA is essentially still in its first draft, if you don't count AACR3, to which it reportedly bears little resemblance. (The draft of AACR3 was not made public, so I cannot comment first-hand on its resemblance or lack of resemblance to RDA.) Therefore, it is difficult to predict how much the rules will differ from those in AACR2, much less how compatible they will be with DCRM(B).

Structurally, however, RDA is very different from AACR2—and therefore from DCRM(B). One thing that makes DCRB easy to learn for catalogers already familiar with AACR2 is that the organization is so similar. In both, the rules for description are organized by International Standard Bibliographic Description “areas,” and to the extent possible, corresponding rules have corresponding numbers. For example, the general rules on statements of responsibility relating to an edition are under 1.2C1-5 in AACR2 and 2C1-3 in DCRB. While DCRM(B) retains the same numbering system, RDA not only has a different system (all numbers, no letters), but it is no longer organized by “areas.” Will these organizational differences in themselves—assuming that the final versions of both documents resemble the current drafts—necessitate a rewriting of DCRM(B)?

And given that another revision in the near future is a real possibility, why did RBMS go ahead with the revision of DCRM(B) at a time when changes to AACR2 were imminent? The generally
cited reason is the length of time required for the revision of AACR2. Rare book catalogers, it was felt, simply could not wait for much-needed new and newly explicit instructions. And in fact, since RDA is not now expected until 2008, that would have been a long time indeed to wait—particularly if RBMS had decided to wait for the final version of RDA before even beginning its revision process. It is also possible that RBMS was anticipating much less drastic structural changes to AACR2 than now seem likely.

Of course, how all this will eventually affect the daily work of rare book catalogers is hard to guess. What does seem certain is that catalogers of all kinds are in for some interesting changes in the coming years.
VIDEO AND DVD CATALOGING ... FOR THE RARE BOOK CATALOGER?*

Sarah Yates**

Something about the title of “rare book cataloger” brings up visions of a silent librarian carefully paging through valuable old books, jotting down notes in pencil on paper. Okay, we all know that the information actually goes into a computer—just because the materials are old doesn’t mean the cataloging itself has to be stuck in the pre-Industrial Revolution era.

But videos and DVDs? Even an “old” video—even an old silent film—is modern by rare book standards. And they don’t even have pages to carefully thumb through.

I don’t know how many law libraries keep videos and DVDs—both called “videorecordings” in AACR lingo—in their rare collections. I do know that my library collects such materials in our archives. Since we don’t have a special “archives cataloger,” cataloging archival materials, including archival videorecordings, falls to the rare book cataloger. I suspect that this arrangement is not uncommon.

Archival videorecordings typically include locally produced videos and DVDs, often recordings of lectures by faculty or visiting scholars. These types of materials are actually rarer (that is, scarcer) than most “rare books.” I can look in RLG’s English Short Title Catalogue and find dozens of libraries that have the same edition of a Coke treatise that my library has. In contrast, no other library is going to have a copy of the DVD of Scott Turow speaking at my law school earlier this year.

This means that rare book catalogers dealing with archival videorecordings face the dual challenge of cataloging materials in a less familiar format and doing so from scratch, since there is no copy to be found in the utilities. Original cataloging is almost always more complicated than copy cataloging, but the real issue that sets videorecordings apart from books is, of course, the format.

The most important tool for cataloging videorecordings is one of the following: AACR, Chapter 7 (Motion Pictures and Videorecordings) or Archival Moving Image Materials: A Cataloging Manual (AMIM). The first step for a law library preparing to catalog videorecordings is to determine which set of rules to follow.

* * This article was originally published in the Spring 2006 issue of LH&RB.
** Cataloging Librarian, University of Minnesota Law Library.
Ease of use is an important consideration when deciding which cataloging standard to apply. AMIM is organized by “areas” similar to those in AACR, and the numbering systems of each are comparable. However, the organization of AMIM does not resemble that of AACR as closely as those of some other supplemental cataloging codes do, such as DCRB. Even if the correspondence were exact, the fact that the rules themselves are different make AMIM—or any set of rules that is different from what one is used to—more difficult to use. My library does not use AMIM because the size of our videorecording collection is too small to justify the added staff time that would be necessary to learn and use a new code.

The only ease-of-use consideration that might weigh in favor of AMIM—assuming a library with catalogers already familiar with AACR and relatively unfamiliar with AMIM—is the fact that the Library of Congress follows AMIM. Since the majority of law libraries’ rare or archival video collections will not have been cataloged by LC (or anyone else), this is not a question of the availability of LC records for copy cataloging. However, it may be a question of being able to find “sample” records for similar types of materials in the utilities, whether cataloged by LC or by another library that follows LC practice.

If the potential difficulties of learning a new standard is not considered a major obstacle—if a library’s collection of videorecordings is large and/or important enough to outweigh the inconvenience to the catalogers, for example—then the next question is: Which set of rules will best serve the needs of the users of the library or collection?

An important factor to consider is the stated purpose of each set of rules. AMIM was written expressly for archival visual materials, as defined in the introduction to the second edition of AMIM as “those materials intended to be kept so that they may be available for future generations, regardless of their age at the time of acquisition.” In contrast, the general introduction to AACR2 states: “These rules are designed for use in the construction of catalogues and other lists in general libraries of all sizes. They are not specifically intended for specialist and archival libraries.”

The introduction to AMIM explains that the “origin or provenance is a key element in any understanding of [archival materials’] significance.” This emphasis is the basis for three of the four major areas of difference between AMIM and AACR cataloging rules: “[F]ilmographic data for the original manifestation of the work is used as the basis for cataloging all subsequent manifestations of that work; multiple lines of physical description are used in one record to describe separate sets of elements for the same work or its manifestations; [and] rereleases and reissues are combined on the same bibliographic record with the original
manifestation of that work." (The fourth difference concerns the chief source of information.)

The language used in the AMIM introduction sounds very FRBResque (note the repeated use of the terms manifestation and work). Such language is also familiar to rare book catalogers, who are accustomed to making finer distinctions than "standard" catalogers when it comes to such matters. However, while rare book catalogers might be more inclined to create separate records for different manifestations of a work, AMIM calls for doing just the opposite.

The difference between AACR and AMIM treatments of different manifestations of a work is probably moot for the majority of the archival videorecordings collected by law libraries. A videocassette of a one-time lecture at one’s institution, for example, is not likely to exist in multiple versions—it may not even exist in multiple copies. The only situation in which this type of material is likely to raise questions about the manifestation versus the work is if a library is converting older formats to newer ones (videocassette to DVD for example) and retaining and cataloging both. In this case, AACR would call for separate records, whereas AMIM would call for two (or more) separate physical description fields on the same bibliographic record.

The remainder of this column will focus on AACR cataloging of videorecordings. I do not want to imply that AACR is the best choice for every law library. However, as someone who has never cataloged according to AMIM, I would not be qualified to comment on its use. I will not comment on every rule in AACR relating to videorecordings, but will instead highlight some of the areas where special characteristics of archival collections make a difference.

Rule 7.0B1, Chief Source of Information, is especially problematic for many locally produced videorecordings. This rule states that the title and statement of responsibility should be taken from the item itself, which is defined as the title frames, or from the container, if the container is an integral part of the piece.

Title frames could be any written credits on the piece, like the opening or ending credits of a movie. It does not include video footage of the dean of a law school saying, “We’re pleased to welcome our distinguished colleague, Professor Achim Hackenthal, who will now present a lecture entitled The Introduction of Emetics in Securing Evidence in Criminal Proceedings.”

A container that is integral to the piece is not what most people would think of as a container; it is what most people would think of as the physical item. A videocassette itself is an integral container; a box that stores a videocassette is a nonintegral container. So if you have a DVD on which someone has written “Hackenthal – lecture 1/3/06” with a Sharpie, this would be the
title proper (assuming there are no onscreen credits), no matter how complete the title on the DVD box or in the spoken introduction. Of course you can—and in this case definitely should—include the fuller title as an alternate title.

If there is nothing written on the integral container, nor any onscreen credits, there may be nothing to stop you from taking out your own Sharpie and writing whatever title you think appropriate! But if you have qualms about doing so, you still can (in fact, are still required to) record a title proper. If there is no information on the chief source, the title may come from accompanying textual material, a nonintegral container, or “other sources.” If you take the title from anywhere other than the chief source, you must indicate in a note where it came from, e.g., “Title from spoken introduction.” If you have to make up a title, then you put it in brackets, e.g., “[Lecture on the use of emetics for gathering criminal evidence].”

Personal and corporate names in the catalog record can cause additional confusion. If your video consists primarily of one speaker giving a lecture, you will want an entry under that person’s name. In fact, you will probably want to make this the main entry. General practice among audiovisual catalogers is to use a title main entry for all videorecordings, but this is based on the premise that (commercial) videos are the product of so many people’s intellectual work that no one person is primarily responsible. However, a locally produced DVD of a lecture is almost always the primary work of one person—there is no producer or director, for example, and the “performer” is also the writer.

For a recording of a local event, you will probably want a traceable entry for your institution. You may also want to trace the names of people associated with your institution, even if their role in the creation or production of the item is too minor to qualify for an entry under a strict reading of AACR. For example, you might want to make an added entry for your dean if she introduced the speaker, even though authors of introductions are not usually traced in AACR cataloging. I have a colleague who, when cataloging the DVD of a musical written and performed by law students at her university, traced the name of every performer and every person credited in any way.

Just remember that, according to AACR, every personal or corporate name entry must be “justified.” If the reason for the entry is not obvious from the descriptive fields such as the title and statement of responsibility or the publication information (if your video is actually published; if it is produced for your institution alone and not for wider distribution, it should be considered unpublished and would get only a date in the 260 Publication, Distribution, etc. field), then you must make a note, e.g., “Speaker introduced by Law School Dean Agnes Chalmers.”
Classification is a question beyond the scope of AACR, but still an important consideration. This mostly depends on local practice. If the videos are going into your general archives, and your archives are not classed or use a local classification scheme, then you will probably want to follow the same practice for your videos and DVDs.

If your archives are classed according to a standard scheme, then you have a few options. One would be to classify by subject and let them scatter. Another would be to define a collection or location such as VIDEOS and class within that.

Yet another option would be to make up one or more “series” and class all the videorecording in a series together. This is what my library has done; for example, we class all our Law Library Distinguished Lectures in KF209 .L37x, followed by a year and a sequential number. If you follow this approach, you should consider adding a series statement to the bibliographic record as well; unless a series statement actually appears on the items, the series would be traced in an 830 field rather than a 440.

In general, keep in mind that you will probably be the only institution ever to own, much less catalog, many of these videorecordings. On the one hand, this means that you can largely do what you want when you catalog them. Not only will no one else know if you have made a “mistake,” but you don’t have the responsibility of contributing a record to the utilities that would be useful for other libraries. In other words, if it doesn’t strictly follow cataloging standards, so what? No other library will have to “fix” your record, since no one else is going to have any use for the record anyway.

On the other hand, this also means that you have an extra responsibility to be accurate in whatever level of access you provide, since your catalog is the only place anyone will be able to find the item. This responsibility may encourage you to provide enhanced levels of access, as in the examples of extra name tracings. But even if you have a large collection to catalog all at once and opt for less-than-full level cataloging just so that everything gets done, it is still important to be accurate.

For additional information on cataloging DVDs and video in general, see the Online Audiovisual Catalogers (OLAC) website: http://www.olacinc.org/.
SOME SPECIAL CONSIDERATIONS FOR SPECIAL COLLECTIONS CATALOGING

Sarah Yates

Have you heard the famous cataloging joke?

Q: How many catalogers does it take to change a light bulb?
A: Just one, but he has to wait and see how the Library of Congress does it first.

The joke’s premise, namely that catalogers nationwide don’t dare make a decision without an LC precedent, may be becoming less true even for general cataloging. Part of the reason that some libraries are now questioning their slavish adherence to Library of Congress cataloging policies is related to LC’s decision last spring to discontinue series tracings, as well as to Karen Calhoun’s controversial LC-commissioned report, “The Changing Nature of the Catalog and its Integration with Other Discovery Tools” (http://www.loc.gov/catdir/calhoun-report-final.pdf). Not all libraries are changing their policies regarding how closely they follow LC practice, of course; some agree with the direction LC seems to be heading, while others simply lack the resources to break their dependence on LC for catalog records and rule interpretations.

Questioning LC policy is nothing new to special collections catalogers. Regardless of your library’s general stance toward Library of Congress cataloging policy, it makes sense to question any cataloging policy designed for a collection other than your own when it comes to your special collections. This includes your library’s own policies, if they were formulated with only your general collection in mind.

Why? Well, a special collection is, as the term implies, a collection that is not like other collections. Standardized cataloging practices might be okay, but then again, they might not best serve your users and your collection. Special collections often call for special cataloging.

At the very least, you may want to avoid any cataloging “shortcuts” that you use for cataloging your general materials, whether they are shortcuts you have implemented at your own institution or shortcuts called for by AACR2 or LC practice.

A leading example of a rule-mandated shortcut is AACR2 rule 1.1F5, which states: “If a single statement of responsibility names

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** Cataloging Librarian, University of Minnesota Law Library.
more than three persons or corporate bodies performing the same function, or with the same degree of responsibility, omit all but the first of each group of such persons or bodies. Indicate the omission by the mark of omission (...) and add et al. (or its equivalent in a nonroman script) in square brackets.” Correspondingly, rule 21.6C2 states: “If responsibility is shared among more than three persons or corporate bodies and principal responsibility is not attributed to any one, two, or three, enter under title. Make an added entry under the heading for [only] the first person or corporate body named prominently in the item being catalogued…”

Suppose your library has a special collection built around George Alumnus, a famous lawyer who graduated from your law school, and one of the books in the collection is:

Four Up and Coming Lawyers Reminisce About Their Law Schools
By Tom A. Lawyer, Dick N. Counselor, Harry D. Attorney, and George Y. Alumnus

Are you really going to transcribe the title as: Four up and coming lawyers reminisce about law school / by Tom A. Lawyer ... [et al.]? Are you really going to add a name entry only for Tom, who incidentally didn’t attend your law school and no longer seems destined for great things in law, having quit the profession abruptly to study for his audition for Fox’s quiz show “Are You Smarter Than a 5th Grader”?1 Probably not. And by the way, if you’re adding a name heading for George, you may as well add a subject heading for your law school as well...unless George’s reminiscences are less than flattering.

Alternatively, you might decide to provide less detailed description to some special collections than you generally provide. The rationale for this approach would usually be that you have a large collection that has not been cataloged at all (or not cataloged online at all), your library cannot devote enough staff time to catalog the collection “properly” in the foreseeable future, and you decide that some access to the whole collection is better than perfect access to a few items but no access to the majority of items. If you are in a situation like this, don’t worry; just keep dreaming about the day in the mythical future when you will get enough funding to hire a dozen or so assistants to go back and give these records the attention they deserve.

What else you choose to handle differently will necessarily depend in large part on the nature of the collection and what makes it special—but not entirely, because you can never forget about

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1 Sadly, Tom didn’t fare much better at outsmarting ten-year-olds than he did at practicing law. He flunked out on the true/false question, Columbus sailed to America in 1942.
certain concerns that have nothing to do with the collection but everything to do with the resources your library is willing and able to commit to its cataloging.

Suppose your library has a collection of popular fiction, for example. This would not be special, except that you happen to work in a law library, and law libraries do not typically have extensive collections of popular fiction. Even if you don’t consider your fiction a “special collection” in terms of its location in your library, circulation policy, etc., you might have to make some cataloging decisions about the collection that differ from your regular cataloging policies.

Consider subject access. Law catalogers tend to take for granted that all titles need subject headings. But until relatively recently, most libraries—including the Library of Congress—did not add subject headings to records for fiction. If you follow LC’s new policy, and if your collection includes titles published before the policy change, you will likely not find records in the utilities with subject headings, so you will have to assign them yourself. (And unfortunately, works of fiction are unlikely to have titles that are as helpful for subject analysis as [Four Up and Coming Lawyers Reminisce About Their Law Schools].) But if you follow LC’s old policy, that will mean deleting potentially useful access points when found in copy—access point that someone put a lot of effort into coming up with. Or you could dodge the whole issue and not add subject headings, but leave them in when they appear in copy. The main drawback here is a lack of consistency among your own records.

And then how do you handle the related yet distinct issue of 655 genre headings, such as Detective and mystery stories or Legal stories? Genre headings are sometimes used in rare book cataloging (not so much for Detective and mystery stories, but for things like Devices, Publishers’) but rarely in general law cataloging. If you are already using 655s for your rare books, this might influence your decision to go ahead and use them for fiction as well, or at least to leave them in if they are already in the record. If you have never used these headings, you have to decide whether cataloging a fiction collection would be a good time to start.

Maybe fiction is not an issue for you. Maybe what make your special collection quirky are the formats of the materials. It may be a collection that contains a lot of photographs, for example. If you do not have many materials in these formats in your library’s general collection, you may not even have an explicit policy on how to handle them, only a default policy to catalog materials of all formats according to AACR2.

If you have never cataloged photographs before, you might turn to Chapter 8 (Graphic Materials) of AACR2 not even knowing there are alternatives. If the version you turn to—or, more accu-
rately, click on—is the Cataloger’s Desktop version, you will probably notice that next to the rule numbers, instead of “LCRI” buttons that link to the Library of Congress Rule Interpretations, there are buttons labeled “GM.” It always pays to be curious if you are a cataloger, so go ahead and click on one of the GM buttons.

If you’re an avid reader of this column, you already know that the Library of Congress doesn’t use AACR2 to catalog books published before 1801; it uses Descriptive Cataloging of Rare Books. Similarly, you already know about Archival Moving Image Materials for videos and DVDs. So you should not be too surprised when you discover by following the links that LC uses yet another manual to catalog photographs and other two-dimensional, non-moving images, namely, Graphic Materials.

You are not compelled to follow Graphic Materials just because the Library of Congress does. But whatever your opinion of its recent decisions, you should at least consider its policies regarding special formats if you have a significant number of titles in those formats.

What constitutes a significant number is an important question; this can be your starting point in thinking about whether to follow cataloging rules other than AACR2. If your George Y. Alumnus collection contains a half dozen photos—and you don’t have large numbers of photos in other collections—it is almost certainly not worth the time necessary to learn a new cataloging standard. If, on the other hand, half the collection consists of pictures of a photogenic young George in the earlier pictures and a distinguished-looking older George posing with his powerful and well-known friends in the later ones, then it might behoove you to evaluate GM and compare its pros and cons with those of AACR2, always with your specific collection and patrons in mind.

The last phrase of that last sentence touches on the most important point of this column. Always keep your special collection(s) and patrons in mind when selecting a course of action for cataloging. I have attempted to give some hypothetical examples of issues you might face, but I could not possibly think of every conceivable type of special collection. And after all, you know your collection better than anyone.

Adams and Osborn have compiled and edited the memorial addresses located in the *Indiana Reports* (1841-1981) and the *Indiana Cases* (1934 to the present). There are forty-two Indiana Supreme Court justices, eight Indiana Court of Appeals judges, three prominent Indiana lawyers, one President of the United States (Abraham Lincoln), one Vice-President of the United States (Thomas A. Hendricks), and one well-known trial judge. Using the memorial and other biographical dictionaries, the authors created a quick fact boxes preceding each entry. Each entry is also accompanied by a picture of the individual drawn from the Supreme Court’s collection. Citation from each volume is provided at the bottom of the page. There is an alphabetical index at the end of the volume. With state court reports being replaced by electronic databases, the introductory information like inductions, memorials, picture presentations, etc. are lost for research purposes. With thousands of these spread throughout the court reports of the fifty states, these are important biographical sketches that need to be saved. The Indiana Supreme Court and its two compilers are to be congratulated for this useful volume as well as distributing it free as a public service of the court.

Joel Fishman, Ph.D.
Assistant Director for Patron Services
Duquesne University Center for Legal Information/Allegheny County Law Library

Over the past 30 years as Senate Historian, author Richard A. Baker (2006) pointed out, “I have prepared countless historical narratives to inform Senators, and others who are curious about the traditions, personalities, and landmarks of the World’s Greatest Deliberative Body.” (p.v.). Baker further reshapes these stories into concise vignettes from hundreds of Senate anecdotes, and selected 200 stories for this Senate history book. Baker’s stories reflect on many Senate activities, from the famous and not so famous Senators, to the rare and unrevealed stories that educate, enlighten, and entertain the reader about personalities and events that shaped the Senate of the 21st century. (Ibid.).

Chapters in the book include: 1. Formative Years in the Senate, 1787-1800; 2. Golden Age of the Senate, 1801-1850; 3. War and Reconstruction, 1851-1880; 4. Origins of the Modern Senate, 1881-1920; 5. Era of Investigations, 1921-1940; 6. War and Reorganization, 1941-1963; 7. The Modern Senate, 1964-2002. Each story contains an illustration, photograph, or cartoon describing the vignette. Each story includes references for further historical reading. This reviewer recommends the noted illustrations, pictures, and cartoons; they are the essentials of each story. More in-depth readings are recommended for a better, and more complete, understanding of the historical story context.

Highlights from the Senate stories include: Senator Aaron Burr’s infamous duel killing Treasury Secretary Alexander Hamilton. The Senate purchasing President Thomas Jefferson’s personal library valued at $23,950.00, with 6,500 volumes. In 1861, the Senate expelled all 10 southern Senators representing the confederate states. Only two, Warren Harding and John F. Kennedy, won their presidential races as incumbent Senators. After an era of Senate investigations involving corruption, the Hollywood filming of “Mr. Smith Goes To Washington” – a film about Senate corruption – included the filming of 45 real-life Senators at Constitutional Hall in 1939. Less than 3 weeks after the attack on Pearl Harbor, Winston Churchill’s war rally speech, addressed in the Senate Chamber, was concluded with thunderous applause! In 1957, Senator Kennedy’s committee reported to the Senate its choices of the 5 greatest Senators: Henry Clay (KY), John C. Calhoun (SC), Daniel Webster (MA), Robert Taft (OH), and Robert La Foelette (WI). This reviewer’s favorite cartoon of Senator McCarthy’s hunt for Communists in the State Department, and the dismayed Secretary of State John Dulles finding McCarthy hiding in the desk drawer. The brilliant U.S. Senate picture photographed in the Senate Chamber on May 8, 2002 – showing all
Senators – including a record-setting 14 women served as United States Senators.

Baker captures the soul of our nation’s struggles as seen through the mirror reflecting the history of the United States Senate. The stories of struggle of our nation for freedom, liberty, and justice are for all Americans to read, especially political historians. The stories remind us that we are not just a product of our government, but of the people leading our government, of the people, by the people, ever casting a powerful shadow of human triumph and tragedy on our American Experience...

Thomas J. Moran, M.L.S. Student
University of Pittsburgh
School of Information Sciences


Professor Paul Brand has written an extremely detailed study of the creation of the Provisions of Westminster (1259), the succeeding legislation of the Statute of Marlborough (1267) and its enforcement through to the end of the reign of King Edward I in 1307. With only Magna Carta (1215, 1216, 1223) and Provisions of Merton (1236) as preceding major legislation, the Provisions and its evolvement into the Statute of Marlborough were important thirteenth-century legislation that remained part of the English common law throughout the Later Middle Ages.

Revising an earlier dissertation, Brand also revisits the earlier work of T. F. T. Plunkett whose Legislation of Edward I (1949 and revised edition of 1962 ) was based solely on printed sources available to him at the time of his writing. Brand has used later published works as well as extensive manuscript legal sources of the period to present a more comprehensive history of medieval English legislation, providing a review of the political and legal background to the baronial revolt for the decade between the mid-1250s to mid-1260s which led to the Provisions of Oxford and the later Statute of Marlborough. Following a literature review in his introduction, Part I deals with the enactment of the legislation
from 1259 to 1267. The baronial revolt led to the Provisions of Oxford (1259) with later conflict ending after the death of Simon de Montfort in 1265. The king’s republication of the Provisions first in 1263 and 1264 and its evolution into the Statute of Marlborough (1267) attempted to correct and address problems affecting the legal system at that time.

Brand reviews the political, social and economic background to the statutes (chapters 1-3), followed by a chronological account of the years following the Provisions (chapter 4), its revision and republication in 1263 and 1264 (chapter 5), and their use in the succeeding four years (chapter 6) that leads up to a discussion of the enactment of the Statute of Marlborough of 1267 (chapter 7). The king’s defeat of Lord Montfort and his followers resulted in Marlborough’s preamble reflecting the king’s role in the making of legislation. Besides rewriting the preamble, there were eight new chapters reasserting royal jurisdictional power, confirmation of Magna Carta, procedure dealing with redisseisin, evasion of wardship, and allowing judgment by default in wardship cases in the case of continued non-appearance by the defendant.

Part II discusses the enforcement and interpretation of the Statute of Marlborough over the next forty years. The Statute of Marlborough Chapter 8 deals with the writ of contra formam feoffamenti, statutory action for tenants contesting liability to suit of court, followed by other mechanisms for enforcing chapter 9 of the statute (ch. 9). Marlborough also affected the criminal justice system (ch. 10), and the procedural reforms made by the mesne process in the royal courts (ch. 11), the use of existing remedies (ch. 12), creation of new writs to enforce socage guardians (ch. 13), the use of distraint relating to other chapters besides chapter 9 of the statute (ch. 14), and abuses in the local courts (ch. 15).

A concluding chapter summarizes Brand’s findings. The appendixes contain the various texts of the Provisions and Statute of Marlborough, a bibliography, and index.

Other reviewers of this work praised Professor Brand’s detailed analysis of the documents and use of primary sources. Brand concludes with “The end result of the co-operative efforts of barons, justices and the king in the legislative process between 1259 and 1267 was to produce genuinely innovative legislation and to create an impressive model of large-scale legislative improvement in the common law.” (p.410). This specialized work is a must read for an expert analysis of statutory law of medieval England.

Joel Fishman, Ph.D.
Assistant Director for Patron Services
Duquesne University Center for Legal Information/Allegheny County Law Library

The so-called Neutrality Crisis encompassed slightly more than a year, beginning with French minister Edmond Genet’s sailing for the United States in February 1793 on the French naval frigate *L’Embuscade* commanded by Captain Jean-Baptiste Francois Bompard. It ended after a change of government in revolutionary France and the recall of Genet in February 1794. Long recognized as a significant political and diplomatic event in George Washington’s presidency, the Crisis also provides important insights into the relationship between American foreign affairs policy and constitutional government. Professor Casto’s detailed and vigorously analytical discussion, both of the events and the pamphleteering debate between Alexander Hamilton and James Madison, represents a major contribution to our knowledge of this vitally important constitutional development. Ranging widely in its coverage, one of the volume’s literary high points is a thrilling description of the see-saw naval battle between the French frigate *L’Embuscade* and the British warship *Boston* (125-137), reminding us that even such a fine scholarly book need not be dull reading.

Foreign affairs matters have always been clouded by serious separation of powers issues between the executive branch and Congress; also vaguely defined is the relationship between the president’s diplomatic and war powers, and the assignment of declarations of war, and other disciplinary and fiscal oversight authority, to Congress. The judicial branch has played a modest and deferential role in this area, marked by Chief Justice Jay’s refusal to provide advisory opinions concerning the Neutrality Crisis. Casto provides new insight into the Jay Court’s rationale for non-interference, arguing that it was based as much on English judicial practice as it was upon separation of powers principles. He also comprehensively discusses the degree to which unilateral executive foreign affairs actions may create a political por practical estoppel to subsequent congressional action annulling or modifying earlier executive fiat. Moving beyond the Neutrality Crisis itself, the volume shows the degree to which the *Pacificus* pamphlets, written by Hamilton, and the 1952 opinion of Associate Justice Robert Jackson in the *Youngstown Steel* case (343 U.S. 579) have shaped constitutional law in this all-too-ambiguous area of governmental practice. There is an implicit suggestion that perhaps more active judicial involvement, both in providing advisory opinions, and in being less deferential to
presidential initiatives, might have better served the national interest over the past two centuries.

Legal historians will be intrigued by Casto’s demonstration of how litigation, and particularly jury verdicts, may be ineffectual as vehicles for the establishment of public policy. While the position is well supported, the discussion of jury verdicts may be flawed by Casto’s conclusion that in eighteenth century colonial and early national America, juries decided matters of law as well as issues of fact. This form of jury nullification certainly did occur in the famous New York criminal libel trial of printer John Peter Zenger (1735), and there is evidence of local jury willfulness in the New England states and colonies, it is perhaps unwise to attribute these aberrations to the other American jurisdictions. Notwithstanding this minor caveat, this is a major contribution to constitutional and diplomatic history that must be read by all who teach, write, or practice in these areas.

Herbert A. Johnson
Distinguished Professor of Law Emeritus
University of South Carolina


This book is the result of its author reading and sifting through about every South African legal and political text available for the first four decades of the 1900s. The author is careful to point out that he is analyzing these many texts to show a broader view of South African legal developments than one would get by reading only judicial opinions from that time period. Many archival and printed primary sources are used to flesh out the political and legal culture during those years. Administrative law and process in particular are contrasted with what the South African judges were saying (or ignoring) about the creation of the country’s laws.
The author’s main theme is that a correct understanding of South African law requires an expanded awareness of these four decades. In particular, the author points out how the whole machinery of government was used to keep the minority whites in power over the majority black natives. South African legal history is not just the white’s court opinions and decisions, but the whole interplay of laws and rules being applied to whites and blacks. For example, the white minority imported the British model of law, but modified it to make certain the black native majority did not have any access to governmental power. The language of precedent, ancient Roman law and early Dutch jurist writings were altered by the white South African Supreme Court judges as part of the government’s unified control of the blacks, but the whites wrote almost as if the blacks were not present or having any role in the development of South African law. Dr. Chanock shows painstakingly step-by-step how the white court decisions do not tell the whole story of South African legal development. Instead, the legal culture of “fear, favor and prejudice” applied to the police, criminal law, prisons, marriage, the legal profession, land law, labor, trade, and so forth. All these various facets of South African legal culture are covered by the author in 571 pages of methodic detail, to show that looking at just the court opinions is insufficient to understand South African law in this time period (and since). In many ways, it seems like the author is intent on rebutting the decisions of the South African Supreme Court from 1902-1936 (and any later interpretations based on them). He wants to show that the executive and other branches of government were interpreting, applying and developing law right along with the courts, and that extensive evidence exists to prove that the courts should have been aware of these developments.

The book is for the advanced scholar or individual already familiar with South African law, politics and history. There is little here to help a beginner—no maps, no glossary, no list of prominent individuals. There is a table of cases cited, an index, and a sixteen-page bibliography (including this Australian author's nine prior works on African history and law). Libraries with large comparative and international law collections could consider this 2006 paperback reprint if they do not already own the 2001 hardcover edition.

Galen L. Fletcher
Faculty Services Librarian
Howard W. Hunter Law Library
Brigham Young University

A renaissance of interest in American legal history over the last fifty years has been apparent in academic circles and in the legal community generally. Accompanying that interest has been the publication of many new bibliographic resources and research aids, some general in scope and some specifically law-related. They have covered a wide range of both primary and secondary sources. Although most have been print publications, in recent years there have been a number of very important electronic databases and research services which provide coverage of historical materials related to law.

Through all these positive developments, the one area that has been somewhat under-served is the prestatehood period for the various states. Even the otherwise invaluable state legal research guides have often been weakest in their treatment of materials predating statehood. Now, we finally have an ambitious effort to fill that gap, one that makes a major contribution to our research arsenal, although not a final one, I hope. But then I know of no new bibliographic aid or research tool that has been definitive in its first appearance. We nevertheless owe the contributors and editors of this most important and useful compilation an enormous debt of gratitude. Each of the contributors is an outstanding librarian or bibliographer in the jurisdiction assigned. The compiler/editors have done a remarkable job in coordinating the project and carrying it through what must have been a difficult editorial and publication process. Recognizing that, in the compilers’ words, “a project like this is organic,” they have wisely created a web page where updates, corrections, additions, etc. can be submitted for posting.

The historical sources for research in American law vary, of course, over time and by jurisdiction. Prestatehood sources include two large and quite different categories - those for the original thirteen colonies and those for the states that entered the union after Independence. Research materials for the pre-Independence period offer special problems largely because English law was the dominant force throughout the original thirteen colonies. However, the English influence was not uniform. There were differences in the terms of the Royal charters that created those colonies and established their legal institutions; there were differences in those colonies in which English settlement followed that of another national power (e.g., the Dutch in New York); and
differences arising from strong local resistance to the application of English law in a few of the colonies. There are even more striking variations with regard to the legal sources of those states entering the union after Independence. Those variations arise not only from prior control and settlement by other European powers, but also from the history of settlement and conflict in those jurisdictions. To illustrate these differences, consider and contrast the prestatehood history of just a few states, like Alaska, California, Florida, Hawaii, and Texas.

The challenge of creating a reference tool covering so many disparate jurisdictions must have been enormous. The work, now published, consists of fifty-two essays (one for each of the fifty states, one for the District of Columbia, and another for New York City) describing the prestatehood historical background of each of the jurisdictions, followed by a survey of the jurisdiction’s legal materials for that period. An index covering both volumes is provided at the end of the second volume. The authors have employed different outlines and styles in preparing their essays, and have chosen different titles. The differences in outline are sometimes required by historical peculiarities in the legal development of that jurisdiction; the differences in title often nicely reflect something special about the jurisdiction’s history (viz., “The Law in Bleeding Kansas . . .,” “Law in the Wilderness . . . Kentucky . . .,” “Early Justice Under the Big Sky: . . Montana”). The fact that some of the essays are arranged by chronological period; others by type of materials; and yet others by the law-making or law-issuing agency of government, does not detract from the usefulness of the whole work. To some extent, those differences in structure make sustained use of the compilation somewhat livelier. However, differences in the detail of bibliographic citations, in the thoroughness of coverage, and in references to web sites and other electronic sources for prestatehood material, render some of the essays much less useful than others. What we have is so valuable, it is perhaps unfair to carp, but one can still hope for a second edition that cures some of these weaknesses, or active use of the web page offered for submissions to improve the work.

Among those chapters for which chronological arrangement seems particularly fruitful are Alabama, Florida, Hawaii, Illinois, Michigan, Mississippi, Rhode Island, and Tennessee. Reading those essays provides historical excursions which are rewarding far beyond their bibliographical details. Some chapters whose authors have emphasized the state’s prior control by other nations, like Arkansas, California, Florida, Hawaii, Illinois, Michigan, Mississippi, New Mexico, New York, and Texas, also have a unique interest and stimulate a desire for further study. Fortunately most of those essays offer references to sources for additional reading.
Archival resources should be a very important component of prestatehood legal bibliography for virtually every state. Now that some states have begun digitizing their early records those resources will assume greater and greater importance in historical research by both general historians and law researchers. More states will undoubtedly be pursuing the same procedures to improve access to their early records. It is therefore disappointing that relatively few of the chapters offer more than a cursory references to the state’s archival materials. The chapter on Washington Territorial Materials is noteworthy for its good coverage.

Web sites and other electronic resources constitute another area in which coverage is spotty. Now that such resources are expanding and becoming an increasingly important part of historical legal research, one would have hoped for more extensive treatment in a major bibliographic work like this. Some chapters do offer good coverage, however; these include California, Colorado, Connecticut, Hawaii, Massachusetts, Pennsylvania, South Carolina, South Dakota, Tennessee, and Wyoming.

Despite these shortcomings, *Prestatehood Legal Materials* is now one of the most valuable aids to historical research in American law. It should open new areas for study and scholarship. We can only hope that the compilation gets the widest possible distribution. It is a must acquisition for all law libraries beyond the smaller practitioner libraries, for college and university libraries, for historical societies and research institutions including American history in their scope, and for larger public libraries.

Morris L. Cohen
Professor of Law Emeritus
Yale Law School

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In *The DeShaney Case*, Lynne Curry analyzes the landmark case of *Joshua DeShaney v. Winnebago County Department of So-
cial Services. DeShaney asserted a civil rights claim against the county on the basis of the county’s failure to protect him from abuse at his father’s hand, although the county department of social services had opened a file on Joshua DeShaney and maintained an ongoing relationship with the child and his family. The controversial decision represents the triumph of the position that the Constitution is, in the words of Judge Posner, “a charter of negative rather than positive liberties.”

Historian Curry puts DeShaney in historical context, analyzes the lower court decisions, considers the Supreme Court majority and dissenting opinions, and finally discusses the court of public opinion. She aims to raise questions about the disparity between the individual reaction to instances of physical abuse and neglect of children and the societal choices that are made in response to child abuse.

Curry introduces her contribution to the Landmark Law Cases and American Society series by providing a quick overview of the book. After describing the trauma suffered by Joshua DeShaney, Curry takes readers through the development of parental rights within modern constitutional law. The introduction also provides a very brief and not too-technical description of the novel legal arguments that Joshua’s attorneys presented on his behalf. Six chapters, a two-page chronology, and a bibliographic essay follow the introduction. The index, 12 pages, is helpful for researchers.

The narrative begins with a detached, almost clinical, description of Joshua DeShaney and his early life experiences. Curry gleaned information about Joshua’s early life by reviewing police and court records, briefs, and interviewing participants. She describes for the reader in almost agonizing detail the series of contacts that Joshua and his father had with a Winnebago County social worker—from the first emergency room visit when the state of Wisconsin took emergency custody of Joshua to the final emergency room visit, when Joshua is brought to the hospital in a coma. This background is helpful for readers to consider as they later read the analysis of the district and appellate court opinions.

In the second chapter, Curry provides historical background for the modern child protection movement. This chapter is integral in providing readers with an understanding of the sometimes-conflicting goals that are faced by child protection workers: maintaining family units and protecting children from abusive parents. The history presents parallels to the ultimate question decided by the Supreme Court—whether a child has the right to be protected by the state from abuse by his parent.

Curry’s presentation of the legal arguments is generally uncomplicated and accessible to non-legal scholar. For example, when explaining the circumstances of the criminal conviction of Joshua’s father for child abuse, Curry clearly explains the terms
of art “Alford plea” for lay readers. However, at times she oversimplifies, such as her explanation of the requirements for a claim under 42 U.S.C. §1983.

Although the tone of Curry’s analysis of the Supreme Court opinion indicates that her sympathies were with the dissent, she clearly explains the legal position of the majority decision. The Due Process Clause of the Constitution, under the majority view, does not require the state to protect citizens from the actions of other citizens. Curry’s discussion of the dissenting opinions presents the dissenting justices’ legal arguments in straightforward manner. Readers will likely be intrigued by the discussion of the changes made in various drafts of the majority and dissenting opinions.

Curry’s historical presentation, including detailed and compelling discussion of oral argument at the Court of Appeals and Supreme Court, will hold the attention of legal and non-legal readers alike. Readers will find the historical perspective enlightening, particularly given the depth of research reflected in *The DeShaney Case*.

Margaret Butler
Reference Librarian
New York Law School


Are politics involved when federal judges are appointed? Two professors have provided an answer in this book that is best suited for students and the public. The “overriding objective of making the seemingly arcane process of appointing federal judges more transparent . . .” is accomplished with clearly presented historical data. (p.vii). Lee Epstein teaches law at Northwestern University and Jeffrey A. Segal teaches political science at Stony Brook University. Both authors have written numerous books and articles on constitutional law and been interviewed by newspapers and television news programs regarding the research findings discussed in this particular book.
The Introduction presents a historical view of the controversy. From John Adams and the Senate of 1800, Woodrow Wilson’s nomination of Louis Brandeis in 1916, and George Bush and the Republicans in 2005, there is evidence that politics plays a large role in the process. While books have been written focusing exclusively on candidates to the Supreme Court, this work takes a broader approach reviewing nominees to all federal courts - district, circuit and the high court.

The role of politics in the judicial appointment process was alive and well at America’s Constitutional Convention in Philadelphia in 1787. While little debate was centered on how federal judges ought to be tenured, it took more than three months before the delegates could agree on how they should be selected. Chapter 1 not only gives a historical look at the evolution of the law, the authors also include charts explaining worldwide practices, the flow of litigation, the process within the different levels of federal courts, and a sketch of the process of judicial appointments in 2005. To illustrate the importance of judicial appointments, an explanation of the 2000 presidential election shows how the case Bush v. Gore resulted in the U.S. Supreme Court’s five most conservative justices seemingly deciding the election in favor of the Republican candidate.

The process of judicial appointments begins either with a vacancy on an existing court or a new seat to be filled. Vacancies arise from death, elevation to a higher court, retirement or resignation. While death and elevation to a higher court are involuntary reasons for vacating, resignation is where the data shows the level of politics involved in the process. Research shows that circuit judges will remain on the bench even if they are ill or eligible for retirement, to prevent a president from appointing a successor of a different political party. Examples of Supreme Court justices who refused to retire until the current administration matched their political party are Robert Grier, Nathan Clifford, Earl Warren, and Sandra Day O’Connor. Vacancies are also created by new seats on the bench. The Judiciary act of 1801 and the so-called Evart Act of 1891 are examples where legislators created new seats for the courts. While both Acts were justified with back-loged courts and the need to increase the number of courts to handle the dockets, the precise timing could have been motivated by one political party to pack the courts. It happened again in 1937 when Democrat Franklin D. Roosevelt asked the Democratic Congress to pass the now infamous court-packing plan. Thus, vacancy-creation schemes are almost always the product of the same factor: politics.

Nominating federal judges and justices is more complex than meets the eye. Some presidents nominate personal friends to the bench: Lyndon Johnson nominated his friend Abe Fortas. Harry Truman nominated four close friends in Harold Burton, Fred Vin-
son, Tom Clark and Sherman Minton. Three-fifths of those seated on the Supreme Court personally knew the president who put them there. The authors are clear, however, in adding that qualifications and professional merit matter a great deal.

Other presidents are fulfilling campaign promises: Ronald Reagan appointed Sandra Day O’Connor after promising to appoint a woman to the court. As for the lower courts, some administrations pay more attention than others to appointments. The authors also cover the roles of ideology and senatorial courtesy in the nomination process.

Since 1789, the Senate has confirmed eighty-two percent of U.S. Supreme Court nominees illustrated in charts showing qualifications and ideology of nominees along with percentage of nominees confirmed in the lower courts. The confirmation process is riddled with the use of power in the committees, the partisanship and the ideology of the senators and the nominee. Robert Bork’s qualification rating was higher than Rehnquist’s in 1986. Qualifications are almost always necessary and can be used as a deciding factor when there is a conflict between the senators and the president. While Bork was qualified, the opposition focused directly on his ideology which was incompatible with the Senate and ultimately kept him from the bench.

Do presidents get what they want? Epstein and Segal use systematic evidence to show a president and his nominee will almost always share the same ideology. And once confirmed the judge or justice’s opinions will more than frequently follow that same ideology shared with the nominating president for at least the first four years. Again, the authors provide charts showing the correlation between ideology of presidents, nominees, and opinions. However, after sitting for ten or more years, the relationship drops by nearly half. Some politicians and commentators would like to end the life tenure of the federal bench as a way to eradicate the politics involved in the federal judicial branch. Epstein and Segal show that politics have always been involved and will remain in the judicial appointment process with or without life tenure.

Stephanie Marshall
Faculty Services Librarian
Dee J. Kelly Law Library
Texas Wesleyan University

Edward the Confessor (1042-1066) is famous in English history as a national king and lawgiver before the Norman Conquest. He became memorialized throughout the following centuries especially through his laws published as *Leges Edwardi Confessoris*. Greenberg’s aim is to “examine the transformation of the Confessor from a medieval symbol that sacralized the kingship into an early modern weapon that utterly defaced it.” (p.2). St. Edward’s Laws along with the *Modus tenendi Parlamentum*, and *Mirror of Justice* became a trinity of texts that represented ancient constitutional thought. Edward’s Laws included a prologue that included William I’s “acquisition” of England rather than “conquest” and chapter 17 that stated that a king who failed in his duty “loses the very name of king.” (p.62) The *Modus tenendi*, written during the reign of Edward II, presented the view that William agreed to rule by Saxon laws, that it included a council of lords and common people, provided for the order of parliamentary business, and the exaltation of parliament. The *Mirror of Justices*, only first published in law French in 1642 and English in 1646, also expounded the role of parliament beginning in the reign of King Alfred and sanctioning the use of force against the king.

These texts were used throughout the medieval period to describe English government down to the Tudor century. This historiography became important during Tudor-Stuart era as a means to debate the constitutional debates of the time—the rebellion, deposition, regicide of Charles I—and the events of the later seventeenth century culminating in the Glorious Revolution of 1689.

In four detailed chapters, Professor Greenberg details the use of these works in the writings of Tudor-Stuart historians, polemists, lawyers, etc. The Tudor period witnessed an expanding interest in the historical past, first to validate the English throne’s takeover of the church, the new influence of the common lawyers who dealt with custom and case law, and the introduction of the Society of Antiquaries. Throughout the century, the emphasis upon English origins of government emphasized the English origins derived from the Saxon past, with the Norman Conquest only serving as a temporary and incomplete interruption of Saxon laws and institution (p.115).

In the beginning of the seventeenth century, Greenberg emphasizes the increasing importance of these debates in the discussion of union with Scotland that first introducing Norman conquest theory that did away with Saxon institutions that led to Stuart absolutism (pp.119-33) Of English lawyers, Edward Coke...
emphasized the ancient constitution of pre-Conquest laws in his introductions to the *Institutes of the Laws of England* (4 vols) that “transformed a largely unreflective cultural practice into an ideological weapon.” (p.142) John Selden recognized the *Modus Tenendi* of medieval origins, but still supported ancient constitutionalism. Greenberg argues that this debate expanded rather than decreased as the century moved forward under the reign of Charles I (p.157). Controversies over extralegal taxation, the Petition of Right, and Ship Money case reflected ancient constitutional arguments.

With the coming of the Civil War in 1642, Greenberg argues that the ancient constitutional texts have been “underestimated” and they remained central to the controversies radicals used to justify rebellion and regicide. Greenberg shows that royalists used the conquest theory to justify the king’s position (pp. 187-193). More importantly, Charles I’s Answer to the XIX Propositions of August 1642 played into the opposition’s hand because Charles defined the government as one of the three estates of king, lords, and commons—different from the past theory that made the king above the lords spiritual, lords temporal, and commons—in which the king could be outvoted by the other two houses. Furthermore, he posited the theory of a mixed monarchy in which there was an equality between King, Lords, and Commons in the lawmaking function rejecting his position as source of government (p.195). This admission became an important part of the rebels’ thought, gave them a powerful ideological weapon to use against the king in future writings throughout the rest of the century. The parliamentarians used St. Edward’s Laws also to refute the king by distinguishing between the medieval concept of the king’s two bodies—the king’s office versus the person of the king—to combat his position. The Long Parliament could claim the right to make law in the absence of the king. Greenberg draws on the works of William Prynne, Nathan Bacon, the Levellers, and later John Sadler and John Milton during the Interregnum (pp. 230-42).

Following the succession of Charles II, royalists continued to argue for the sovereignty of kings in early Restoration writings, but most notably during the Exclusion Crisis when Robert Filmer and Robert Brady supported the monarchy by arguing that the house of commons came into existence after the time of memory (coronation of Richard I in 1189) and therefore the doctrine of prescription ran against the Whigs who wanted Prince James excluded from the throne. Brady argued kings predated parliaments and the Norman Conquest placed the kingship in an absolute position apart from parliament. Whig writers countered these arguments and some extremists, like Algernon Sidney, advocated a government of republicanism (p.264). This was followed by the Glorious Revolution, of James II’s departing and William III and Mary II as king and queen of England based on their acceptance
of the Bill of Rights. The polemical controversy for the next three years was one of the largest in the century. Greenberg argues that although the trinities of works were not always specifically detailed in polemical controversies and in parliamentary debates, and faults other historians for not recognizing the discussions “of resistance, deposition, and parliament’s right to choose a new king—radical notions all.” (P.275) There was a connection between the coronation oath of the new kings and that of the Confessor’s Laws. Whig writers like William Atwood, James Tyrrell, and Robert Atkins continued to use the trinity of texts to maintain the right to depose the exiled king.

Professor Greenberg’s work is an important corrective on how one views and understands the constitutional debates of the sixteenth and seventeenth centuries based on the medieval sources available to them. Her wide reading of primary and secondary sources shows that the concept of the ancient constitution was an important element in constitutional thought and her work will become an important source for this period.

Joel Fishman, Ph.D.
Assistant Director for Lawyer Services
Duquesne University Center for Legal Information/Allegheny County Law Library


The Liberty Fund continues to serve lawyers and scholars by its publishing reprints of classic texts on natural law and the Enlightenment in a series under the editorship of Prof. Knud Haakonssen. This volume, the Williams translation of Hugo Grotius’ *De Jure Praedae*, should have a place on every law library’s shelves. It is well produced and well edited. The 1950 Carnegie Foundation volume which first included the Williams translation has been updated in this new publication by a new introduction,
several new appendices containing additional documents relevant to the text, and an excellent bibliography and list of suggested readings.

The *De Jure Praedae* has had an unusual textual history. It was the first major law book produced by the young Grotius. It was written not as a scholarly commentary but rather as an advocacy document to defend Dutch merchant shippers’ rights to seize Portuguese vessels in the East Indies. Grotius was supplied with an enormous cache of documents relative to the topic of the book by the Dutch merchant shippers’s organization, the VOC, otherwise known as the United Dutch East India Company. The VOC, however, neither expected nor wanted the lengthy treatise which Grotius produced. Thus, only the twelfth chapter of the *De Jure Praedae* was published in his lifetime under the title *Mare Liberum*. The remainder of the text remained in manuscript, owned by Grotius’ descendants until it was sold, along with other Grotian manuscripts in 1864. The first publication of the Latin text was that of H.G. Hamaker in 1868. The Carnegie translation by G.L. Williams did not appear until 1950.

The complete text is a mix of Dutch maritime history, general comments on the law of war, and a long complex and innovative argument on the natural right of individuals and sovereigns to wage wars of self-defense. Its importance lies not only in the fact that it represents an early stage of Grotius’ thoughts on natural law and the law of war, but also because of this natural rights argument.

No serious scholar of the history of international law, the law of war, or of the natural rights tradition can afford to be without this volume. Even those who already own the original Williams translation of 1950 will benefit from the new introduction, appendices, and bibliographies. Liberty Fund is to be commended on this publication.

Professor Michael Hoeflich
University of Kansas Law School
Hugo Grotius (1583-1645) was a major political philosopher, whose work under review, published in 1625, became a standard authority in international law by the eighteenth century and continues to influence down to today. The work had gone through 26 editions by the end of the century and translated into Dutch, English, French, Italian and German by the end of the eighteenth century. The book which began as a work on moral and political theory evolved into a work on international law by the end of the eighteenth century (p. 1:x-xi).

In his introduction, Prof. Tuck gives a short biographical sketch of Grotius, a participant in the political controversies of the United Provinces in early seventeenth century. It was during his imprisonment from 1618 to 1621 that he began to write the work under review, which was not published until 1625. Grotius spent most his remaining years from 1622 to 1645 in France, for some years as ambassador of the Swedish Court to the French king. De Jure built upon his earlier works including De Iure Praedae (see Professor Hoeflich's review in this issue). Tuck discusses Grotius’s work and the relationship between the two editions (1625 and 1631) in which Grotius revised his view that the law of nature may be “instituted by Divine Commands.” Tuck points out that Grotius’s view of natural law, which involved minimalist intervention by God, was closer to Hobbes than Pufendorf. The three practical aspects of the treatise were the legitimization of private war (in support of the East India Company), the role of the creation of civil society and the ability to hold private property, and the sanction of certain kinds of slavery (pp. 1:xxvii-xxxiii).

In a Note on the Text, Tuck discusses the history of the printing of Rights of War. John Morrice (1686-1740), an Anglican cleric, translated and published Grotius's Latin work in 1715 that was republished in 1738 with translations of the extensive notes by Jean Barbeyrac’s French edition. Prof. Tuck suggests that the 1738 edition was translated by someone other than Morrice as a project driven by its publishers. (p. 1:xxxvii). The current three volumes contain Tuck's introduction, the main text, . Following the conclusion of the work in volume 3, there are tables for Passages of Scripture cited, a list of authors cited, and the original index. Prof. Tuck then translates the Prolegomena to the first edition of De Iure Belli ac Pacis. (pp. 3:1745-1762). His translation follows the original publication rather than a later 1667 edition which first provided numbered paragraphs. This is followed by a
modern bibliography of postclassical sources cited by Grotius based on the more recent Latin text published in 1993 and the original English text published as part of the Carnegie Endowment of International Law in 1925 (pp. 3:1763-1789). Another bibliography follows of works referred to in Jean Barbeyrac’s Notes (pp. 3:1791-1814). Finally, there is an index to the entire current edition (pp. 1815-1988).

Professor Richard Tuck has provided an important current edition to Grotius’s major work. The Liberty Fund is to be commended for publishing this work in both hardbound and paper copy at a reasonable cost for scholars and students alike as well as for libraries. This work will replace the Carnegie Endowment edition for scholarly and popular use.

Joel Fishman, Ph.D.
Assistant Director for Lawyer Services
Duquesne University Center for Legal Information/Allegheny County Law Library


After nearly two centuries of scholarship, it is perhaps impossible to forward a new idea about the motivations behind the founding of the U.S. Constitution, but University of Texas law professor Calvin H. Johnson has brought a new emotion to the debate: “righteous anger.” Johnson’s general thesis is that the Constitution was a reaction to the inadequate funding of the national defense by the Continental Congress. The founders, embodied by James Madison and Alexander Hamilton, blamed this on the self-interested parsimony of the states, and they designed the Constitution with a primary purpose of creating a fully funded nation-state able to directly tax its citizens. This idea is not entirely new, first argued by Roger H. Brown in Redeeming the Republic Federalists, Taxation, and the Origins of the Constitution, but Johnson focuses on the moralist nature behind the founders determination to recast the American experiment, making a powerfully argu-
ment for renewed attention to the taxation power in Constitutional studies.

Johnson’s argument for his thesis is the subject of Part One, which takes up the bulk of Righteous Anger. He begins with a critique of the Continental Congress and its inability to fund the new nation. He discusses the method by which the Congress would “requisition” funds from the states. After the Revolutionary War, the states stopped sending money to Philadelphia; the 1786 requisition asked for $3.8 million but the states sent only $633. The financial crunch—the U.S. owed $1.7 million to foreign borrowers—led Congress to pass impost bills mandating funds in 1781 and 1783. However, since acts of the Continental Congress could be vetoed by a single state, the impost bills were nullified.

The crisis led many Americans to fear for the survival of the independent states. Johnson notes that James Madison, Alexander Hamilton and George Washington all expressed anxiety that this would lead to war as England, or other European powers, would exploit the weakness of the new state. These critics were also angry that the failure of the states to fund the nation meant that Continental Army soldiers and veterans were left unpaid. Washington was particularly concerned, fearing anarchy and noting at one point that the “General Government is now suspended by a Thread.” (p.24). In many minds, the current situation dredged up bitter memories of the states’ niggardly funding of Washington’s troops during the late war.

Johnson sees James Madison as both a guide to the politics of the era and as the most important of the founding fathers. The Virginian, he argues, was the motivating force in pushing for a new government with the power to lay taxes, laying out his views in two privately circulated memoranda: the *Notes on Contemporaneous and Ancient Confederacies* (1786) and *Vices of the Political Organization of the United States* (1787). In the documents, Madison critiques the current confederate system of government, arguing implicitly for a more centralized form of government. Among Madison’s ideas, which he expounded further in *Federalist No. 10*, was that a larger “expanded government” was less likely to be captured by any faction. Johnson discusses one of the sources of Madison’s fear of faction: his political struggles in Virginia with Governor Patrick Henry, in particular Madison’s battles with Henry over debt relief and over Henry’s closing of Virginia courts to legal claims by British citizens—in direct violation of the Treaty of Paris.

Johnson examines Madison’s key role in the Constitutional Congress, while tallying his “partial losses.” In general, Madison succeeded in creating a centralized government that derived its power from the people, not the states, and that had a permanent power to tax for its own defense. The Constitution failed, however, to give the federal government control over the entire sphere
of government, leaving significant powers to the states. Symbolic of Madison’s partial success is the failure of his proposed federal veto over state laws.

Johnson’s discussion of the ratification struggle focuses on the disparate views of the foes of the 1787 Constitution who are traditionally known as the Anti-Federalists. What drew these men together, he argues, was opposition over whether the federal government should have the power to impose direct or internal taxes. In many ways, the Anti-Federalists were drawing on a general aversion to taxation; populists like Patrick Henry played to these emotions. The Anti-Federalists raised other issues—Bill of Rights, democracy, slavery—but Johnson sees them as sideshows to the main act.

In the brief Part Two of Righteous Anger, Johnson critiques alternate theories concerning the motives of the founders of the Constitution. In short order, he dismisses theories that make the prime force either the need to regulate commerce, to curb subversive forces as were seen in Shays Rebellion, to manage conflicts between states, or to assure that creditors could recover their debts. Johnson sees these factors as “peripheral” to the central issue of providing the new American state with the ability to tax for the common defense.

The even briefer Third Part of the book discusses Madison’s turn from his federalist views in the midst of profound discontent over Alexander Hamilton’s role in the government of George Washington and John Adams, and its legacy in Constitutional jurisprudence. Johnson sees the late turnabout as irrelevant to discussion of the motives of the founders because the “ink had dried and the original meaning had become fixed.” (p. 161). Nonetheless, Madison’s flip and the adoption of the Eleventh Amendment serve as Johnson’s coda to the founding period.

Although Righteous Anger at the Wicked States is framed as a traditional history, it is clear that Johnson’s intended audience is not professional historians; instead, his target is the legal community and his goal is to refocus the debate over founder’s intent away from the view favored by the intellectual descendants of the Anti-Federalists. As the proponents of the “New Federalism” on the Supreme Court continue to read an “original” Constitution they imagine was written to limit the federal power, it is valuable to look again at some of the founders who were mad as hell about the states’ abdication of their duty to protect the commonweal and were not going to take it anymore. Johnson argues that the result of this “righteous anger” was the founders’ Constitution.

Kurt X. Metzmeier
Associate Director
University of Louisville Law Library

Between 1736 and 1762, the British colonies negotiated a series of treaties with the Native American nations that occupied the lands which now comprise the Commonwealth of Pennsylvania. Most of these treaties were between the Indian nations and Pennsylvania’s Proprietary government, although representatives of four other colonies–Connecticut, Maryland, Massachusetts and Virginia as well as representatives of the British Crown–participated in the negotiation of several of the treaties.

The treatise and the minutes of the various conferences, negotiated in Carlisle, Easton, Harris’s Ferry (present day Harrisburg), Lancaster and Philadelphia, were originally printed and sold by Benjamin Franklin. In 1938, they were republished in a 500-volume limited-edition printing. Now Dr. Susan Kalter, Associate Professor of U.S. and Native American Literature at Illinois State University, Normal, has again made this material available in a treatise that will be a necessary addition to any Native American or Law collection.

In her Introduction, Dr. Kalter provides extensive background material, including the sacred legend of the origin of the Iroquois people, the historical background of the formation of the Iroquois Confederation, and the influence that the Iroquois had on the political formation of the United States. She also provides historical background on the Lenapes (Delawares) and Shawnees, and describes the encroachment of the Swedish, Dutch, French and, finally, English settlers into the region. She details relations between the Proprietary government of the Penns and the various Indian nations, particularly noting Franklin’s many contributions. These were often on the side of the Native Americans and against both the settlers and the Proprietors. The introduction is heavily footnoted.

These intercultural treaties read like a dramatic script, with the speakers frequently interrupted by exchanges of Wampum. Thus, the reader is provided with insight into not only the issues under discussion, but also into the Native American culture. Franklin was more than a publisher of these documents; in several cases he was present for the negotiations. In two cases, Franklin included extraordinary material in his publications showing his personal intervention. As with the introduction, the treaties are heavily footnoted. The treaty language has been modernized and standardized.
The publication includes a glossary of the individuals persons and groups that are mentioned in the treaties, as well as a detailed index.

Mark W. Podvia
Associate Law Librarian, Legal Research Professor and Archivist
The Dickinson School of Law of the Pennsylvania State University


*M’Culloch v. Maryland*, 17 U.S. 316 (1819), is one of the most important constitutional law cases decided in the United States Supreme Court. The case “marked the high-watermark of the Marshall Court’s nationalism. Its holding—that Article I of the federal Constitution could be read in an expansive way, and that states might not undermine acts of Congress—not only gave teeth to the supremacy clause but also laid a sure constitutional foundation for a strong Union.” (p. ix). M’Culloch in the opinion was actually spelt M’Culloh with no c in it (p.90)

Professor Killenbeck provides a useful history of this landmark case from the early history of the national government in the Washington administration through to the Civil War. In his prologue, Killenbeck presents a brief overview of the case decided in 1819 until the mid-1830s and became the basis of later evolvement of a stronger federal government under FDR. Incidentally, Chapter 1 provides the background to the creation of the First National Bank under President Washington’s administration. Under Andrew Hamilton’s plan for a strong national government, the privately-owned bank would serve as the bank for the United States. The Congressional debates outline both arguments for and against the bank.

The second chapter provides the history of the bank for its twenty-year existence until it was allowed to expire in 1811. The attempt to extend the charter failed because, according to Killenbeck, partly because it was seen as a “British institution” run by Federalists and partly because of state banks’ opposition to the
national bank in taking away their business. His second chapter conclusion quoted Thomas Pickering that Jefferson never forgot this “...signal defeat. Envy and hatred of his rival [Hamilton] have ever since rankled in his bosom; and if he can now destroy the Bank, he will feel the final victory to be his own.” (p.52)

Chapter 3 provides the political and economic conditions rising from the War of 1812 that resulted in the growth of economy shortly after the war that led to the creation of the Second Bank of the United States in 1816. Alexander Dallas, later Secretary of the Treasury, and businessmen like John Jacob Astor, David Parrish and Stephen Girard, worked in 1813-1814 during the war to obtain congressional support for a new bank. The creation of a new bank in 1816 led to the bank opening branches throughout the various states. The first president, William Jones, however, was a weak administrator and did not understand the bank’s role. The bank competed aggressively against the state banks and lent out money unbacked by specie. Killenbeck does not take a stand on whether the bank was the actual cause or contributing factor to the decline of economy in 1818 that resulted in the panic of 1819. (p.66). Newspapers and local governments reacted against the bank which led to a congressional inquiry that found the bank was at fault and Jones was fired as its head (pp.70-71). As debates raged in Congress during February, 1819, at the same time that the Supreme Court began to hear the M’Culloch case.

Killenbeck provides a short overview of the Supreme Court in chapter 4. He reviews the rise of the court under Chief Justice Marshall and the major decisions of Dartmouth College v. Woodward (1819) and Sturges v. Crowninshield (1819) as background to the M’Culloch case.

Chapter 5 is the review of the case. James M’Culloh was the banker for the Maryland branch of the Second Bank, who issues a series of notes without paying taxes imposed by Maryland. He opens the chapter with a background description of James M’Culloh’s life up to the time of the bank. In presenting the arguments before the Supreme Court, most readers know that the court then had no limits upon presentation like today’s Court. The court took nine days for oral argument. Six counsel were the leading members of the Supreme Court bar: Daniel Webster, William Wirt, and William Pinkney for the federal government; Joseph Hopkinson, Walter Jones, and Luther Martin for Maryland.

After nine days of presentation, Marshall took just three days to write his opinion, delivered on March 6, 1819. Killenbeck argues that Marshall gave a fair hearing to both sides and did not write the opinion in advance. Following Pinkney’s arguments, Marshall stressed the constitutional issues of the case, not just for the bank, but for the country itself. He also recognized that his statements would affect contemporary debates over slavery, which was then going on in the Congress over the admission of
Missouri to the Union. He recognized that the bank had been approved earlier by the court. He rejected the idea that the constitution derived not from the people but from “the act of sovereign and independent states.” He presented his nationalist viewpoint that government of the Union, though limited in its powers, is supreme within its sphere of action.” (p.116). He discussed the Constitution as providing a broad outline of the government developed over time and not a detailed rendering. Finding the Constitution’s implied powers provided for the congressional creation of a bank against the narrow construction of Maryland, Marshall rejected Maryland’s right to tax the bank. He rejected the state sovereign’s right to tax an instrument of the national government or they may tax any or every other instrument. He held that “the American people did not make their government dependent upon the States.” (p.122).

The two succeeding chapters deal with the results of the opinion. First, Killenbeck provides the discussion over reception of the decision, especially in Virginia, where Marshall participated as an anonymous contributor to the debate, “A Friend of the Union” and “A Friend of the Constitution,” the only time in American history, where a sitting justice participated in such an extralegal controversy while sitting on the bench against his fellow Virginians, Brockenborough and Spencer Roane.

Second, the Virginian controversy expanded to the other major newspapers of Philadelphia (Aurora General Advertiser), Lexington, Kentucky (Argus of Western America) and Niles Weekly Register, where the editors were major critics of the court’s decision. Killenbeck also points out that both Madison and Jefferson questioned the court’s decision, with Madison’s discussion of judicial review, while Jefferson supported the states’ rights position.

In chapter 9, the author discusses the history of the Second Bank over the next decade and the political debates surrounding President Jackson’s opposition to the bank. His election in 1832 was seen as a referendum upon the bank; thereafter, his removal of deposits, unconcern about censure in the senate, and the house’s opposition to the bank in 1834 led to the bank’s failure and the expiration of the charter on March 4, 1836.

In his final chapter, Killenbeck discusses the possible resurrection of the bank in the 1840s, the use of M’Culloch as precedents in the Legal Tender cases and more recently, U. S. v. Lopez (1995), U. S. v. Morrison (2000), and Gonzales v. Raich (2005).

In the Epilogue, the author presents the remaining years of M’Culloh’s life. As bank teller, he had embezzled more than $1.5 million from the bank and lost his position in May 1819. Suit was brought against him and another bank member, but eventually was acquitted. He regained his reputation over the years, becoming First Comptroller of the Treasury in the 1840s, and died in 1861.
Killenbeck writes a short, readable history of the \textit{M'Culloch} case and places it in historical context of the era. His work, as are other books in this series, successfully achieve the general editors and Press’s aim to provide Landmark cases a valuable addition to the constitutional literature of the United States Supreme Court.

Joel Fishman, Ph.D.
Assistant Director for Lawyer Services
Duquesne University Center for Legal Information/Allegheny County Law Library


The history of criminal law in England has attracted the attention of many historians over the centuries and a bibliography of such books is a long one and will only increase in coming years. The amount of raw materials found in scattered archives throughout England is voluminous and is beyond the ability of any scholar in a life time to examine. The author has made extensive use of these records from several English counties to establish his thesis that many advances in the English criminal law were caused by outside forces rather than by statutes passed by Parliament in the Nineteenth Century which were supplement by papers issued by Parliament of findings in different areas of criminal law upon which so many commentators have relied. This illustrates a factor often overlooked by historians is that such statutes do not signify an abrupt change for change may have taken place in the public attitudes prior to its enactment. The author focuses on two groups, juveniles and women, plus documenting the changing attitudes towards the criminal by charts and statistics to substantially prove his thesis that outside and often nonlegal movements have influenced changes. One should not be surprised there was local variations on many of these attitudes in different regions. The author has examine the existing literature exhaustively and offers his comments on the findings of previous scholars.
Law is influenced by so many factors which are not obvious to the casual observer. In examining why prosecution of juveniles decline around 1820 in London, the author identifies one factor which was the transfer of such cases to summary courts where possibly more leniency was shown as long as it did not involve property. Society has long taken a dim view of damage or thief of property. As the Nineteen Century opened in England, industrialization was taking place and children were employed in factories which some would argue would keep juveniles too busy to get into trouble. However the factories could not employ many of the population of this age group leaving many children to roam the streets and country side. The author addresses the issue why the decline in prosecution of juvenile and he examines a number of theories, and the decline in possibility of employment is often the universal reasons given. However, some blamed their employment in factories as a cause for young people turning to crime. The author then explores this increasing juvenile delinquency by a change in agricultural practices which at one time, employed this group. Although this reviewer has used the term “juvenile delinquency”, this was not recognized as a crime as it later became.

Of great interest to this reader was the examination of one case known as the Great Gleaming Case of 1788 which demonstrates the many customs that any land title in England was burdened. In this case, it was recognized custom of the members of some parish having the right to enter upon the field after the owner had gathered in his crop, to gleam or harvest the remains of the crop. This was a useful right for it made it possible for the poor and small land owner to gather food for themselves and relieve the parish of supporting this group from use of local funds for this purpose. The author suggested that those who brought this action were motivated by price of barley and wheat and he goes into great length to examine prices and disproves the suggestion of other writers that prices were inflated by a perception that the bad weather would cause a surge in prices - neither of which was true judging from the existing records. The culprit was to enclosure of land by the large landowners who sought to take in more property from the small land owners. One landowner interested in this suit who was expanding his own property was a gentleman familiar to American history, General Cornwallis.

The chapter on change of attitudes towards the punishment of women leaves in doubt whether punishment for women were any more lenient than for men for the various crimes. Many factors enters into the equation of trying to draw any definite conclusion in any attempt to ascertain what factors governed the sentence handed out to a defendant. In our century, it was found that the uniform sentencing guide lines have definitely proven to be unsatisfactory for a great many reasons. This applies equally to sen-
tences imposed in passed centuries for so much is omitted from the official records that it is impossible to determine if two defendants charge with the same crime did exactly the same thing. It is obvious that certain judges consider their roles in sentencing to put the defendant away for as long as possible as an example to others or to see that they hang. It has always been argued by unenlightened public that making an example will reduce crime. We do know that judges do have different attitudes about crimes and punishments which is a factor that cannot be qualified with certainty. So many factors about the defendant can not be quantify in as the preparation of statistics would require as this chapter so aptly demonstrates.

This book ranks as an outstanding contribution to an understanding of this changing attitude towards different aspects of the criminal system. It does looks behind the surface to identify factors which influenced the change in attitudes towards crime but this reviewer doubts that much has changed over the history of criminal law. However, this volume with its analysis proves that it is a difficult task to quantify crimes that it can be neatly wrapped in statistics or general conclusion.

Erwin C. Surrency
Emeritus Professor of Law
University of Georgia School of Law


Professor Levinson, University of Texas Law School, has been described as “the most imaginative, innovative, and provocative constitutional scholar of our day.” (Walter Dellinger, back cover of book). Levinson’s thesis is simple. There are structural problems in the federal Constitution that create unjust or ineffective government that need to be addressed by the population at large through an ongoing debate and referendum.

Professor Levinson opens the volume with a substantial quote from Thomas Jefferson who wrote “Each generation is an independent as the one preceding, as that was of all which had gone
before. It has then, like them, a right to choose for itself the form of government it believes most promotive of its own happiness.” (p.ix).

Starting with an introduction in which he stresses the incompatibility of the Preamble in relationship to various sections of the Constitution, he rejects the veneration that people have for the Constitution, observing the views of Madison, Jefferson, and others that change could be done after a period of time. According to Donald Lutz, a noted authority on constitutionalism, under Article V we have the most difficult constitution to amend today.

In five chapters, Levinson lays out the structural problems with the Constitution that he summarizes in his conclusion (p.167):

• The allocation of power in the Senate
• The almost certain presidential dictatorship that will follow any catastrophic attack on members of Congress
  • Excessive presidential power
  • The Electoral College
  • The hiatus between the repudiation of a sitting president and the inauguration of a successor
  • The inability to get rid of an incompetent president
  • The functional impossibility of amending the Constitution with regard to anything truly significant.”

He also is critical of life tenure for U.S. Supreme Court justices and the creation of second-class citizens. To remedy these deficiencies, Levinson recognizes that some of the problems can be addressed through constitutional amendments. More importantly, Levinson recognizes that ordinary politics will not solve the problems outlined in his work. He believes people first have to realize that there is abuse (and a problem), and that secondly, something must be done about it (p.172). He calls for a national referendum upon the problem, influence the state governments to petition to call a constitutional convention upon the approval of two-thirds (34) of the states, or following the work of James Fishkin of Stanford University, he suggests a series of “deliberative polling” of groups throughout the country that would lead to a national referendum.

Professor Levinson’s arguments are based on a broad knowledge of history and contemporary affairs as demonstrated throughout the book. He goes beyond the pure academic discussion with his attempt to initiate change. President Bush’s increasing use of executive authority and the inability of the Congress and Court to address executive powers has drawn significant attention through more popular books upon the same
matters as Levinson; see John Dean’s *Broken Government* (2007) and Naomi Wolf’s *End of America: A Letter to a Young Patriot* (2007). Although not the final word on the subject, Professor Levinson presents a cogent, lawyer-like, reasonable arguments for his position. This is a must read for all of us.

Joel Fishman, Ph.D.
Assistant Director for Lawyer Services
Duquesne University Center for Legal Information/Allegheny County Law Library


*Mapp v. Ohio*, a case that raised a variety of judicial issues, proved to be a landmark decision in America. Long takes the reader through the case from beginning to end, illustrating the illegal search that took place at Mapp’s home, the step-by-step judicial process, and the final decision that changed American history.

This book provides a thorough overview of how the *Mapp* case moved through the court system. Long discusses the judicial process, how the case was handled by the prosecution, defense, and judges. The main focus of the book revolves around the key issues that eventually secured the freedom of Dollree Mapp, and changed both police behavior and the law in America. *Mapp v. Ohio* consists of eight chapters, epilogue, a four page chronology of events, a list of relevant cases, and bibliographic essay. An eight page index is helpful for keyword searching and general reference.

Long provides both a brief biography of Dollree Mapp, the defendant in the famous case, as well as an explanation of the social and political environment in which this case took place. After laying this groundwork in the prologue, Chapter one illustrates the illegal search and seizure by the Cleveland police that took place at Mapp’s home in Cleveland, Ohio, 1957. This important first chapter sets the stage for the reader, supplying the necessary background information for the rest of the book.
Mapp v. Ohio revolved around the fourth amendment, and the federal exclusionary rule, which states that any evidence seized illegally would be inadmissible in a court of law. The exclusionary rule proved to be a key issue in Mapp, since the police searched her home and seized “obscene” material without a warrant. The second chapter, entitled The History of the Fourth Amendment and the Federal Exclusionary Rule, explores the meaning of both elements, and how each has been dealt with in the court system. This is particularly helpful for the reader who has a limited legal background, as Long explains the history of the Fourth Amendment and the exclusionary rule, without overburdening the reader with unnecessary legal jargon. Long goes into detail about how the Supreme Court justices dealt with the case from the oral arguments to the many different versions of the majority opinion, which Justice Tom C. Clark was appointed to write. The fourth chapter entitled, The Supreme Court Deliberates, follows the case through the process, but more importantly, focuses on communication between the justices regarding the opinion. Long offers much insight as to the justices’ thoughts and musings about the case at hand, what precedents should be upheld or overturned, and the true intent of the First, Fourth and Fifth Amendments. Long includes quotes taken from notes and responses to opinion drafts written by the justices, providing an honest glimpse into their heads while capturing the “push and pull” dynamic of the Supreme Court justices.

After much discussion, debate, and opinion drafting, the Supreme Court handed down the final decision in Mapp v. Ohio. While many states had already adopted the exclusionary rule, now under the Fourth Amendment, all states were required to exclude any illegally seized evidence. This in turn had a major affect on how police searches were conducted. Long closes her book with discussion of how Mapp v. Ohio has been cited and criticized over the years, proving that the same issues that determined Dollree Mapp’s guilt or innocence are still relevant today.

Long’s narrative of the events that took place make for a straightforward and interesting read, even for the non-legal scholar. In 200 pages, she manages to educate the reader in a compelling manner, while maintaining a scholarly tone.

Lauren L. Vucic
Librarian
Pepper Hamilton, Pittsburgh, PA
The current conflict in Iraq shows that the debate about the laws of armed conflict is still flourishing. The Bush administration’s use of the preventative war theory, the newly developed category of “unlawful combatant” and Russian President Putin’s attack on the U.S. action as violating the U.N. Charter all highlight areas which have been in conflict for centuries. This book traces the dynamic nature of the laws of war and armed conflict with their changing theological, philosophical and legal bases. Although some of the early history brings in Chinese and Islamic understandings, most of the book is focused on Western understandings of this area of international law.

The first issue nation states needed to address was the fundamental question of the natural state of the world. Is the state of the world one of peace, with war as an aberration, or one of conflict, where peace is the exception? The earliest Western theories, based on natural law, saw the natural state of the world as one of peace. This led, with influences from Christian theology, to the just war theory and its variations. By the time of the 17th & 18th centuries, a formalistic approach to international law is also reflected in the law of war. Grotius was one of the major proponents of this new vision. With Hobbes, the move away from the just war theory is complete, with strife seen as the natural state of the world. During the 19th century, war had reached its’ pinnacle of prestige and was an accepted way of doing business between states.

Neff denies that one can say that the law of war evolves in terms of a progression because elements from earlier time periods reappear in slightly different versions. Thus, the League of Nations goes back to the just war’s idea that the natural state of the world is peace and that intervention may only occur in certain limited circumstances. Neff does argue that since 1945 we have been in a period of reconceptualization where wars of national liberation, civil conflicts and the war on terrorism are changing traditional understandings of lawful intervention, status of combatants and the like.

The second major issue nation states needed to face was when conflict should be handled under the criminal laws versus armed conflict. This distinction affects a variety of issues such as the type and amount of force that may be used against opponents (however styled), the location of the action (i.e. law enforcement is limited to the nation state’s territory with very limited exceptions), a person’s status, right to trial/due process and treatment under
various conventions. The book addresses this issue as it arises during various historical time periods but notes its' importance during the post 1945 period with the civil conflicts and war on terrorism.

The book is true to its subtitle, a general history. Issues such as how to start a war, who are proper combatants, prohibitions of actions, status of neutrals, and legitimate peace terms are discussed in each section but without detailed references to the various Hague and Geneva conventions. The book includes a table of cases and treaties and an extensive bibliography of both primary and secondary resources.

The book is easily accessible to someone without a background in international law but with enough references for the more conversant to probe deeper. Even though it is general, it is well nuanced. It is a valuable introduction to this area of law and provides some useful insights into the current debate over armed interventions.

Barbara Fritschel
Librarian
US Courts Library, Milwaukee, WI


It is generally accepted by scholars that the ecclesiastical courts in England entered into a period of decline after Henry VIII’s reformation although this dramatic change was not exclusively due to these events. This in no way detracts from the importance of these courts in the life of those living outside London for many social functions belonged exclusively to these courts such as probate, care of the poor, and more importantly, its criminal jurisdiction over certain immoral conduct or sex crimes. During the period covered by this book [1500 - 1860], the local Englishman could make several appearances before these courts in his life time. The costs and other financial demands contribute to the unpopularity of these courts and their abolishment in the Nineteenth Century.
There never was just one ecclesiastical court but several hundred, all established by the authority of the local bishop ordinary in each diocese of the Church, some with picturesque titles such as the Court of Arches in London, which had jurisdiction of appeals from the other ecclesiastical courts within the province of Canterbury. The other courts within the diocese included the Consistory Courts, the archdeacon courts and the Bishop’s Court of Audience. The author classified the functions of these courts as having a corrective function, an adjudicative function, courts for verification and record, and licensing function.

The author has examined a number of records of these courts and as other scholars have done, extrapolated from their findings to reached conclusions on their business in the Kingdom of Great Britain. No one can quarrel with this approach for this is only possible method to reach any understanding of the work of these judicial bodies performed in different periods.

Its corrective function extended to both cleric and laymen, for as the author argues, this area of their work maintained a social harmony in the community. The church wardens were urged by the bishop to report those who swore at their neighbors or assaulted them in any way, either verbally or physically. The individual who was intoxicated or failed to attend Church, or was caught playing cards during Church services, or was accused of adultery, were surely summoned before the Bishop or his representative. The author notes that the greatest number of cases were for sexual offenses, some of which were later made into a criminal offenses such as the unexplained death of a newly born child or adultery or sodomy but with what success is a matter of continued debate.

The one responsibility which impacted the greatest number of citizen was its jurisdiction over probate matters and this lead to abuses. At death, the priest was liable to be the last person to see the deceased before his final passage beyond this world and allegedly would urge a substantive gift be made to the Church which would assure better treatment in the next world. This led some American states to require such gifts be made a period of time in writing before death.

The most intriguing cases were those involving tithes but these cases were not limited to money or goods owed the Church. However, many of these cases were obligations to receive or pay tithes which went with certain properties purchased after Church properties were confiscated and sold to the laity. These obligations accompanied the ownership of real estate.

Not only did the bishop or his delegate licensed ministers, but school teachers and midwives. The author used this as an example of how Church functions could support the civil authorities. The midwife was obligated to have the mother name the father to prevent her from becoming a burden on the county as required
under the poor laws. The Church issued marriage licenses which accounted for a substantive income.

Over the period of years, scholars have offered their suggestions why these courts declined in importance after the Reformation in the Sixteenth Century, but many of these theories are unpersuasive. The author has examine many of them and offered evidence on their validity, often based upon a count from the original records of the decline in the number of such cases at different periods. After the Reformation [1640 according to the author] these courts were subject of many complaints over the centuries. Often in legal history, a certain minor change have consequence unanticipated at the time. One such example was a statute giving justices of the peace jurisdiction of tithe cases where the amount was less that 40s, which certainly eroded the business of the ecclesiastical courts. As becomes evident in this account of the several Parliamentary acts adopted over the period of the three centuries of this coverage, had the effect of making it possible for individuals to go into other forums, namely the Chancery Courts.

It is highly unlikely that many suitors were sophisticated enough to prefer one forum over the other and hence, the legal profession made the choice. This reviewer would not offer a historical analysis of this interplay but with the number authorized to appear before any English court limited, it is possible that the profession would prefer to take a case to the court in which he is qualified to appear, a factor which the author explores. To follow the decline of these Ecclesiastical courts, the author takes classes of cases such as defamation suits and punishment of dissenters, and follow their decline by statistics in number of this type of cases. All of this interplay between all these factors are difficult to recount but the author and editor [for the author died and the manuscript was completed by Prof. R. H. Helmholz] have done a masterful job in using such a vast amount of original records in producing a readable and scholarly book. The history of ecclesiastical courts is an interesting part of the judicial history of English courts which in turn, impacted judicial bodies in the American colonies.

Erwin C. Surrency
Professor Emeritus
University of Georgia

Rudolph Peters’ *Crime and Punishment in Islamic Law* (Cambridge, 2006) is a history of the *Shari‘a*, Islamic law, from the Ottoman Empire through its eclipse in the nineteenth century. It is also an examination of the current practice of those states that have revived Islamic criminal law and punishment. Peters’ book has been offered as a casebook, and in that capacity it has a great deal of value. As an appendix, Peters has included a glossary of Arabic terms, consisting of the forms of punishment and descriptions of classical jurisprudential theories. In addition, a section listing recommended further reading for each chapter will be beneficial to those requiring more study.

As Westerners, as Americans in particular, our knowledge of the Islamic world has been limited. The author is Professor of Islamic Law at Amsterdam University, and has written extensively on the subject, including a history of *Jihad* and on *Shari‘a* in Northern Nigeria. He understands the conventional Anglo-American legal scholar’s gaps in understanding and has tried to convey the power and complexity of Islamic criminal law without unnecessarily obscuring matters. To this end, helpful geographical maps and charts have been added to the text. I suggest that another aid to comprehension would have been the inclusion of sections explaining the traditional division between Islamic criminal and civil/business law, which does not follow common-law practice at all.

In classical Islamic *fiqh* (jurisprudence), Peters describes the three chapters of criminal law, which are defined by the identity of the victim, the harm done, and whether the punishment is fixed in the Koran or is discretionary. The first involves offenses against persons, somewhat comparable to Western tort law. This is further divided into the two forms of punishment imposed: *qisas*—retaliation for crimes such as homicide or wounding; and financial compensation—*diya*. The second covers offenses against Allah and those mentioned in the Koran or *hadith* (words of the Prophet). These have mandatory fixed punishments (*hadd*):

1. theft (return of goods, amputation)
2. banditry (cross amputation, crucifixion, or banishment)
3. unlawful sexual intercourse (lapidation, banishment, or flogging)
4. unfounded accusation of 3. (flogging)
5. drinking alcohol (flogging)
6. apostasy--departure from Islamic religious practices (flogging, death by the sword)

The third area concerns punishments for other forbidden behavior, among them endangerment of public order or state security (ta‘zir). Authorities are given wide discretion to enforce and penalize these offenses. With reference to both historical and contemporary cases, Peters communicates a sense of the multifaceted aspects of Islamic criminal law, particularly in the determination and carrying out of punishments. Despite the straightforward appearance of the hadd offenses, for instance, Peters cites to cases in which the punishments differ greatly from those stipulated.

Chapter 5, Islamic Criminal Law Today, is a thorough review of five of the seven nation-states which have revived Shari‘a and the degree to which each have implemented it. These states, Saudi Arabia, Sudan, Iran, Pakistan, and the northern states of Nigeria, have restored Islamic criminal law mainly for political reasons, and have also come under scrutiny from the West for human rights violations. The criticism mainly derives from the valuation of women and non-Muslims in the law as half that of Muslim men; also in the use of crucifixion and lapidation (stoning) as punishments. In most Islamic legal jurisdictions, criminal responsibility begins at puberty, usually designated as nine for girls and 10 or 12 for boys; therefore capital punishment can be imposed on children, at least theoretically. In practice, crucifixion, stoning, and the execution of children has not been widely, if ever, reported in the past few decades. The response to the criticism has been that Western nations, including the United States, have imposed death sentences on minors, have tortured prisoners of war, and have had detainees in prison for years without requiring them to be charged. This does not bar criticism of the Islamic states, but neither does it help those states to form the political will to reform.

It is interesting to read this book after Saddam Hussein’s execution. Although the Constitution of the new Republic of Iraq explicitly recognizes Islam as the official religion of the Republic, it is widely believed that this is a concession to the majority Shiites. Criminal justice under the current law is left to the provinces, and hanging is not a form of punishment mentioned in the Koran. The reaction of many in Europe and the United States to the execution, however, shows that “Islamic justice” is seen as nearer to the Old West than to anything in our 21st Century law courts. Peters’ book should be read by anyone interested in testing that point of view.

Janice Selberg
Director of the Law Library and Information Technology

Various law libraries have manuscript collections that are useful for understanding legal history and legal research. Recently, academic law libraries (Alabama, Boston College, George Washington, Pennsylvania, Texas, for example) have worked to make parts of their special collections more available to a wider readership than their own legal community through the publication of various publications, e.g., catalogs, oral histories, etc.

Our colleagues, Paul Pruitt and David Durham, have produced a short, interesting volume on examples of commonplace books representing four centuries of legal history. In their introduction, they observe that note taking has had a long history, even before the publication of the printing press, but it was in the early modern period of sixteenth- and seventeenth-century England that it expanded. The term commonplace book derived from “common places,” or shared categories of rhetorical inspiration.” (p.11). The legal profession expanded its use of commonplace books with the publication of statutes and court reports to record precedential rules and cases. The use of commonplace books continued down to the nineteenth century, but Professor David Hoffman was one of the last scholars to continue to an older tradition in the first half of the century. Various legal publishers printed blank commonplace books in mid-century for the practicing bar, e.g., *The Lawyers Commonplace Book With an Alphabetical Index* (Little and Brown, 1845). By the middle of the century, Blackstone’s and Kent’s *Commentaries* provided a structure to American law which led to general practice note books that the practicing bar could use. Later, the development of the West reporters and digests affected practice notebooks of the late nineteenth and early twentieth centuries.

The volume contains seven selections of notes. Each chapter provides a short biography of the person and a description of the
commonplace book along with a transcription of several pages and a picture of the original pages. The two librarians coauthored and transcribed most of the documents with Timothy Dixon assisting on Walker’s notebook and Prof. Freyer contributing to Judge Black’s notebook.

The seventeenth century selection is from an unknown owner, in different hands, that contained household memoranda and recipes as well as legal notes on trials and moots. There is an index of legal terms derived from several printed digests (Brooke’s Graunde Abridgement, Rastelle’s Collection of Entries, etc.)

Alexander Dorcas’s ledger of a merchant and lawyer from the early Republic (1785-1817), who lived in upstate New York (Ulster County) represents various transactions that he performed for his clients as well as his merchant accounts using a double-entry system.

George Josiah Sturgess Walker’s notebook is his lecture notes from Tapping Reeve’s Litchfield Law School in 1826, where he was a 19-year-old student. This example posted deals with Professor James Gould’s lecture on slavery.

Thomas K. Jackson’s diary is that of a post-Civil War merchant and farm manager, who lived in Alabama, and was the son-in-law of the prominent lawyer, judge, and state senator, Turner Reavis. Reavis published the first Digest of Alabama Reports (1850). The diary includes information concerning his merchant activities as well as family history.

James Thomas Kirk was a lawyer for more than fifty years (1880-1933). He was a successful advocate, who had 133 cases before the Alabama Supreme Court. His notebook, dated April 1, 1891, consisted of 316 pages of which there were sixteen pages of printed lists of subjects with blank pages for note taking. He added thirty-two of his own subjects to the index. Notes on cases with their citations continue down to 1916.

Jerome T. Fuller was a lawyer in Centerville, Alabama from 1896 until his death in 1935. He was a successful lawyer, who practiced criminal law and civil law including the representation of personal injury actions against lumber companies, railroads, and other corporations. His notebook (from 1925 to 1935) is a looseleaf binder with typewritten summaries of cases and topics with handwritten interlineations updating the typed information. It is not organized along the lines of the earlier notebooks, but is based on specific cases and statutes that affected his particular practice. (p.99) He cited West Publishing Company materials and is considered by Pruitt to be “a modern law office...” for which [his] notebook was a practical device, a portable filing cabinet keyed to the books on his shelves.” (Id.) The entry shown is for a dispute over land ownership with a list of forty-six points to be proved in the case of Vernon v. Mrs. O. D. Street (1932).
In the final chapter, Prof. Freyer discusses the Justice Hugo Black's notebook of 135 leaves (dating from 1938 to 1940), when he began serving on the U.S. Supreme Court. The notebook is important for “it suggests how Black adapted to the new role of Justice. It also provides insight into the institutional workings—certainly the work habits—of the Court.” (pp.110-111) The notebook reveals Black's mastering of “theories, precedents, and doctrines underlying the issues arising from the liberal constitutional revolution that began in 1937.” (p.112). Freyer illustrates his points through a further exploration of the notebook and in two topics that provided background for decided cases: confessions in Chambers v. Florida (1940) and voting rights in the two cases of U.S. v. Classics (1941) and Smith v. Allwright (1944).

The authors are to be commended for the well-written and scholarly introductions to these commonplace books. The Law School is to be commended as well for the publication of the volume and making it free to all who may wish to possess this useful work. It is hopeful that other academic law schools will begin to publish some of their commonplace books associated with major legal practitioners to better understand a neglected factor in the development of legal education and legal practice in American legal history.

Joel Fishman, Ph.D.
Assistant Director for Lawyer Services
Duquesne University Center for Legal Information/Allegheny County Law Library


John Reed (1786-1850) was the founder of the Dickinson School of Law in 1834. As the president judge of the Ninth Judicial District, Reed prepared his work probably in anticipation of using it as a coursebook for the new law school that he was creating. Reprinted for the first time by Law Book Exchange, Professor Wil-
liam Butler and Mark Podvia of Dickinson Law School, the former Professor of Law and the latter Associate Law Librarian and Archivist, present a useful introduction to the work to place the author and the books in their proper historical perspective.

The authors provide a short biography of Reed, drawn from his own reminiscences as a young man, his early career, judicial career as President Judge of the Ninth Judicial District, and following his judgeship and Professor of Law, his return to the practice of law. He served as a trustee of Dickinson College (1821-28) and took part in the planning of the expansion of the College. On June 8, 1833, upon the 50-year anniversary of the college, the Board of Trustees met to approve Reed’s plan to begin a law curriculum with him as the “Professor of Law in connection with Dickinson College.”

Reed’s book was announced for publication in December 1830, and it was available for sale by July 1831. The authors posit that the huge success of Blackstone’s *Commentaries* in the United States led Reed to use it as the basis of his work. In 1803, St. George Tucker adapted the *Commentaries* for his treatise on Virginia law that was a leading treatise in antebellum America. The authors recognize Hugh Henry Brackenridge’s contribution to legal literature in his *Law Miscellanies* and his unfilled promise to compile a work similar to Tucker’s. (p.xi). They conclude that “Reed produces not a version of Blackstone’s Commentaries, but an original work of comparative legal scholarship in which the law and legal developments of a republican commonwealth are superimposed upon and injected into the intellectual legal bedrock from which they originated.” (pp. xi-xii).

Because of Brackenridge’s higher visibility, he has sometimes been referred to as the “Pennsylvania Blackstone” by those who may not know of Reed’s work. But Reed should be credited with that title because of the extensive work he provided for in the three volumes. His work reprinted much of Blackstone’s *Commentaries* first three volumes (omitting criminal law of the fourth volume) interspersed with commentary upon Pennsylvania law. Though St. George Tucker has received much more recognition and discussion by legal historians for his similar work on Virginia law; Reed’s work still needs to have full-length treatment. A cursory read through the three volumes shows an erudite work, with Reed’s commentary interspersed throughout each chapter along with citations to a multitude of Pennsylvania cases from the nominative reports of the period along with treatises like Kent’s *Commentaries*, and Samuel Robert’s *A Digest of Select British Statutes...* (1817), etc.

The editors recognize that the effect of the book on legal scholarship was “problematic.” (p.xii). It is uncertain how many copies were published and distributed throughout the United States. Although they cite only twenty-five libraries in OCLC pos-
sessing hard copies, OCLC holdings show that there are at least another 75 libraries with microform or internet copies. But even 100 copies available in paper or fiche is not a significant number, and other libraries may not have cataloged it yet (including my own).

The editors also posit the possibility that Abraham Lincoln had used Reed’s work to learn the law which has been a topic of discussion for many decades, since Lincoln never identified which edition he had used. (pp. xiv-xvi).

Of George Fleming, printer of the original volumes, the editors recognize him as a leading printer of newspapers, religious works, etc in Carlisle. The editors note that Reed’s work was the largest publication that he printed in his career. In 1833, Fleming made another contribution to legal literature by publishing the first edition of volumes 2 and 3 of Charles Penrose & Frederick Watts, *Reports of the Supreme Court of Pennsylvania* that consisted of 1,154 pages.

In conclusion, the editors have provided an important introduction to Reed’s work and the work itself still awaits full analysis. As a reprint, it is expected that Reed’s contribution to the legal literature of antebellum America will be more fully recognized in future legal scholarship. Professors Butler and Podvia and the Law Book Exchange are to be congratulated for reprinting this important early nineteenth-century work.

Joel Fishman, Ph.D.
Assistant Director for Lawyer Services
Duquesne University Center for Legal Information/ Allegheny County Law Library


In antebellum United States, Joseph Story, Associate Justice of the U. S. Supreme Court and Dane Professor of Law at Harvard Law School, was one of the outstanding jurists and legal educators in the country. In addition, his writings of ten treatises on a variety of legal topics were important contributions to the development of American legal literature. This volume is a reprint of
twelve articles that Story wrote for the *Encyclopedia Americana*, a project encouraged by the editor Francis Lieber. Lieber is a well-known German, who was father of political science and later became a professor at Columbia Law School. Story and Lieber had a warm friendship in the 1830s and Story contributed his writings without any enumeration to assist his friend.

Professor Morris Cohen’s introduction reviews the lives of both men, how they communicated with each other, and Story’s work in contributing to the *Encyclopedia*. He places the writings in the context of mid-nineteenth century legal literature.

Story’s articles include Common Law; Congress of the United States of America; Conquest; Contract; Corpus Delecti; Courts; Criminal Law; Death, Punishment of; Domicil; Domicil, in Law; Equity; Evidence; Jury; Lien; Law, Legislation, Codes; Nations, Law of; Natural law; Prize; and Usury. Following the articles, there is a review of the *Encyclopedia America* in the *North American Review* (Jan. 1832). Kurt Nadelmann’s article on *Joseph Story’s Sketch of American Law*, reprinted Story’s article on *American Law* that was written in 1834 and published by Professor Carl Joseph Anton Mittermaier in the German periodical, 9 *Kritische Zeitschrift* 1 (1836). Story’s contribution was an important contribution to German knowledge of American law. Finally, the publisher’s advertising prospectus for the *Encyclopedia Americana* was published. In addition, there is an index to the introduction and essays.

Morris Cohen and Greg Talbot and the staff at The Lawbook Exchange deserve credit for reprinting Story’s writings in this extralegal source, since this volume provide a useful addition to Story’s treatise literature for those interested in Story’s writings and an important view of the specific topics under review in the *Encyclopedia Americana*.

Joel Fishman, Ph.D.
Assistant Director for Lawyer Services
Duquesne University Center for Legal Information/Allegheny County Law Library

When one does research in American legal history, he or she is immediately faced with the question of what precedents did the creators draw on in establishing that institution. He will come across terms like mayor’s court or the court of Husting and wonder where such terms originated. The only charter to a municipality issued by the colonial assemblies was Philadelphia and the contents of that charter suggests that it is based upon the governmental structure of the City of London. After the American Revolution, many features of the charters granted in England were incorporated in those granted to American cities and for that reason, the legal history of the corporation of London has some interest for the American legal scholar.

Before getting into further details elicited in this scholarly book, a few general comments should be in order. When examining English legal history in the time period of this book, the reader is faced with legal concepts not familiar to the present lawyer. One of the obvious strengths of this book is the author’s explanation of the terms and the legal concepts behind them without overburdening the readers with the arcane details, a feature which aids the reader a great deal. The text is based upon thorough research in original existing records of London and other boroughs in England. London was not the only municipality that had received a charter from the king during this period, but the author observes that it was the chief city in England for many reasons and hence this status makes its legal history of greater interest. The author does not neglect to review some developments in these other boroughs such as the establishment of the office of recorder, who had to be trained in the law after 1385. (p.240) The author traces the growth of professionalism of the recorder and its differentiation from other officers but the difficulty is how the office came into existence for it is apparent that the city governing body had often sought sound legal advice long before the formal establishment of this office. The one office that is not discussed in greater detail is that of the mayor who sat as judge in several of the courts in London. It appears in many of the early American cities that by tradition inherited from England, the mayor held a court without a specific provision in the charter of a municipal body directing him to do so.

The customs and privileges granted the city in their charters were murky for what legal concepts did they embrace and who enforced them is addressed by the author. One such source were the courts including those in London and the King’s central courts. Several city officials compiled manuscripts recording
these customs which are of great value. Chief among these liberties was the ability to alienate real property free of the restrictions imposed by law in the other parts of England. The first chapter surveys the extant records of the period covered by this book which enables the reader to appreciate the complexities of the many contradictory threads in this history. It is well known that London had its own series of courts but how independent of oversight by the King’s courts through appeals or other forms of judicial review varied by the decades that are investigated. The author contends that these courts in London were not completely independent of the King’s Courts. This issue is examined in the final chapter where the author argues that the city courts could not escape the influence of the common law as developed in the courts at Westminster. The Central Court at Westminster which attracted some of the judicial business of the citizens of London was the Court of Chancery which had a role in the interpretations of what constituted the privileges of the city. The author confines her research to the major courts of the city and not other judicial bodies including the private courts known technically as sokes and Church Courts. What complicates this survey is the habit of the courts to sit in separate sessions to consider different types of business initiated before them.

In explaining the jurisdiction and some of the working of the courts, it is necessary for the author to get into the details of procedure. Those who admire common law pleading will enjoy reading these segments of the book and especially the chapter on the administration of these courts where procedure played a vital role. It is impossible for any one to put a definitive founding date for any of these judicial bodies, although the Sheriff’s Courts seems to be the oldest and apparently existed several centuries earlier before the city received its first charter. A minor flaw of this excellent history is the lack of a general overview of the charters given by the Kings to the city upon which arguments about the city “liberties” were based.

Offered in this book is an account of the establishment of the legal profession in the city between 1300 and 1550. In discussion of the history of the recorder and the common serjeanty, it become clear that the aldermen of the city government sought legal advice from these two city official. As the author notes, the records reports many occasions where individuals appear for litigants but whether they were personal substitutes or assisting in some form in the litigation is not clear from the records. Seeking legal advice and representing a client are two different functions for it is clear that the concept of representation was slowly granted to certain groups. Since the city had its own series of courts, it became necessary that a group who regularly appeared on the behalf of clients should meet some qualification for as early as 1280 A.D. it was noted that some individuals who offer
their services as counters or advocates “who did not know how to speak properly”. (p.275) It was the Sheriff Court that first required those seeking to represent clients to be formally admitted which was done in 1280 A.D. but no requirements for admission are contained in this document. At first, the clerks would appear for litigants until this practice became prohibited. As early as 1244, the Kings justice in eyre prohibited aldermen of the city could from rendering an opinion in any case where they had been consulted by the parties. (p.275)

In summary, this book is very instructive for those who are interested in the early origins of English law. This history has many themes running through the text which require close study. The authoress has made a contribution to this early history by her organization of the material she found during the course of her research. A reading of this books reveals that she has devoted many years in study of these early records which often requires many visitations in any effort to extract any trend for it should be understood that the clerks who created the official record did not have any thought of preparing a organized history by his entries. Thus, structuring this multifarious material into a structured account is an accomplishment to be applauded.

Erwin C. Surrency
Professor Emeritus
University of Georgia


Included among the materials in the U.S. Senate’s art collection is a large collection of graphic art from the nineteenth and early twentieth centuries. The United States Senate Catalogue of Graphic Art contains almost 1000 prints from this collection, most of them taken from magazines such as Harper’s Weekly, Frank Leslie’s Illustrated Newspaper, Puck, and The Judge.

The book is divided into eight “thematic chapters:” Senate Chamber, Capitol Exterior & Grounds, Senate Art, Portraits, Group Portraits, Beyond Capitol Hill, and Political Cartoons &
Caricatures. Within each chapter the prints are arranged chronologically or, in the case of the Portraits chapter, alphabetically.

Among the engravings and daguerreotypes in this book are those depicting the greats and the near-greats. Numerous prints of Henry Clay, Daniel Webster, and John C. Calhoun are reproduced, as are portraits of Jefferson Davis, Stephen A. Douglas and many other Senators. Other prints depict various Presidents, Supreme Court Justices and U.S. Representatives.

However, this book is not limited to depictions of the powerful. In one print, two newlyweds tour the Capitol building. In another, Senate Assistant Doorkeeper Issac Bassett, Joshua-like, turns back the hands of time on the Senate clock to allow a vote on an important bill. Other prints show workmen painting the Capitol dome, reporters racing to the telegraph office to wire their stories, people eating in the Senate Dining Room, and pages delivering messages.

Prints depicting the Capitol’s interior and exterior permit the reader to see the changes as the building was expanded and renovated. Images show both the pre-Civil War copper dome and the present cast-iron dome. The President’s and Vice-President’s Rooms are shown in detail, as are the old and new Senate Chambers and other rooms. Even the heating apparatus in the basement of the building is shown in an 1858 print.

The book also includes prints depicting various events that occurred in and around the Capitol. These range from the inauguration of Ulysses S. Grant to the Impeachment trial of Andrew Johnson to the grand parade of General Sherman’s Army of the West. In one print, Henry Clay rises to introduce the Compromise of 1850. In another, Vice-President Henry Wilson lies on his deathbed in the Vice-President’s Room.

The political cartoons—many drawn by Thomas Nast and Joseph Keppler—are particularly interesting. Some depict issues long past, others show us how little has changed in more than a century. In one, a giant snail, representing the Senate, plods along while those to be helped by the bill it carries languish. In another Liberty tells President Grant “don’t let us have any more of this nonsense. It is a good trait to stand by one’s friends; but—”

The book includes essays written by Diane K. Skvarla and Donald A. Ritchie. In addition, approximately 30 of the prints are accompanied by explanatory commentaries.

The United States Senate Catalogue of Graphic Art is an excellent work that would be useful to anyone with an interest in American history. In addition to the print version, an electronic version of the book is available.

Mark W. Podvia
Associate Law Librarian, Legal Research Professor and Archivist
The Dickinson School of Law of the Pennsylvania State University

Professor Ted White is a well-known legal historian from the University of Virginia Law School. He wrote Oliver Wendell Holmes: Law and the Inner Self (1993) which was a well-received professional biography of Holmes. Now, he has written a much shorter work of a more general nature for the general public and that will serve well for undergraduate and graduate history courses and for those who wish to gain an excellent overview of Holmes’s life.

Holmes (March 8, 1841-March 6, 1935), was the son of a famous father who was a doctor and poet in Boston, Massachusetts. Junior wished to become as famous as his father throughout his early life and did not feel that he accomplished this until late in life. He participated for three years in the Civil War and was injured three times in action. He attended Harvard Law School from 1864 to 1866 and then practiced as a lawyer in Boston for approximately 15 years, until appointed to the Supreme Judicial Court of Massachusetts, where he served from 1882 to 1902, the last three years as Chief Justice. His appointment occurred just six months after he had accepted a teaching position at Harvard Law School which he left immediately upon accepting the judicial position. After twenty years on the court, however, he had not gained the professional recognition that he desired. White explains how court decisions may be good if unanimous; however, in Holmes’s case it restricted his writing and his capability of recognition. In 1902, President T. Roosevelt appointed Holmes to the United States Supreme Court. Holmes came on the court by being a friend of Roosevelt and agreeing with the president’s policy towards the territories brought under control as a result of the Spanish-American War. However, he soon began to disagree with the President in his progressive policies such as dissenting in the Northern Securities Co. v. U.S. (1904). Holmes’s went on to write a number of dissents in influential opinions that reflected his viewpoint that law was decided on intellectual grounds not political grounds. (pp.84-85). He became an “unlikely informer” (ch. 7), in his later opinions from 1905 to 1920s–Lochner v. New York, Adair v. U.S., Coppage v. Kansas, and Adkins v. Children’s Hospital–because his dissents represented “Progressive” movement of the period. It was the association with Felix Frankfurter and other progressives during the same period that led to his growth in reputation among the legal profession and general public. Also, Holmes received the Roosevelt (now Presidential) Medal of Freedom from President Coolidge in 1924 (p.114). Frankfurter spent
twenty years expanding Holmes’s reputation to become known as the ‘Yankee from Olympus.’ White nicely explains Holmes’s contribution to First Amendment law through the *Schenk v. United States* in which he used the “clear and present danger” language, upheld the Debs’ case in 1919, and in *Abrams v. U.S.* (1919), following Zechariah Chafee in a famous *Harvard Law Review* article, gave greater importance to the protection of free speech (ch. 9). Holmes served on the court until January 1932 when he resigned for health reasons, living another three years until his death in 1935.

White describes Holmes’s writing contributions. In his early years, Holmes served as coeditor and contributor to *American Law Review*, wrote his 12th edition of Kent’s *Commentaries* and other essays before publishing *The Common Law* (1881), with the famous sentence: “The life of the law has not been logic; it has been experience.” In his court opinions, Holmes quickly understood issues in a case, tended to write short opinions, and wrote them quickly, within a couple of days of being assigned to them. He liked to write opinions “with style,” using memorable language to give his readers something to think about.” (p.79).

Finally, White takes into account various private activities of Holmes such as his “love letters” to Claire Castletown, the importance of his 1921 radio address, and how his law clerks took care of him at the end of his life.

White includes a chronological listing of Holmes’s life, a short annotated bibliography, and index. For those interested in Holmes, this work is highly recommended.

Joel Fishman, Ph.D.
Assistant Director for Lawyer Services
Duquesne University Center for Legal Information/Allegheny County Law Library

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This is the tenth published volume in the glacial progression of the Oliver Wendell Holmes Devise History of the Supreme Court of the United States, although it is number thirteen in the
chronological sequence of the projected volumes. It is a welcome addition to the distinguished series, covering the period of Chief Justices Harlan Fiske Stone and Fred Vinson, and maintains the high quality of the best of the previous volumes. The two volumes for the period immediately preceding this one and the volume to follow this one are in preparation. Professor Wiecek, the author of this volume, is a Professor of Law and a Professor of History at Syracuse University. He has a PhD in History from the University of Wisconsin and a law degree from the Harvard Law School. He is a highly respected legal historian and the author of several books and many articles in his field.

Most law librarians are familiar with the unhappy history of the Holmes Devise History, but I'll recap it briefly. At his death in 1935, Justice Holmes left the residuary of his estate to the United States and, after a twenty year delay, Congress in 1955 created the Oliver Wendell Holmes Devise Fund and a Permanent Committee to use the Fund to prepare a history of the Supreme Court. The Committee was formed the next year, and the initial assumption of a single author was quickly dropped. Assignments were made (largely to academic scholars) of individual volumes in a chronological sequence by the successive chief justiceships. A contract for publication was made with Macmillan with (in view of the subsequent history) an absurd deadline of 1965. The volumes were to cover the period only through the period of Chief Justice Charles Evans Hughes, i.e., 1941, but in the early 1990s the coverage was extended to include through the end of the Warren Court (1969). So, this volume by Professor Wiecek is not within the original scope of the project.

As most legal historians and many reference librarians now know, the value of the project goes far beyond that of a standard Supreme Court history. There are other histories of the Supreme Court, including histories of the period covered by this volume,

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1 Volume X, covering 1921-30, is being prepared by Professor Robert Post of the Yale Law School, and Volume XI, covering 1930-41, is being prepared by Professor Richard D. Friedman of the University of Michigan Law School.
2 Volume XIII, covering the Warren Court, 1953-1969, is being prepared by Professor Morton Horwitz of the Harvard Law School. It is uncertain as to whether a further extension will be made to include the Burger Court.
4 At that time, it would be worth about $263,000, which today would be over three and a half million dollars.
but few that provide both the internal history of the Court (analysis of the decisions, studies of the individual judges, and dynamics of the decisional process) along with the external history (the outside forces operating on the Court and its decisions and the impact of the Court's decisions (economic, political and social). The original general editor of the project, Professor Paul Freund, was quoted as saying that the history would not merely deal with the decided cases, but would be “history in the broad sense: dealing with the impact of the world upon the Supreme Court and the impact of the Court upon the world.” The focus of the volumes has changed somewhat over the years. While the early volumes tended, with some exceptions, to emphasize the internal history of the Court, beginning with volumes III and IV by G. Edward White on the second half of the John Marshall Court, a broader approach became apparent. Professor White’s volume and most of those that followed went beyond the internal approach of deci-
sional analysis and viewed the Court in the light of the external forces operating on it and the impact that it had on the American society. For law librarians, virtually all of the volumes have been highly useful reference works in which the footnotes were treasure troves of citations to both primary and secondary sources on the internal and external aspects of the Court’s history.

This volume, by Professor Wieck, is very successful in combining both approaches - a keen analysis of the leading cases decided in its period and an expansive study of the context in which the Court functioned and the impact it had on the political, social and economic life of the country. The arrangement of the volume into six parts is basically by large themes, although Part I deals with the Roosevelt Court (i.e., the period from of Harlan Fiske Stone’s appointment as chief justice by President Roosevelt in 1941 to Stone’s death in 1946) and Part IV covers the Truman Court (i.e., from Fred Vinson’s appointment as chief justice by his friend, President Truman, in 1946, to Vinson’s death in September 1953). The themes of the other parts are as follows: Part II, First Amendment Rights; Part III, World War Two and the Constitution; Part V, the Cold War; and Part VI, Civil Rights.

Although these two chief justiceships were among the shortest in the history of the Court and this period is usually considered much less significant than the Hughes Court which preceded it and the Warren Court which followed it, the author of this volume is very persuasive in highlighting its crucial importance. Wieck’s analysis shows how, despite increasingly sharp divisions among the justices, the Stone and Vinson Courts successfully consolidated and expanded the achievements of the later years of the

Hughes Court and laid the groundwork for the dramatic liberal advances of the Warren Court that followed. As a result of Professor Wiecek’s outstanding scholarship and readable style, this volume will make it difficult to underestimate the transitional importance of this period in the history of the Supreme Court. Among the secondary aspects of the volume which I found particularly helpful and praiseworthy were the beautifully written prologue, “First Monday 1941,” and epilogue, “First Monday 1953,” respectively setting the stage and summarizing the work; the numerous illustrations; and the first-rate indexing. The author concludes his epilogue and the book itself with these words which sum up the main theme of his work:

The Stone and Vinson Courts stood on the threshold of the modern constitutional era. American public law crossed over from classical legal thought, with its reassuring but deceptive promise of certitude, to the creative uncertainties of judicial activism in the Warren and Burger Courts.7

This book is without question a major contribution to what has become the essential (although perhaps not always definitive) history of our Supreme Court.

Morris. L. Cohen
Professor of Law Emeritus
Yale Law School


John Fabian Witt’s The Accidental Republic enters the canon of American legal history trailing clouds of glory. Prestigious accolades include Harvard University Press’s Thomas J. Wilson Prize for best first book of the year, the James Willard Hurst, Jr.

Prize from the Law and Society Association, and the William Nelson Cromwell Foundation Prize bestowed by the American Society for Legal History plus fine recommendations from reviewers at various business, history, and legal journals.

The book is well-designed, well-made, and well-researched. Detailed notes and an index comprise a full third of the volume. The lack of a formal bibliography may be only a stylistic omission to some readers, but to others who wish to delve more deeply into the author’s sources that lack is a hindrance. This outgrowth of a Yale University dissertation in history promises to trace the origins of workmen’s compensation law in the United States, comparing the U.S. experience with European models and other alternate avenues of thought and action which result in distinctly different “paths not taken.” Witt accomplishes that intent, but not every reader will agree with his reasoning or his conclusions. One critic calls it the best work we are likely to get on the subject; but when viewed against the backdrop of other theorists, both preceding and contemporary, still others argue that The Accidental Republic has shortchanged us on some perspectives while force-feeding us others.

Witt begins his narrative in the middle of his story, selecting as his departure point a speech by President Theodore Roosevelt delivered at the Jamestown Exposition in June, 1907, on “Georgia Day.” That event occasioned an outpouring of sentiment celebrating national progress and the unity and oneness of a country still suffering the effects of its most divisive war. Roosevelt’s major focus, however, was clearly the problem of industrial accidents and “automatic indemnity for personal injury” as one newspaper heading opined. Witt backtracks to illustrate how we got to this executive expression of American thought, exploring what he sees as the crisis of free labor: industrialization’s attendant increase in workplace injury and death and the means by which legal, institutional and societal entities attempted to facilitate proper recompense for this “most visible of social ills,” the disabled worker, an “injured soldier of the industrial army” who sadly lacked his military counterpart’s compensation for service.

Witt traces the development of administrative compensation for non-negligent work accidents in the context of late 19th and early 20th century torts, delineating the dilemmas and ultimate inadequacy of classical tort law to deal with so great a percentage of deaths and injuries for which the law permitted no recovery. Concurrently, fraternal and benevolent insurance associations approached the problem of workplace injury and death not from the perspective of lofty legal argument but from the practical standpoint of taking care of one’s own. The proliferation of such mutual aid cooperatives was due largely to the fact that commercial life and accident insurance was virtually a closed avenue to most laborers. Ultimately, however, the insurance cooperatives
also proved unable to produce the lasting model for insuring against accidental death and disability in the workplace, due in part to shifting thought in regard to employer liability, worker autonomy, and the reorganization of industry into a more systematic, managerial environment.

Subsequently, Witt explores other “hands-on” influences. He champions Crystal Eastman’s early 20th century study of industrial accidents which described the failure of post Civil War institutions to deal with the “crisis.” Tort law demanded a search for fault before compensation, insurance cooperatives rarely provided adequately, and only the largest employers could adopt their own accident relief plans. Her solution was to enact laws requiring that employers compensate employees injured in the course of their work, fault being irrelevant (except for deliberate wrongful act) and compensation being proportional to the injured employee’s wages. Such a solution was embraced by some ideologues as a precursor to a cooperative economy and just the harbinger of great social programs to come, but legislating a compulsory solution smacked of redistribution and socialism to others. According to Witt, it is that resistance which delayed and derailed attendant social programs to the era of the New Deal and beyond. Witt describes that resistance as more legal than political, however.

The sixth chapter of The Accidental Republic is devoted to an examination of *Ives v. South Buffalo Railway* and the author of the opinion, Judge William Werner. By 1910, it appeared that workmen’s compensation statutes were held in high favor, but no sooner had the first major one been enacted in New York State than it was challenged as an unconstitutional taking. Although the decision in *Ives* was circumvented by constitutional amendments in New York and other jurisdictions and although the Supreme Court eventually upheld workmen’s compensation, Witt sees the case as pivotal and prophetic, standing as it does on the cusp between divergent philosophies. He also finds it underappreciated for the ways in which it changed the character of the compensation statutes and in which it oriented subsequent work-accident reform. He devotes substantial time to analysis of the case and the motivations, both private and public, of the man who wrote the opinion.

In the final chapter and conclusion, Witt contends that with the benefit of hindsight we can say that the threads of his argument all laid the foundation for the American administrative state, his “accidental republic,” accidental in the sense of unintended, unforeseen, and also undetermined.

The likely audience for this work is the legal historian and scholar, and Witt’s theories on how we got from a “crisis of free labor” to the “accidental republic” will provide fodder for contention and argument among that readership. The more casual stu-
dent of American law and society, however, may certainly be
drawn to the book, possibly by its intriguing subtitle: “Crippled
Workingmen, Destitute Widows, and the Remaking of American
Law.” Much of this chronicle of injured workingmen and their
distaff dependants and children in a time before workmen’s com-
 pensement morphed into workers’ compensation will be of interest
to the lay reader, but it is the forays into social history—the few
but poignant vignettes and exemplars of late 19th and early 20th
century life for laborers and their families—that may appeal to a
wider readership. Another section lending itself to broader appeal
may be that devoted to William Werner, the rags to riches judge
in the Ives case, who wrote love letters to his wife from the bench
when bored by the proceedings of his own court, all the while
publicly touting his solemn responsibility to protect the people
from radical and revolutionary encroachment upon the common
law. Ultimately, we can say that Witt has provided us with an in-
tricate, complex, and important contribution to legal and social
history.

Teresa Neaves
Librarian
Mitchell, McNutt & Sams, P.A., Tupelo, Mississippi

Witt, John Fabian.  Patriots and Cosmopolitans: Hidden His-

The author of this work, John Fabian Witt, is Professor of Law
and History at Columbia University. In this work, he sets out four “forgotten” stories of American history designed to illustrate
his view of the United States as a unique nation-state founded
and based on law. They touch upon such diverse topics as the
role of Scottish Enlightenment thinking in the development of the
United States, the pan-African nationalist movement, European
inspired cosmopolitanism, and the development of modern per-
sonal injury law.

In the first of the four stories, Witt relates the tale of a little
known founding father whose personal, economic, and legal phi-
osophies took him to the height of Associate Justice of the United
States Supreme Court and to the depth of debtor’s prison. Witt
posits that like the American legal profession generally, attorney
James Wilson was a study in contrasts. Wilson was in his own way brilliant, but his views relating to “timeless rationality” and the rule of reason were not reflective of the prevailing philosophies of pluralism and the role of the common law. He was a signer of the Declaration of Independence; nonetheless, his home was attacked by rioters and militia during the Revolutionary War. An active delegate to the federal Constitutional Convention, he was appointed to the first United States Supreme Court. He also engaged in land speculation on a grand scale, speculation which ultimately ruined him. Wilson viewed his economic pursuits as being in the public’s interest; this view blinded him to the reality of the collapsing land market. Possibly saved from impeachment by his death in 1798; he died in North Carolina of malaria, spared the ignominy of death in a debtor’s prison by a last minute deal.

Wilson had lived his life expounding a theory of government based on Scottish Enlightenment thinking. He used the image of the pyramid as the embodiment of the concept of timeless reason. An idealist to the end, he never understood that the real image upon which American government functioned was the machine, never perfect, but always being adjusted and adapted. It is Witt’s position that, while lawyers rarely do well in revolutions, the adaptability of the profession in this country, like the adaptability of a machine and of American government, allowed lawyers to flourish even in revolutionary times. In the end, it was Wilson’s inability to adapt that led to his failure.

The second story presented is the story the Reverend Elias Hill, pan-African nationalism, and the Liberian emigration movement in the era of reconstruction. The story begins with a very interesting description of Hill’s upbringing and of the lives of slaves and “free” blacks in pre-Civil War South Carolina. Particular attention is paid to the legal limits placed on free blacks and on owners seeking to manumit slaves. The description reveals a pre- and post-war region with an extraordinarily virulent and entrenched form of racism. This racism set the stage for difficult decisions during reconstruction. Decisions weighing the costs and benefits to members of the black community of staying and fighting for their rights versus leaving for Liberia to seek a better life.

The focus of the tale diverts from the specifics of Hill’s story for a general discussion on black and white views of black citizenship and immigration in pre-Civil War United States. It discusses the irony of the Liberian constitution’s provisions preventing white citizenship. There is even discussion of the debate over how diplomatic recognition of Liberia and Haiti might lead to blacks having to be recognized as equals, as least for Liberian and Haitian diplomats and their families.

The story then returns to upcountry South Carolina in the post-Civil War era. The rise of the Ku Klux Klan, the violence against blacks, the federal government’s response, and Hill’s own
testimony against members of the Klan are described in detail. Hill’s decision and the decision of his Clay Hill company to immigrate are examined and explained as are the difficulties faced by most free blacks seeking to immigrate. When they left, it seemed that the decision by and departure of Hill’s group was more timely than they could have imagined. The federal prosecutions of Klan members had bogged down and cases were being overturned. The United States Supreme Court decided the *Slaughterhouse Cases* and effectively removed the federal government from the picture, heralding the end of reconstruction. The Klan and the violence returned stronger than ever. With the end of reconstruction, the interest in immigration grew exponentially. Sadly, immigration to Liberia had been greatly overrated. Malaria and homesickness took a toll on the immigrants. Perhaps twenty percent, including Reverend Hill, died of malaria, as many as a third of the immigrants died overall. Many returned to America. Some even returned to South Carolina. Those who stayed faced a country in a virtual civil war. Corruption, political infighting, and abuses of the native West African peoples had started the country on a tragic journey that has not ended.

This story concludes, however, not in Liberia, but with a different migration, the Great Migration of blacks from the South to the North. A migration that made a regional problem national. A migration that forced real changes. A migration that the author concludes was linked to the Liberian immigration in that the black Americans who left for Liberia were not exiting at all. When they left, they were seeking to bring the promise of the principles upon which America was founded more fully alive. Instead, they brought with them all the seeds for Liberia’s failure.

The third story tells the tale of how the internationalists seeking a United States of the World instead gave rise to the growth and recognition of the civil liberties we take for granted. Civil liberties which had been neglected for 150 years. The main protagonist in this story is Catherine Crystal Eastman, a co-founder of the predecessor of the American Civil Liberties Union. A 1907 graduate of New York University School of Law, the restriction on women in law prevented her from practicing. She used her legal skills to become active in the early workers’ compensation movement, in the women’s suffrage movement, and in the internationalism movement. Much attention is spent on the theories behind the Ms. Eastman’s version of internationalism which advocated against nation states and argued that boundaries between countries were artificial and harmful. Her version of internationalism is contrasted with the version espoused by Elihu Root.

The tale continues with discussion of the divisions within her part of the internationalism movement. It discusses the extent to which women were excluded from the “conventional” or official channels used for discussion of issues and how this exclusion...
made it necessity for women to take “radical” approaches to issues if they were to be heard. There is even discussion of where in the internationalist continuum President Wilson’s views fit. Then came the first World War and the internationalists were left without a clear forum. Opposition to the nation state, to the government, was seen as unpatriotic and even treasonous. The internationalists were left trying to find a way to continue the discussion of their issues without going to jail. They found their mission changed into one of supporting the rights of free speech, press, and assembly. Through defending these “traditional” American liberties, they were able to continue some part of their agenda to continue the work against what they viewed as the “dangerous abstraction of state sovereignty.”

The last tale presented begins with the unlikely friendship between Dean Roscoe Pound and flamboyant trial attorney Melvin Belli. The author sets forth the theory that the foundation for their friendship was the common desire to limit the growth of the administrative state and expand the field of common law tort law, but that ultimately the administrative bureaucracy which each abhorred came to exist. Their efforts only helped shift the bureaucracy from the state to private parties. There are sections on the upbringing, careers, and philosophical development of each man. The author describes how they first began to work together under the auspices of the National Association of Claimants’ Compensation Attorneys (NACCA). The NACCA was to become the American Trial Lawyers’ Association (ATLA). He also describes what he thinks were the benefits each man received from their work together. This section concludes with an interesting discussion of the development of the American approach to tort law focusing on each man’s contributions to the national debate on the best means for providing compensation for injuries.

The stories having all been told, I must add that occasionally a little less theory and a little more story would have made for a better read. The introductions to each story provide an excellent foundation for understanding the imagery of the stories. Unfortunately, the back and forth within the stories between story line and underlying theory distracts from the underlying strength of the book as a whole. That said, the choice of stories and writing are generally interesting. The author tells four good tales. Four tales from our history which can rightly shed light on the interplay between law, legal philosophies, and history.

Lucinda Harrison-Cox
Public Services / Electronic Resources Librarian
Roger Williams University School of Law Library

This work is a collection of nine essays written by leading scholars of colonial and early Republican periods of United States history. All have published books and articles on their selective subjects. David Wormsley writes an introduction to the work, discussing the role of Edmund Burke’s political philosophy and summarizing the various essays in the work.

Jack Greene writes an interesting essay on the relationship between Jamaica and the metropolitan government in the 1740s and 1750s. As the Empire’s “economically important and politically precocious colony,” the constitutional controversy of the era shows how the Jamaicans supported their constitutional rights in terms of English political and constitutional thought that existed at the time. Prof. Wormsley, however, argues that Greene’s essay does not reflect republican thought, and is different from the other essays that do not reflect republican and liberty as shown by the other essays (pp. 19-20).

Two essays concentrate on religious ideas at the time of the Revolution. Robert Ferguson’s essay on liberty concentrates on religion and the law in revolutionary America. As a Protestant country, religion played a significant role in the development of political thought down to 1776; however, thereafter, the role of law replaced religion as the mainstay of political thought in the development of the republican government. “If religion demanded a higher faith and the truth of revelation, the law placed its own narrower faith in human artifice and the power of argument” (p.129). The *Federalist Papers*, for Ferguson, represent “the nation’s most influential exposition of constitutional protections, they also remain the touchstone text in placing liberty under the constraints of government” (p.144). R. Frey

Barry Shain’s argument is that America was a nation made up mostly of people of varying Protestant faiths, whose religion led to the elevation of freedom of religious conscience to a fundamental freedom and individual right, while belief in Reformed Protestant view of original sin affecting every person led to people to support spiritual and political liberty at the communal or corporate level rather than at the individual level. The Revolution was a “calamitous event” that “the heart of America’s Revolutionary-era political culture and aspirations was Reformed Protestantism and, thus, America was born neither secular nor liberal” (p.14, 208)
John Danford discusses David Hume and his views on commerce and liberty which was an important interrelationship for the development of the new country. Danford concentrates on his political economy essays which rejected classical republicanism thought at the time for a more forward approach to commerce. Ronald Hamowy discusses the role of Richard Price, a staunch supporter of liberty and the American colonies versus Robert Ferguson, a Scottish writer, who supported the government’s position on the revolution. Although both writers based their views on eighteenth century Whig views made their contributions receptive by colonists. Raymond Frey also concentrates on the Scottish contribution to moral philosophy and its influence on the founding fathers. He discusses the “moral sense theory and the claim that there are natural rights, a tension that has in the end to do with different kinds of reflections upon the foundation of morality” (p.277). He discusses the writings of Shaftesbury, Butler Hume, and Hutcheson, finding the first three set apart from the fourth, and their effects upon people like Jefferson and Madison.

For political and constitutional thought, David Wooton offers a “ground breaking essay” (Wormsley’s comment, p.16) in which he discusses the origins of modern constitutionalism of “checks and balances” that grew out of the mechanical science of late seventeenth and eighteenth centuries. He discusses how the term developed as two separate words and then brought together by the time of the revolution.

Lance Blanning’s essay concentrates on the political debates of the post-1776 period to determine what the nature of the federal government would be in relation to federal versus state power in a federated system. He discusses the dichotomy between Andrew Hamilton and James Madison in their contrary views of what and how a federal government should operate.

Gordon Wood also attempts to answer the question about Madison’s position of being a strong nationalist in favor of the constitution, but a strong states’ right advocate in the 1790s. Wood argues that there was no change in Madison’s position. His support of a national government that would be regulate commerce, limit states rights, and engage in commerce to the betterment of the society was met by the Hamiltonian government that emulated the fiscal-military nations of Europe through a centralized government with a strong executive, large bureaucracy and army, etc. Madison was against this type of state and carried on his principles even as President during the War of 1812.

In conclusion, this is an excellent collection of essays on the Revolutionary era by leading scholars. Scholars and students who study this era will have to read this work for its high quality essays on the political, economic, intellectual, and religious views
expressed in the work. Liberty Fund is to be commended in sponsoring this excellent collection and publishing this work.

Joel Fishman, Ph.D.
Assistant Director for Lawyer Services
Duquesne University Center for Legal Information/Allegheny County Law Library