UNBOUND
An Annual Review of Legal History and Rare Books

Journal of the Legal History and Rare Books
Special Interest Section of the
American Association of Law Libraries

Volume 2
2009
UNBOUND
An Annual Review of Legal History and Rare Books

Unbound: An Annual Review of Legal History and Rare Books is published yearly by the Legal History and Rare Books Special Interest Section of the American Association of Law Libraries

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Phone (202)994-6857
jmeade@law.gwu.edu

Mark Podvia, Editor-in-Chief
Associate Law Librarian and Archivist
Dickinson School of Law Library of the Pennsylvania State University
150 South College St.
Carlisle, PA 17013
Phone: (717)240-5015
Email: mwp3@psu.edu

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

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Traditionally, appellate courts in all states have published the reports of the highest and intermediate courts. In recent years legal historians have written on the history of court reporting and court reports. Many famous judges and lawyers throughout the
country gained important reputations for their reporting. As court reports became more commonplace, however, the review of these reports lessened. Throughout the nineteenth century the development of court reports received attention from the legal community through reviews in many of the leading periodicals of the day. By 1900, few individual state reports were reviewed in the periodical literature. Reports were no longer cited by the named reporter (although still listed on the spine of the book), but became just a numbered series.

Court reporting in Pennsylvania has a long history dating back to the early days of the Republic and the establishment of Pennsylvania as a Commonwealth. Some illustrious members of the Philadelphia bar served as court reporters from the late eighteenth to early twentieth centuries. It is the aim of this article to review the biographies of those men who were the reporters of the nominative reports for the Supreme Court of Pennsylvania. The reports comprise the eleven reporters whose collection of early nominative reports of Pennsylvania Reports contain cases from 1754 to 1845. Five men compiled the Miscellaneous State Reports consisting of five sets of reports that were published to coincide with the State Reports because of a limitation upon state law (21 volumes). In addition, I have included three other men—Alexander Addison, Frederick Charles Brightly and F. Carroll Brewster—who published Supreme Court cases as part of their reports. Another article on the official court reporters from 1845 to present is currently being prepared.

The first report published in the United States was Kirby’s Reports for Connecticut (1789), followed by Alexander James Dallas’s Reports of Cases Ruled and Adjudged in the Courts of Pennsylvania, Before and Since the Revolution (1790). The first volume covered Pennsylvania cases from 1754 to 1789. The second volume expanded its coverage: Reports of Cases Ruled and Adjudged in the Several Courts of the United States and of Pennsylvania, Held at the Seat of the Federal Government (1798). By enlarging the scope of the work to include the United States Supreme Court, the Pennsylvania Supreme Court, and Philadelphia


4 See part 2 of this article.
Common Pleas Court, Dallas successfully recognized the importance of the high court and Pennsylvania courts. Having the same title as volume 2, volumes three and four continued to have reports from the three courts; the former covered cases from 1794 to 1799, while the latter volume covered 1799 to 1800. The fourth volume differed from the previous three volumes by inclusion at the end of the volume of two Delaware Court of Errors and Appeals cases (pp.[i]-xxii), followed by a 1760 case of appeal from New Hampshire (pp. [xxiii]-xxv), and a Mayor’s Court of Philadelphia case from 1797 (pp. [xxvi]-xxx)

Alexander Dallas was born on June 21, 1759 Jamaica and died on July 16, 1817. His father was an eminent and wealthy physician from Scotland. His elementary education in Edinburgh and attended Westminster School, and came to Philadelphia in 1783. Dallas took an oath of allegiance to the State of Pennsylvania on June 17, 1785 and he was later admitted to the Pennsylvania Supreme Court on August 3, 1785. Afterwards he joined the bar of the federal courts as well. Governor McKean appointed him Secretary of the Commonwealth on January 18, 1791 and he was recommissioned in September 1793, December 1796, and in 1799. In March 1801, he was appointed U. S. Attorney for the Eastern District of Pennsylvania. Under President Madison, he was appointed and confirmed as Secretary of the Treasury from October 1814 to November 1816. His children became important public servants; George Dallas became Vice-President of the U.S. and later Minister to England; a second son, Trevanion Dallas, became a judge of District Court of Allegheny County.

Jasper Yeates published the second set of Pennsylvania Reports posthumously by his son-in-law, Charles Smith. Yeates was

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born on April 17, 1745 and died March 14, 1817. He was born in Philadelphia, the son of John and Elizabeth (Sidebottom) Yeates. He attended the College of Philadelphia where he received his B.A. degree in 1761 and later received a Master’s degree, too. He studied law under Edward Shippen, one of the leaders of the bar in late eighteenth-century Philadelphia, and was first admitted to the Philadelphia bar on May 8, 1765 and then to the Lancaster bar. He married Sarah, daughter of Colonel James and Sarah (Shippen) Burd. At the beginning of the War of Independence, he became the chairman of the Lancaster County Committee of Correspondence. Later, he became a delegate to the Pennsylvania Convention that ratified U.S. Constitution in 1787. Governor Thomas Mifflin appointed him Associate Justice of the Supreme in 1791. President Washington appointed him one of three members of a commission to investigate the Whiskey Rebellion in Pittsburg in 1794. Later, his Federalist tendencies led to his impeachment (along with Samuel Chase) by the Pennsylvania Senate in 1805. He was acquitted of the charges.\footnote{20 DICTIONARY OF AMERICAN BIOGRAPHY 606 (1937); Benjamin C. Atlee, "Jasper Yeates," 5 GREEN BAG 393-97 (1893). William Henry Egle, "The Federal Constitution of 1787: Sketches of the Members of the Pennsylvania Constitution," 11 PA. MAG. HIST. & BIOG. 449-500 (1887).}

Horace Binney (b. January 4, 1780-d. August 12, 1875) has the best reputation of any of the reporters. He graduated from Harvard College in 1797, and studied in the office of Jared Ingersoll. He was admitted to the Philadelphia bar on March 31, 1800, and to Pennsylvania Supreme Court in March 1802. He was elected a member of the Pennsylvania House of Representatives for the legislative years of 1806 and 1807. Binney held the position of director of the First Bank of the United States in 1808 and later became President of Philadelphia Common Council (1810-12), and then a member of the Philadelphia Select Council (1816-19). As his reputation grew Governor Wolf offered him a position on the Pennsylvania Supreme Court in 1830 but he declined the office because of his desire to maintain his own schedules. He was elected on an Anti-Jacksonian ticket to the Twenty-third Congress, House of Representatives (March 4, 1833-March 3, 1835). He retired from practice after that term except for writing opinions and participating in the Girard Will case (1844). He was offered the Chief Justiceship of the United States Supreme Court upon the retirement of Chief Justice Taney, but he turned it down. He authored eulogies on Chief Justice William Tilghman of the Pennsylvania Supreme Court in 1827 and Chief Justice John
Marshall of the United States Supreme Court in 1835, and Associate Justice Bushrod Washington of the United States Supreme Court in 1858. His The Leaders of the Old Bar of Philadelphia (1859) presents various portraits of the leading Philadelphia lawyers of the late eighteenth and early nineteenth centuries. Another historical work was An Inquiry into the Formation of Washington’s Farewell Address (1859). During 1862, he wrote several pieces that became the book The Privileges of the Writ of Habeas Corpus Under the Constitution (1862) that generated a pamphlet controversy over habeas corpus during wartime. Binney finally died at the age of 94 one of the most revered lawyers in Philadelphia and Pennsylvania history.  

Thomas Sergeant (b. January 14, 1782–d. May 5, 1860), son of Jonathan Dickinson Sergeant, graduated Princeton in 1798 and studied law in the office of Jared Ingersoll. He was admitted to the Philadelphia bar on June 8, 1802. Governor McKean appointed him to the office of clerk of the Mayor’s Court of Philadelphia. Later he married the granddaughter of Benjamin Franklin. He held a wide number of positions: Congressional representative of the state (1812-14), an associate justice of the District Court of Philadelphia (1814-1816), Secretary of Commonwealth (1817-1818), Attorney-General (1819-1820), Postmaster of Philadelphia (1828-1832), and associate justice of the Supreme Court (1834-1846). He served as the second provost of the Law Academy of Philadelphia (1844-55) and was also a trustee of the University of Pennsylvania (1842-1854). He was President of the Historical Society of Pennsylvania, and member of the American Philosophical Society and New England Historical Society. He helped lay the groundwork for the establishment of the State Law Library in Harrisburg. Among his publications were seventeen volumes of Pennsylvania State Reports (1814-1829) co-authored with William Rawle, Jr.; two editions on Treatise upon the Law of Pennsylvania Relative to the Proceeding by Foreign Attachment (1811, 1840), and an historical treatise on Pennsylvania land law, Views on the Land Laws of Pennsylvania (1838), Constitutional Law (1822 and 1830), and Sketch of the National Judiciary Powers Exercised in the United States Prior to the Adoption of the Present Federal Constitution as part of Peter Du Ponceau’s Dissertation on the Jurisdiction of the Courts of the United States (1824).
William Rawle, Jr. did not acquire the fame of either his father or his son, since both his father (William Rawle) and son (William Henry Rawle) are listed in the Dictionary of American Biography. He is not William Rawle, Jr. (b. July 19, 1788-d. August 9, 1858) but was the third son of William and Sarah (Burge) Rawle. He was educated at Princeton College and then studied with his father for three years. He was admitted to the Philadelphia bar on May 21, 1810. During the War of 1812, he served as Captain of the Second Troop of the Philadelphia City Cavalry (1812-14). As Supreme Court reporter, he then compiled Sergeant's & Rawle's Reports (1814-28), then Rawle's Reports, (1828-35), and finally co-authored the first volume of Penrose and Watts Reports. He served as a member of the Common Council of Philadelphia, 1835-40, while holding the office of president for four years. With his father, he founded the Historical Society of Pennsylvania in 1824 and later became its vice-president. He was elected a member of the American Philosophical Society in 1841. He became secretary and later director of the Philadelphia Library Company. He also served as trustee of the University of Pennsylvania for nineteen years and as a secretary and then vice president in 1837 of the Law Academy of Philadelphia. He participated on the committee that accompanied the remains of Chief Justice Marshall from Philadelphia to Richmond, VA. He married Mary Anna Tilghman, daughter of Edward Tilghman, Esq. and Elizabeth Chew, daughter of Chief Justice Benjamin Chew.11

Clement Penrose (b. October 6, 1798-d. April 6, 1857), was the eldest son of Clement Biddle Penrose and Anna Howard (Bingham) Penrose. He was born near Frankford, Philadelphia. He studied law in Philadelphia under Samuel Ewing beginning in 1819 and was admitted to the Philadelphia bar on May 9, 1821. He published the State Reports with Frederick Watts from 1831-1833 (first volume has William Rawle on title page). He was elected to the State Senate in 1833 and served until 1841. He was an anti-Mason Whig during his term in office. President Harrison appointed him Solicitor of the Treasury for which he held the position from 1841 to 1845. Penrose returned to Lancaster to open...
a practice from 1845 to 1847. Later, he was elected as a "Reform" candidate to the Senate in 1856. He died in Harrisburg.\textsuperscript{12}

Frederick Watts (b. May 9, 1801- d. August 17, 1889) graduated Dickinson College in 1819 before studying law under Andrew Carothers and being admitted to the Carlisle bar in August 1824. He joined with C. B. Penrose to be state reporters in 1829 and published three volumes with Penrose, ten volumes by himself, and nine volumes with Henry Sergeant down to 1845. He served as the long-time President of Cumberland Valley Railroad (1845-1871). On March 9, 1849, Governor Johnston commissioned him President Judge of the Ninth Judicial District (Cumberland, Perry, and Juniata) until 1852; and later became President of the Agricultural College of Pennsylvania, 1854 and became president of Gas and Water Works Company in same year. Although he retired in 1869, President Grant later appointed him Federal Commissioner of Agriculture for six years from 1871 to June 30, 1877, and then retired again to Carlisle until his death.\textsuperscript{13}

Thomas I. Wharton (b. May 17, 1791- d. April 7, 1856), son of Isaac Wharton and Margaret Rawle, and nephew of William Rawle. He graduated University of Pennsylvania and studied law with William Rawle. He was admitted to the Philadelphia bar on October 19, 1812. Shortly thereafter, he became a Captain of the Infantry in the War of 1812; Later, he became a charter member of the Historical Society of Pennsylvania in 1826, councillor (1825-28, 1836-37), corresponding secretary (1828-36) and later vice-president (1837-41). With William Rawle and Joel Jones, he was one of the three men selected by the legislature to codify the state laws in the 1830s (many of the laws remained in force to 1976). He served as treasurer (1827-41) and vice-chancellor (1854-1856) of the Law Association of Philadelphia and as a trustee of the University of Pennsylvania (1837-56). His other publications include \textit{A Digest of Cases Adjudged in the Circuit Court of the

\textsuperscript{12} 14 DICTIONARY OF NATIONAL BIOGRAPHY 449-50 (1937); ALFRED NEVIN, MEN OF MARK OF CUMBERLAND VALLEY, PENNSYLVANIA, 1776-1876 323-24 (Philadelphia, 1876); 1 TWENTIETH CENTURY BENCH AND BAR OF PENNSYLVANIA 29 (Chicago, 1903); 2 COLONIAL AND REVOLUTIONARY FAMILIES, supra note 11, at 661; 15 LEGAL INTELLIGENCER 117 (April 10, 1857).

\textsuperscript{13} 3 Eastman, supra note 7, at 651-52; Nevin, MEN OF MARK, supra note 12, at 306-8; 19 DICTIONARY OF AMERICAN BIOGRAPHY 556-57 (1937); BIOGRAPHICAL ENCYCLOPAEDIA OF PENNSYLVANIA OF THE NINETEENTH CENTURY 428-29 (Philadelphia, 1874); see also Mark W. Podvía, The Honorable Frederick Watts: Carlisle's Agricultural Reformer, 17 PENN ST. ENVTL. L. REV. 299-328 (2009).
United States for the Third Circuit and in the Courts of Pennsylvania (1822); and A Memoir of William Rawle, LL.D. (1840).14

Less is known about Henry Sergeant (d. April 30, 1858) who was admitted to the Philadelphia bar, April 26, 1839 and later authored the work, Treatise on the Lien of Mechanics and Material Men in Pennsylvania (1839).15

Alexander Addison is also generally related to the early nominative reports because his volume of Reports contains cases from the High Court of Errors and Appeals that existed from 1780 to 1806.16 Addison (b. 1758-d. November 24, 1807) was born in Scotland and attended the University of Aberdeen, where he received B.A. and M.A. degrees. He came to Washington County in 1785 and was admitted first to the Washington County bar in 1787 and later to the Allegheny County bar on December 16, 1788. Addison is chiefly known in his role as president judge of the Court of Common Pleas of Allegheny County from 1796 to 1803, and for his advocacy of the Federalists against the Republicans in the late 1790s and early 1800s. In 1803 he was impeached by a Republican Assembly, found guilty, and removed from office. His Reports, first published in 1800, contain cases from Allegheny, Westmoreland, Washington, and Fayette counties.17 An attached volume contains his Grand Jury charges that reflect his strong pro-Federalist position.

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14 20 Dictionary of American Biography 34 (1937); 1 Carson, supra note 10, at 60, 66-67, 147; "Obituaries," 14 Legal Intelligencer 128 (April 18, 1856); Martin, supra note 3, at 220, 323.
15 Martin, supra note 3, at 310.
16 Reports of Cases in the County Courts of the Fifth Circuit, and in the High Court of Errors & Appeals, of the State of Pennsylvania. And Charges to the Grand Juries of Those County Courts. Washington: Printed by John Colerick....1800. The cases of the High Court of Errors can be found on pages 59-121, 327-31.
17 These are the first county reports outside of Philadelphia County which follow with Browne's Reports (1801-14) and Mile's Reports (1825 to 1841) respectively. No other systematic publication of Allegheny County occurred until the Pittsburgh Legal Journal began in 1853. For Addison, see Joel Fishman, Judges of Allegheny County, Fifth Judicial District, Pennsylvania (1788-1988) 2-3 (1989). The longer biography can be found in John R. Wagner, The Public Career of Alexander Addison (1951) (unpublished M.A. Thesis, University of Pittsburgh).
PART 2: THE LATER REPORTERS
(1859-1890)

The biographical information on the later reporters of the Miscellaneous State Reports is not so voluminous except for Samuel Pennypacker. Benjamin Grant, (b., 1822- d., 1878) was admitted to the Erie bar in 1845 and he had a large and successful practice of which there is no information published. His reports have been called a "series of finely prepared reports" gave his name a wide celebrity. In volume 3, there is a group of cases dealing with the federal conscription law during wartime.\(^\text{18}\)

James Monaghan (b. September 21, 1854- April 3, 1949) was admitted to Pennsylvania bar in 1878. Governor Pattison appointed him Supreme Court reporter in 1892. Later he became the assistant librarian of the Pennsylvania Supreme Court in 1921. He was a charter member of the Pennsylvania Bar Association in 1895. Among his other memberships were serving as a former vice president of the Philadelphia Ethical Society; member of the Federal Union and American Academy of Political and Social Science, and an honorary member of the Institute of American Genealogy. As a court reporter, he was the first editor of the Pennsylvania County Court Reports and Pennsylvania District Reports, Chester County Reports, and the Cumulative Annual Digest of Pennsylvania Law Reports from 1899 to 1927 that were revised by the Bisel Company into the Pennsylvania Digest of Decisions (1930). His two treatises were The Liquor License Laws of 1887... (1887), and Pennsylvania Appellate Practice (1912).\(^\text{19}\)


Samuel Pennypacker (b., April 9, 1843-d., September 2, 1916) was born in Phoenixville, Pa. and served in the Civil War as a private in the Twenty-sixth Emergency Regiment (1863). He studied law under Peter McCall, a well-known Philadelphian lawyer in mid-century, and graduated from the University of Pennsylvania.

\(^{18}\) 1 TWENTIETH CENTURY BENCH AND BAR OF PENNSYLVANIA 227 (Chicago, 1903).

\(^{19}\) 2 WHO WAS WHO IN AMERICA 378 (1950). Interestingly, his obituary is only mentioned in the Reports of the Pennsylvania Bar Association for 1950 with no account of his life.
Law Department in 1866 when he was admitted to the Philadelphia bar, May 19, 1866. Because of a resignation, he was elected President of the Law Academy of Philadelphia for the year 1867 to 1868, only one year after admission to that body. He later served as a staff reporter on *Weekly Notes of Cases* (compilation of Pennsylvania cases first published in the *Legal Intelligencer*). He held various offices including President (May 14, 1900-1916) of the Historical Society of Pennsylvania. Governor Beaver appointed him judge of the Philadelphia Court of Common Pleas No. 2, 1889, and then he was elected to two successive terms from 1889-1902. He served in a variety of offices over the years: Vice Provost, Law Academy, 1898-1916; member of the American and Philadelphia Bar Associations; Vice President, Philadelphia Bar Association; Chairman, Legal Biography Committee of the PBA; PBA delegate to the Universal Congress of Lawyers and Jurists (1904); President, National Congress on Uniform Divorce Laws (1906); President, Philobiblon Club (1900-16); and trustee of the University of Pennsylvania (1886-1916). He wrote a large number of books and articles, including his autobiography, *The Autobiography of a Pennsylvanian* (1918) (see his bibliography of works, pp. 545-49). Among his leading works were his *Pennsylvania Colonial Cases* (1892); *Pennsylvania in American History* (1910); *Digest of English Common Law Reports*; and *Congressional Hall, Philadelphia* (2 Pa. B. Assn. Rep. (1896).  

Sylvester Baker Sadler (b. September 29, 1876-d. March 1, 1931) was the son of Judge Wilber F. and Sarah E. Sterett Sadler. He graduated from Yale University, Phi Beta Kappa honors, 1896, and later graduated from Dickinson Law School in 1898. He was an instructor in criminal law at Dickinson Law School when he was appointed judge of the Cumberland Court of Common Pleas to fill the unexpired term of his father in 1914. He was re-elected to the position in 1915 and served until January 1, 1921, when he was elevated to Associate Justice of Supreme Court of Pennsylvania. He was a member of the Union League of Philadelphia and Pennsylvania and American Bar Associations. Besides Sadler’s *Reports*, he wrote *Criminal and Penal Procedure in Pennsylvania* (1903).  

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Two other compilers of Supreme Court reports were Frederick Charles Brightly and F. Carroll Brewster. Brightly was born in England (b. August 26, 1812–d. January 24, 1888) and came to the United States in 1821. He was admitted to practice in the Philadelphia bar in 1839, where he served a distinguished career as a practitioner and author. He was "considered one of the best informed men of day upon intricate questions of law." His library consisted of over 5,000 volumes. He was the editor of the *Nisi Prius Reports*, The Law of Costs, and editor of the eighth to eleventh editions of *Purdon's Digest of Pennsylvania Law*.22

F. Carroll Brewster (b. May 15, 1825–d. December 30, 1898) graduated from the University of Pennsylvania in 1841. He studied law in the office of his father and was admitted to Philadelphia bar on September 20, 1844 (Martin lists it as September 7, 1844). He held a number of positions that made him a well-known attorney in late 19th-century Philadelphia: Philadelphia City Solicitor (1863); judge, Court of Common Pleas (1866-67); Attorney-General of Pennsylvania (1869-72); and president, University of Pennsylvania Alumni Society (1866); Solicitor, Philadelphia City Trusts, 1869 until death; President, Lawyers Club, 1892 until death. He authored *A Treatise on Equity Practice in Pennsylvania* (1898, 1895), *A Treatise on Practice in the Orphans' Courts* (1894); *A Treatise on Practice in the Pennsylvania Courts.* (1888, 1889); and *A Treatise on the Practice in the Courts of Common Pleas of Pennsylvania* (1891, 1896).23

**PART III: THE OFFICIAL REPORTERS**

(1845 TO 1978)

From 1790 to 1845 various Philadelphia lawyers commercially published the *Pennsylvania Reports*. The decreasing influence of the Reports led the legislature to pass the act of 1845 P.L. 374
creating the position of official court reporter and a new set of reports called the *Pennsylvania State Reports*.\(^{25}\) The scope of this article is to present short biographical sketches of the official reporters from 1845 down to 1978 when West Publishing Company took over the publication of the reports beginning with volume 459.

There were eighteen reporters for the 459 volumes. J. Pringle Jones produced the fewest with only two and William Schaffer had sixty-two.

Robert Barr was born in 1802 at Lancaster, Pennsylvania and admitted to the Berks County Bar on January 1, 1831. He became a successful lawyer and represented Berks County in the General Assembly in 1841. Governor Francis Shunk appointed him the first State Court Reporter in 1845 for a five-year term. He completed ten volumes before he died in office on December 25, 1849. His friend, J. Pringle Jones, completed his work after his death.\(^{26}\)

John Pringle Jones served as the second state reporter from 1851 to 1852 publishing only two volumes, volumes 11 and 12 of the *Pennsylvania State Reports*. He was born in Philadelphia in 1812 and died on March 16, 1874. Jones studied for two years at the University of Pennsylvania and then spent his senior class at Princeton University, where he graduated with honors in 1831. He studied law with Charles Chauncey and was admitted to Philadelphia bar in 1834. He was appointed deputy attorney general of Berks County in 1839 and later was appointed judge of the Third Judicial District from March 15, 1847 to 1851. Following the act to create an elected judiciary, he was elected president judge of Twenty-third Judicial District from 1852 to 1862. Governor John Geary appointed him president judge of the Third Judicial District from 1867 to 1869. His only publication besides

\(^{25}\)1845 Pa. Laws 374. Section 1 provided for the appointment by the governor of “a person of known integrity, experience and learning in the law” as state reporter. Section 7 provided for the name of the reports. Interestingly, section 2 provided for the judges to submit majority opinions only, no minority opinions were to be published by the court. Section 3 dealt with the arrangement of the cases; section 4 provided for the publication of the reports of not less than 550 pages, while section 5 gave him the copyright ownership of the volume. Section 6 provided for the removal of the reporter by the governor for incompetency or failure to discharge his duties based on a request from the judges.

\(^{26}\)1 Twentieth Century Bench & Bar of Pennsylvania 50 (1903); John Hill Martin, Bench and Bar of Philadelphia (1883). Morton Montgomery, Biographies from Historical and Biographical Annals of Berks County Pennsylvania 339 (1909).
the court reports was An Eulogium upon Antony Laussat, Esquire: Pronounced January 11th, 1834 (1834).27

George Washington Harris (June 23, 1798-August 13, 1882), appointed by Governor William Bigler, was the third reporter covering volumes 13 to 24 of the Pennsylvania State Reports. He was the grandson of John Harris, founder of Harrisburg. Harris was educated at Harrisburg Academy and later at Dickinson and Jefferson Colleges, before graduating from the University of Pennsylvania Law School. He studied law probably under Amos Ellmaker, preceptor, and was admitted to the bar in 1820 and later admitted to Philadelphia bar on December 13, 1845. He served as deputy attorney general of Dauphin County before becoming state reporter when he moved to Harrisburg. He later became secretary of the library committee of the U. S. Senate and edited the journal of William Maclay, whose diary of the First Congress is one of the major documents of that era.28

Joseph Casey, appointed by Governor James Pollock, served as state reporter from 1856 to 1861 covering volumes 25 to 36 of the Pennsylvania State Reports. He was born on December 17, 1814 in Ringgold Manor, Washington County, Maryland and died on February 10, 1879. He was the son of Joseph and Rebecca (McLaughlin) Casey. Casey was admitted to Pennsylvania bar in 1838. He was elected as a Whig to the Thirty-first Congress, House of Representatives (March 4, 1849-March 3, 1851). He was appointed commissioner to investigate and end the Erie Railroad War, 1855, before Governor Pollock appointed him as State Reporter. President Lincoln appointed him one of the first judges of the U. S. Court of Claims from 1861 to 1863 and its first chief justice from 1863 to December 1870. He then resumed practice of law until his death in 1879.29


29 3 Dictionary of American Biography 559-60 (1937); Who Was Who in America Historical Volume 1607-1896 98 (1963);
Robert Emmet Wright, appointed by Governor William Packer, served as state reporter from 1861 to 1865, covering volumes 37 to 50. He was born in Carlisle, Pennsylvania on November 30, 1810 and died on January 10, 1886. He studied law and admitted to bar in 18. He was appointed district attorney of Allentown by Attorney-General J. K. Kane. He later became postmaster of Allentown, a school director for twenty-three years, and served as burgess of Allentown for two terms. Besides the Reports, he published An Alphabetical and Analytical Index to the Pennsylvania State Reports (1866). His other publications included The Pennsylvania Justice... (1839 and 2d ed., 1845); Samuel Roberts’ Digest of Pennsylvania Statutes (2d ed. 1847); Graydon’s Forms of Conveyancing... (new ed. 1845; 4th ed., rev., cor., enl. 1852 and 1866).^{30}

Persifor Smith, appointed by Governor Andrew Curtin, served as court reporter from 1866 to 1876, covering volumes 51 to 81. He published a final volume after he left office that was numbered 81* or 81½.^{31} He was born on June 23, 1808 and died May 25, 1882. He was the son of Joseph and Mary (Frazer) Smith. He graduated from the University of Pennsylvania in 1823. He studied for the legal profession, was admitted to the Chester County bar in 1829, and then admitted to the Philadelphia bar on April 8, 1830. He was appointed State’s attorney for Delaware County in 1832 and later became Clerk of the Orphans’ Court for Chester County in 1835. He later served as a member of the Pennsylvania legislature from 1861 to 1864. He served as an elder in the West Chester Presbyterian Church. Besides the reports, he was the author of Forms of Procedure, in the Courts of Pennsylvania... (1862).^{32}


^{31} Although his reports have been generally given good reviews, this last book was criticized by the reviewer as having too many per curiam opinions and padding, but which the profession would be “forced to buy this afterbirth...”, see Fishman, Reports, text accompanying notes 111 to 116.

^{32} 11 Jordan, Encyclopedia of Pennsylvania Biography 175-76 (1919); Martin, supra note 3, at 312.
A. W. Norris, appointed by Governor John Hartranft, served as state reporter from 1876 to 1881 covering volumes 82 to 96. He was born in Lewistown, Pennsylvania on April 11, 1841 and died on May 21, 1888. He first studied at Georgetown College and later served in Civil War as a captain. He graduated from the University of Pennsylvania Law School in 1867 and was admitted to the Philadelphia bar on November 16, 1867. He read law under preceptorship of Judge Thompson of Philadelphia. He was appointed private secretary to Governor Hartranft in 1872 and later appointed Supreme Court Reporter in 1876. He also served as Judge Advocate General of Pennsylvania in 1877. He later represented the Sixth Senatorial District in the Pennsylvania Senate from 1881 to 1882. President Chester Arthur appointed him Pension Agent at Philadelphia in 1881 and he was later elected Auditor-General of Pennsylvania in 1886. As a Civil War veteran, he was a member of Post No. 19, Grand Army of the Republic and department commander of GAR of Pennsylvania.33

Albert Outerbridge, appointed by Governor Henry Hoyt, served as state reporter from 1881 to 1995, covering volumes 97 to 110. He was born on April 20, 1841 and died on January 23, 1917. He was admitted to the Philadelphia bar on June 7, 1862. He served as editor-in-chief of the Weekly Notes of Cases from 1874 to 1899. He then became a trust officer and later vice president of the Land Title & Trust Co. of Philadelphia.34

Lemuel Amerman, appointed by Governor Robert Pattison, served as state reporter from 1886 to 1891, covering volumes 111 to 115. He was born near Danville, Montour County, Pennsylvania on October 29, 1846 and died in Blossburg, Tioga County, Pennsylvania on October 7, 1897. Amerman graduated Bucknell University, in 1869, studied in the law office of Attorney General of L. C. Cassidy, and then was admitted to Philadelphia bar on December 24, 1875. He later moved to Scranton and became the Solicitor of Lackawanna County from 1879 to 1880. He was a member of State house of representatives from 1881 to 1884 and elected city comptroller of Scranton for 1885 and 1886. He was elected as a Democrat to the Fifty-second Congress, House of Representatives (March 4, 1891-March 3, 1893) and was an unsuccessful candidate for Fifty-third Congress. He was one of the original members of the Pennsylvania Bar Association in 1895 and was an active member of Executive Committee.35

33 JORDAN, ENCYCLOPEDIA, supra note 32, at 786-87 (1914); Martin, supra note 3, at 208.
34 1 WHO WAS WHO IN AMERICA 924 (1942); Martin, supra note 3, at 209.
35 Obituary, 4 PA. B. ASS’N. REP. 351-52 (1898); PROMINENT AND PROGRESSIVE PENNSYLVANIANS OF THE NINETEENTH CENTURY 81-83
Boyd Crumrine, appointed by Governor Joseph Beaver, served as state reporter from 1887 to 1892, covering volumes 116 to 146. He was born on February 9, 1838 and died on August 21, 1916. He was the son of Daniel Crumrine and Margaret (Bower) Crumrine. He graduated from Waynesburg College on August 1, 1860. He studied law under Judge John L. Gough and was admitted to the Washington County Bar on August 26, 1861. He served as a lieutenant in the Civil War. As a Republican politician after the war, he became District Attorney of Washington County from 1865 to 1868. He later compiled social statistics of the Western District of Pennsylvania for the 1870 census. Following his position as reporter, he resumed private practice with John P. Patterson. Among his numerous publications were Rules to Regulate the Practice of the Several Courts of Washington County (1871); Pittsburgh Reports; Containing Cases decided by the Federal and State Courts, Chiefly at Pittsburgh, 3 vols. (1872-73); The Boundary Dispute Controversy Between Pennsylvania and Virginia, 1748-1785, with the Records of the Old Virginia Courts held within Southwestern Pennsylvania from 1775 to 1780 (reprinted from Annals of the Carnegie Museum, 1902-1905); The Courts of Justice, Bench and Bar of Washington County, Pennsylvania... (1902); The County Court for the District of West Augusta, held at Augusta Town (Washington) Pa., 1776-1777 (1905).36

James Monaghan, appointed by Governor Robert Pattison, served as state reporter from 1892 to 1895, covering from volumes 147 to 165. He was born September 21, 1854 and died April 3, 1949. He was admitted to Pennsylvania bar in 1878. A dispute between Crumrine and himself over the publication of the state court reports appeared in State Reporter’s Case, 150 Pa. 550 (1892).37 He also served as the editor of two volumes that were part of the Miscellaneous State Reports (Monaghan’s Supreme Court Reports (1891–92)). He was another charter member of the Pennsylvania Bar Association in 1895. He served as assistant librarian for the Pennsylvania Supreme Court in 1921, was

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vice president of the Philadelphia Ethical Society, member of the Federal Union, a member of the American Academy of Political and Social Science, and honorary member of the Institute of American Genealogy. He authored two treatises *The Liquor License Laws of 1887*...(1887) and *Pennsylvania Appellate Practice* (1912). He also edited the *Chester County Reports* and was the first editor of the *Pennsylvania County Court Reports* and *Pennsylvania District Reports*. He further compiled forty volumes of *Monaghan’s Cumulative Annual Digest*,\(^3\) that cumulated all reported decisions on an annual basis from 1906 to 1929.

Wilson Kress, appointed by Governor Daniel Hastings, served as state reporter from 1895 to 1900, covering volumes 166 to 194. He was born in 1836 and died on June 25, 1920. He was admitted to the bar of Clinton County in 1866.\(^3\) He also was the first state reporter of volumes 1 to 12 of the *Pennsylvania Superior Court Reports*. At time of death he was the oldest member of the Bar and President of the Bar Association.\(^4\)

William I. Schaffer, appointed by Governor William Stone, served as a court reporter for twenty years, covering volumes 195 to 262 of the *State Reports* and at the same time served as state reporter for volumes 13 to 70 of the *Pennsylvania Superior Court Reports*.

Albert B. Weimer, appointed by Governor William Sproul, served as state reporter from 1919 to 1933, covering volumes 263 to 309. He was born on January 5, 1857 and died on November 13, 1938. He graduated with an A.B. from Harvard College in 1880 and was admitted to the Philadelphia bar in 1882. He also served as Assistant State reporter for the Pennsylvania Superior Court covering volumes 16 to 70, and then as State Reporter for volumes 71 to 106 of the *Pennsylvania Superior Court Reports*. He was the editor of the *Legal Intelligencer* from 1922 to 1925. He was the author of *The Law of Private Corporations in Pennsylvania* (2 vols., 1898), *The Law of Railroads in Pennsylvania*... (3 vols.,

\(^3\) *James Monaghan, Monaghan’s Cumulative Annual Digest of Pennsylvania Decisions Being a Digest of all the Reported Decisions of the Supreme, Superior and County Courts for the Year 1899. Volume 1. James Monaghan Editor of the Supreme Court Reports, Etc. Soney & Sage, Newark, New Jersey, 1900. The twenty-four volumes were later compiled into a single seven-volume set by George Henry, Pennsylvania Digest of Decisions, Being a Digest of All the Reported Decisions of the Supreme, Superior and County Courts for the Years 1906 to 1929 Inclusive. (1931).*

\(^4\) He started on March 28, 1895 and his reporting began with volume 166 at page 405.

1893-1905), and *The Law Relating to the Mining of Coal in Pennsylvania* (1891).\(^{41}\)

C. Brewster Rhoads, appointed by Governor Gifford Pinchot, served as state reporter from 1933 to 1943, covering volumes 310 to 344. He was born in 1893 and died in 1973. He became a well-known lawyer adding his name to the prestigious law firm of Montgomery, McCracken, Walker & Rhoads. He was a leading member of the Philadelphia bar, holding the position of Chancellor in 1954-55, and then President of the Pennsylvania Bar Association in 1964.\(^{42}\)

Laurence Eldredge, appointed by Governor Edward Martin, served as state reporter from 1943 to 1968, covering volumes 345 to 431. He was born in 1902 and died in 1982. He graduated with a B.S. degree from Lafayette College in 1924 and received his LL.B. degree from the University of Pennsylvania Law School in 1927. He became the adviser and revising Reporter on the *Restatement of the Law, Torts* for the American Law Institute. He taught at Temple, Columbia, and University of Pennsylvania Law Schools. He held various positions within the Philadelphia Bar Association including chairman of the Board of Governors. In the Pennsylvania Bar Association, he served as an assistant editor of the *Pennsylvania Bar Association Quarterly* from 1938 to 1942. Interestingly, he is the only reporter to be sued by a justice (Michael Musmanno) of the Pennsylvania Supreme Court for failing to publish his dissenting opinion in volume of the *State Reports*.\(^{43}\)

Eldredge was a prolific writer whose books were *The Development of Freedom of the Press in Colonial America* (1940); *Modern Tort Problems* (1941); *Keeping the Restatement Up-to-date* (1947); *Pennsylvania Annotations to the Restatement of the Law of Torts* (1948-53), and an autobiography, *Trial of a Philadelphia Lawyer* (1968). He wrote articles on a variety of tort and negligence topics as well as books reviews.\(^{44}\)


\(^{43}\) Fishman, History of the Court Reporters, *supra* note 20, at 17-34.

Norman Lindenheim, appointed by Governor Raymond Shafer, from 1968 to July 1973 covering volumes 432 to 452. He graduated from Harvard Law School and later assisted James Monaghan in compiling the Cumulative Index-Digest of Pennsylvania Decisions (1932). He later worked with Eldredge as his Assistant State Reporter for volume 431 before becoming state reporter.

John W. Marshall, appointed by Governor Milton Shapp, served as the last named state reporter from 1973 to 1974, covering volumes 453 to 458. Marshall was born in 1926, graduated from the University of Pennsylvania, B.S., 1949, and his LL.B. degree in 1950.

degree from Temple University in 1954. He served as an associate in
the law firm of Duane Morris and Heckscher (1955-63), legal
counsel to the School District of Philadelphia (1963-66), and be-
gan teaching in Temple Law School in 1960 rising to an Associate
Professor (1966-68), and then full professor (1968- ). He served as
acting Dean in 1971-72 between the resignation of Ralph Norvell
and the appointment of Peter J. Liacouras.45

From volume 459 onwards, the Reports were published by
West Publishing Company and are, in essence, a reprint of cases
from the Atlantic Reporter 2d series.

The sequential order of Reports:

- 1-10 Barr
- 11-12 Jones
- 13-24 Harris
- 25-36 Casey
- 37-50 Wright
- 51-81* Smith
- 82-96 Norris
- 97-110 Outerbridge
- 111-115 Amerman
- 116-146 Crumrine
- 147-165 Monaghan
- 166-194 Kress
- 195-262 Schaffer
- 263-309 Weimer
- 310-344 Rhoads
- 345-431 Eldredge
- 431-452 Lindheim
- 453-458 Marshall

45 AALS. Directory of Law Teachers 355 (1971); Alumni, TU Law
History, at http://www.law.temple.edu/servlet/Retrieve-
Alexander Milne Calder’s imposing bronze statute of William Penn no longer dominates the skyline of the City of Philadelphia, taller structures having long since overshadowed the likeness of the Founder of the Commonwealth of Pennsylvania. However, the building upon which the statute stands—Philadelphia’s City Hall—remains as one of the great architectural treasures of Penn’s City of Brotherly Love. Although bearing the name “City Hall,” this magnificent structure, built in the Second French Empire style, actually serves two functions. It is, of course, the center of government for one of America’s largest cities. However, it is also the courthouse of Philadelphia County, the city and county having been consolidated in 1854.  

Each of Pennsylvania’s sixty-seven counties has its own courthouse that houses county courts and offices. These structures range in design from simple and functional to ornate and elaborate, covering a range of architectural styles. By and large, the style depends not on the size of the county, but rather on the era in which the courthouse was constructed. The style also reflects the public’s changing attitudes regarding government in general and the judiciary in particular.

Pennsylvania’s colonial courthouses tended to be functional buildings designed for the storage of land records and for court purposes. The colonists viewed their rulers with a wary eye, and saw little purpose for county government beyond record-keeping and providing justice. In many counties the courts originally met in taverns, those being the only public buildings available. In Cumberland County, for example, the early courts were

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* This article was originally published in the Spring 2009 issue of LH&RB.

** Mark Podvia is Associate Law Librarian and Archivist at the Dickinson School of Law of the Pennsylvania State University.

1 1854 Pa. Laws 21. City and County offices were not fully merged until the adoption of a Home Rule Charter in 1951.
Widow Piper’s Tavern, Shippensburg

held in “Widow Piper’s Tavern,” a limestone building located in Shippensburg.

The earliest purpose-built courthouses in the Commonwealth were often roughly-constructed wooden structures. One such wooden courthouse, a log building built in 1773, once stood on the Public Square in Bedford, Pennsylvania. However, wooden courthouses were generally replaced with brick or stone buildings as quickly as county finances would permit. This was not because of architectural concerns, but rather because wooden building were more likely to burn, destroying county land records.

Philadelphia’s first courthouse was constructed in 1709 “in the middle of High (Market) Street just beyond the Second Street intersection.” The building was described as follows:

Both its placing and its form were characteristic of English-continental usage–a not dissimilar one is the Town

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2 HISTORY OF BEDFORD, SOMERSET AND FULTON COUNTIES, PENNSYLVANIA 196 (1884). Bedford is the county seat of Bedford County.

3 On March 24, 1845, Cumberland County’s 1765 courthouse was destroyed by fire. Fortunately, most of the county’s records were saved. John Hays, Destruction of the Court House, 1845: An Eyewitness Account, 14 CUMB. CO. HIST 71 (1997).

Hall of Amersham (Bucks) in England, dating from 1682. With an arcaded ground story given over to marketing and storage, the main level above was for court and town offices. This upper story was reached originally by outside stairs that began along either side of the building and mounted after turning the corners to a hooded balcony before the central door. In the fashion of its day, the roof was very steep, the coved cornice carried across high pitched gable ends. Between stories ran a brick string course, jogged at the corners. The first windows were casements...with little panes set in leaden frames. A central cupola contained the town bell, previously suspended in a crotch at the top of a pole.  

While this was a much more substantial building than Bedford’s log structure, it was still a relatively simple structure. Like a 1724 stone building in nearby Chester that once served as Chester County’s Courthouse and later as the Courthouse of Delaware County, the first Philadelphia Courthouse differed “very little from a well-built but unpretentious house of the time.”

A similar unpretentious structure was constructed in Bedford County in 1774:

The new Court house had a frontage of about 65 feet on Juliana Street. It was three stories high, with a peaked roof, capped with a tall steeple. The first floor was used as the jail. One large room was used to hold persons who did not pay their debts. Part of the jail was reserved for the jailer. The second floor was the Courtroom, while the third floor was divided into several rooms for the grand and petit juries.

To reach the Courtroom it was necessary to climb a wide uncovered stairway located on the outside. An extension of it led to the jury rooms. The building was of limestone blocks.

Despite the relatively simple structures constructed prior to the Revolutionary War and the wary eye with which the colonists viewed government, “[g]reat regard was had for the dignity of the

5 Id.
6 IRWIN RICHMAN, PENNSYLVANIA’S ARCHITECTURE 18 (1977). The Old Courthouse in Chester is the oldest surviving public building in Pennsylvania.
Court, and great reverence felt for forms and ceremonies.”\textsuperscript{8} The Colonial Courts upheld the pomp demanded by English Common Law tradition. In Allegheny County the judges “donned scarlet robes, throwing a majestic splendor over the ‘bench’ made of unfinished split logs.”\textsuperscript{9}

With America’s independence came a change in the public’s attitude towards their officials, although this changed attitude was not one of greater respect. Rather, Americans adopted “a marked hostility toward the mildest social distinctions expressed in titles or salutations.”\textsuperscript{10} The public officials themselves recognized this. When an attorney began to address Pennsylvania Supreme Court Justice Thomas Smith as “Your Honor,” the judge quickly cut him off with these words:

The gentlemen of the Bar frequently use this expression in addressing this court; but the appellation not being given to us by the Constitution or Laws of the Country, it will be agreeable to the court if you decline giving it in the future. If we possess sufficient legal abilities and an intimate and accurate knowledge of the practice:--if we administer the Laws with decision, dispatch and rigid integrity:--if we consult and promote the real permanent interests, and social happiness of our fellow-citizens, as far as in our power in our present situation, they will respect us without any titles: But should we appear unequal to our office--should we betray the want of legal abilities, or should our judgments be bad or influenced by our affections, or passions, or by any personal or party considerations, no titles or appellations, however pompous, could secure to us the respect of an enlightened people.\textsuperscript{11}

Along with a change in the manner of addressing judges came a change in judicial garb. The judicial robe and wig—symbols of the authority of English judges for centuries\textsuperscript{12}—were removed from the Pennsylvania courtroom:

\textsuperscript{8} Rev. Conway P. Wing, History of Cumberland County, Pennsylvania, with Illustrations 157 (1879).
\textsuperscript{9} George E. Kelly, ed., Allegheny County: A Sesquicentennial Review 84 (1938).
\textsuperscript{10} Page Smith, The Shaping of America, A People’s History of the Young Republic 128-9 (1980).
\textsuperscript{11} Burton Alva Konkle, The Life and Times of Thomas Smith, 1745-1809 213 (1904).
\textsuperscript{12} English judicial robes are of religious origin; prior the 1300’s English judges and lawyers were clerics.
Thomas Jefferson and other leaders of the republic opposed judicial raiment, and the wig and robe became symbols of a rejected system. The new democracy wanted to correlate the law with the new social experiment, and the aristocracy of the robe was eliminated.13

Such an attitude did not lend itself to the construction of elaborate public buildings. A new courthouse built in Philadelphia in 1787, located just west of the State House (Independence Hall), was a “box-like brick building” that largely mirrored Old City Hall, built during the same era and located just east of the State House.14 The buildings were described as being “quaint in their simplicity” and “solid in their structure.”15 Like the earlier courthouse, this structure differed little from the homes of the era.

On the other side of the Commonwealth, a new courthouse was constructed in Allegheny County in 1789, replacing the earlier log structure.

It was located on what is now known as Market Street. The structure made of brick, was two stories high and not devoid of some pretensions. It was capped with a peaked steeple and proudly looked out through a row of wooden fluted columns, which, alas, failed to excite the appropriate awe, because visitors tried out their penknives on them and left initials and figures which added nothing to the aesthetics of the building.16

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13 Glenn W. Ferguson, To Robe or Not to Robe?–A Judicial Dilemma, 39 J. AM. JUDICATURE SOC’Y 166 (1958). Only the United States Supreme Court retained its judicial robes. The Jay court wore scarlet robes; they were replaced by simple black robes by Chief Justice John Marshall. Associate Justice William Cushing of Massachusetts was the only member of the Court to wear an English-style wig–he stopped wearing it after being pursued through the streets of New York City by a band of little boys and a sailor who called out “My eye! What a wig!” History of the Court, http://www.supremecourthistory.org/ (last visited Mar. 19, 2009).


16 KELLY, ALLEGHENY COUNTY, supra note 10, at 86.
Old Cumberland County Courthouse, Carlisle
Built in the Greek Revival style; the columns were damaged by Confederate shells during the Gettysburg campaign
A similar unpretentious structure was built in Mercer County in 1807 at a cost of $7,116. “The courthouse was a square structure of brick, two stories high, with wings on the east and west side of the first story. The lower story was occupied by the court room. The upper story was divided into jury rooms and the wings housed the county offices.”

Courthouse design began to change with the rise of the Greek Revival style following the War of 1812:

Architects such as Robert Mills (1781-1855), William Strickland (1799-1854), and Thomas U. Walter (1804-1887) proposed numerous public buildings all designed in the Greek Revival style to maintain the national ideology of independence, worldliness, and liberty adopted by Jefferson and Clerisseau. By the mid-1800s all public buildings and most large residential buildings were being built in the Greek Revival style. Greek Revival had become the adopted symbol of democratic America and produced some of the most symbolic and celebrated early American buildings that would influence generations of architects to come.

Courthouses built in this style originally “used the simple Doric or Tuscan orders; later they were more likely to sport the fancier Ionic or Corinthian” columns.” However, the Commonwealth’s Greek Revival courthouses were not grand structures. Although they often were the object of civic pride, they retained a functional simplicity.

The conclusion of the Civil War brought a change in the public’s attitude towards courthouses. Simplicity gave way to increasingly elaborate designs. Courthouses often became the sites of memorials honoring the Union dead.

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17 History of the Mercer County Courthouse, http://www.mcc.co.mercer.pa.us/history/courthouse.htm (last visited Mar. 19, 2009). The structure later burned. The present Mercer County Courthouse, a handsome domed building, was built in 1909 at a cost of $500,000.
18 Id.
21 Id. Such a memorial can be seen in front of the Centre County Courthouse in Bellefonte.
The time was ripe for courthouse building in the United States. When the Civil War ended, the states were ready for a display of pride. Thomas U. Walter's magnificent new dome for the Capitol, completed in 1867, became an inspiration for architects and state officials throughout the country. The functions of the state government were expanding, and more space was needed. The newer areas of the country were ready for their first monumental public symbols. In all, it was a time for a wave of construction, and the cruciform domed configuration was foremost in popularity. As the state capitals grew and developed, so grew the counties and their need for their own symbols, which often followed the lead of the capitals.22

The movement to larger and more elaborate courthouses was aided by the rise of a new upper class. Perhaps the most noticeable change in the life of the very rich was their “consciousness.” In the ante-bellum days the rich of New York or Philadelphia usually lived in houses the modest facades of which gave little hint of their occupants’ wealth; that was displayed in luxurious ballrooms and lavish interiors. Now the rich built extravagant mansions that publicly proclaimed their wealth.23 Wealthy individuals who had no qualms proclaiming their own wealth were unlikely to oppose the spending of public money for elaborate public buildings.

The end of the Civil War also brought a change in attitude towards the use of titles. Judge William Hall of Bedford County wrote that when he went on the bench in 1871, even his court tipstaff insisted on being address as “Colonel.”24 The days when a judge such as Thomas Smith would be refuse to be addressed as “Your Honor” were long past.

By the time the Civil War ended the City of Philadelphia was in need of a large municipal building to house the combined city/county government, which had long since outgrown the antiquated building of the late 1700s. After considerable controversy over where the new building should be located, it was determined

24 WILLIAM M. HALL, REMINISCENCES AND SKETCHES, HISTORICAL AND BIOGRAPHICAL 100 (1890).
to build the new City Hall at the intersection of Broad and Market Streets. John McArthur, Jr., was selected as architect.

**Philadelphia City Hall**

McArthur created what is still claimed to be the largest and tallest municipal building in the world, larger than even the United States Capitol in Washington, D.C. Designed in the then-popular Second French Empire-style, the structure covers 4.5 acres—four full city blocks—and includes 630,000 square feet (14.5 acres) of floor space. It contains more than 600 rooms and over 250 sculptures. Philadelphia was, after all, a great city and county, second only to New York City in population and wealth. Such a city deserved a City Hall that was second to none, or so the Victorian designers thought.

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26 Philadelphia City Hall Trivia & Fun Facts, [http://www.geocities.com/Athens/Delphi/2115/Mainframeset.html](http://www.geocities.com/Athens/Delphi/2115/Mainframeset.html) (last visited Mar. 19 2009). The building took thirty years to complete and was out of style by the time it was dedicated.
The building was built around an open courtyard, entered by portals on each side. The most ornate entrance was the north portal, described as follows:

The North Portal was designed to be the building’s Ceremonial and Legislative Entrance. The main chamber contains two grand stairways (open only for special functions) leading to a balcony and a second floor exterior entrance to Conversation Hall. A passageway from the main chamber leads to a secondary chamber with solid granite walls almost 20 feet thick, and highly polished granite columns 3 feet in diameter.

*The Crypt of the Tower* is directly beneath the massive tower. [Alexander] Calder’s theme in the crypt is *The World*. It is a theme repeated often throughout the building. Here it is represented in the column capitals and keystones at arches located at each compass point. [On the Western keystone] the head of a bear represents America and the Atlantids at the column capitals are American Indian. To the South is a tiger keystone and African figures representing the African continent. The Eastern keystone is an elephant with Mongolian figures to represent Asia, while the North depicts Europe with a bullock and Caucasian figures.27

Other portions of the building—offices, courtrooms and public spaces which space does not permit describing—were no less grand. Philadelphia’s City Hall was the most expensive municipal building ever built in the United States, with a cost of over $24.4 million.28

The courthouse is primarily built of Milford pinkish gray granite, quarry faced on most surfaces and smooth for accents....The surface texture changes under differing angles of light. The window arrangements were designed to give as many rooms as possible natural light from two directions, using the huge interior court. Since the visual dominant features viewed from the outside are the formidable stone walls, it is surprising how well the interior is flooded with natural light. The tall tower, in addition to providing a civic symbol, originally was intended to draw

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27 *Id.* The existence of a special stairway for ceremonial use shows the increased deference to government and judicial officials.

28 *Id.*
in a better quality air than was available at the very polluted ground level.\textsuperscript{29}

\textit{Allegheny County Courthouse, Pittsburgh}

Pittsburgh’s Gilded Age courthouse, while not as ornate as its eastern counterpart, is no less impressive. Designed by architect H.H. Richardson in 1883, the building was completed in 1888.\textsuperscript{30}

Luzerne County, located in Pennsylvania’s anthracite region, also built a new Victorian courthouse, perhaps the most elaborate ever constructed in Pennsylvania. The structure, begun in 1906, was strongly influenced by the “White Cities” movement that came out of the 1893 World’s Columbian Exposition in Chicago, Illinois.\textsuperscript{31}

The entire rotunda, including the arches of the penetrations under the dome, is finished with marble. The four piers supporting the dome and the rusticated walls of the first story are of Botticino stone, a buff-colored marble re-

\textsuperscript{29} Id. at 30.
\textsuperscript{30} Williams, County Courthouses, \textit{supra} note 21, at 29-30.
\textsuperscript{31} Luzerne County Courthouse History, \textit{supra} note 23. Ironically photography is not permitted in this opulent building because of security concerns; the author was permitted to take photographs for this article only when accompanied by a guard. This did not occur in any other courthouses that the author visited.
sembling Caen stone in color. The cornices, columns, balustrades and corridor wainscoting are of white Italian

*Luzerne County Courthouse*
marble, and the wainscoting base of Alps green. Statuary finish bronze has been used effectively in the marble cornice of the second floor gallery and main stairway. The elevator enclosures, electroliers and office screens are also of cast bronze. The floors throughout, with the exception of some of the smaller offices, are of Tennessee marble, those of the corridors, gallery and rotunda being laid in patterns.

The interior of the dome is executed in plaster and is colored with the prevailing tone of the Botticino stone. The panels are terra verte, with such portraits and emblems as are used, painted as cameos. Gold leaf is used on the moldings. The pendentives are painted with figures on mosaic backgrounds.

The vaulted ceiling of the rotunda corridor and entrance corridors are treated with Mosaics, the pendentives of the vaults having painted portraits of various people prominently connected with the history of the County. The lunettes along the corridor walls which adjoin the mosaic vaults are painted with subjects apropos of the early settlement of the Wyoming Valley.

There are five court rooms, four of which are located on the third floor; the fifth, or Orphans' Court room, being on the second floor. The third floor court rooms are similar in design; two are finished in mahogany and two in Circassian walnut. The Judges' chambers adjoin the court rooms and are similarly treated. The court room floors are covered with rubber tiling, the draperies are of Orsini silk velour and the electroliers of brass, gold plated. Each of the third floor court rooms is embellished with a notable mural painting over the Judges' bench: "Justice," "Prosperity Under the Law," "The Judicial Virtues," and "The Awakening of a Commonwealth," having been executed by Messrs. Edwin H. Blashfield, Will H. Low, Kenyon Cox and William I. Smedley, respectively.\footnote{Id.}

With the construction of these elaborate courthouses, judges abandoned Jeffersonian and Jacksonian simplicity in their dress. In 1889, the Justices of Pennsylvania's highest court returned to wearing of judicial robes:
The Chief-Justice and Associate Justices of the Supreme Court of Pennsylvania henceforward are to wear, when seated in court, the judicial robes (black silk gowns) that are worn by the Justices of the Supreme Court of the United States. There is probably not a Judge among them who would think of putting on these robes if it were a mere “putting on of airs,” and certainly the [Philadelphia] Ledger would have no sympathy with him if he had such notion. Every one of them doubtless regards the change, as the public will, as an advisable recurrence to a former wholesome custom, which had the effect of an impressive presence all the way from the judicial bench through the bar to the benches for suitors and spectators.33

At least one reason given for the return of judicial robes was that conservatives were hoping to use the courts as a bulwark against the rising Populist movement.34 Although it took time for judicial robes to gain acceptance in the Commonwealth’s lower courts, the practice of wearing judicial robes gradually became universal; by the 1950’s virtually every trial judge in Pennsylvania wore robes when appearing on the bench.

Courthouses built in Pennsylvania since the Second World War continue to provide a dignified setting for judicial functions. Gone is the opulence of the Gilded Age structures; the concept of functional simplicity has largely returned. However, the judicial robes and courtroom decorum that came with the Guided Age remain with us still. Today even Pennsylvania’s Magisterial District Judges—the Commonwealth’s lowest-level judicial officials—are required to wear judicial robes “to maintain the dignity of [the] office.”35

33 Supreme Judges in Robes, N.Y. TIMES, Jan. 8, 1889, at 2.
34 Jerome Frank, COURTS ON TRIAL: MYTH AND REALITY IN AMERICAN JUSTICE 255 (1949).
35 Pa.R.M.D.J. 101. Magisterial District Judges handle all traffic cases, other minor criminal cases and civil cases involving amounts up to $8,000. At least one modern commentator has written that far from promoting courtroom dignity, “[t]he silliness of American judicial garb...makes [judges] look like dorks.” Charles M. Yablon, Judicial Drag: An Essay on Wigs, Robes and Legal Change, 1995 Wis. L. REV. 1129, 1130.
A FAILED LEGAL PERIODICAL/NEWSPAPER OF MID-NINETEENTH CENTURY PENNSYLVANIA: OLWINE’S LAW JOURNAL (DECEMBER 29, 1849 TO MAY 18, 1850)¹

Joel Fishman, Ph.D.**

In reviewing the history of Pennsylvania legal periodicals, Olwine’s Law Journal has one of the shortest publishing histories covering less than five months from late December 1849 to mid-May 1850.¹ The newspaper was published weekly on Saturday in quarto size, in twenty-one issues over the six-month period. Each issue consisted of eight pages, consecutively paginated, with 168 pages in the entire publication. Isaac Wayne Olwine (1827?-1863) was the editor of the newspaper and served as Deputy Prothonotary of the Court of Common Pleas of Philadelphia County, whose father Anthony was prothonotary at the time.

In the first issues, the editor informed the Philadelphia readership that it distributed the newspaper to all members of the bar that he had an address for, expecting to “save us much trouble and expense in calling on every gentleman of the bar.” Olwine asked those who did not want to receive the journal to please contact him at the Prothonotary’s Office at the court of common pleas. With a cost of $2 per year, “we trust that we will not receive a single note of discontinuance.”²

¹ This article was originally published in the Spring 2009 issue of LH&RB.

** Dr. Fishman is the Assistant Director for Lawyer Services at the Duquesne University Center for Legal Information/Allegeny County Law Library in Pittsburgh, Pennsylvania.


² Id. 10, 18, 29, 50, 89.
In the initial publication, the editor offered the following justification:

Our Journal shall, if industry, labor and devotion can accomplish it, be important to the legal profession, and useful to the whole community. It will contain legal intelligence of interests to the Lawyer, the Conveyancer, the Alderman, the Justice, the Merchant and the citizen. The Current and Deferred Motion Lists, of the different Courts, with the disposition made of all rules and motions, Important Decisions on Appeals, Certioraris et cet. will be minutely reported.  

The editor went on to include literary contributions–tales, essays, lectures, poetry–to the publication. He also offered “pencil sketches” of prominent American and English lawyers. He appealed to the reading public to contribute by purchasing a subscription and writing contributions.

Each issue contained an article or commentary on the first page, followed by an editorial on the second page. Each issue contained the court directory, trial lists of the Court of Common Pleas and District Court, Supreme Court sitting nisi prius, auditor’s lists, and sometimes sheriff’s sales. Most articles or columns are one or two columns with a few runs more than one page or carried over to the next issue. Usually, there is more than one page of advertisements, many of which did not relate to the law or legal matters in some way.

Initially, he received some favorable comments from his readership, but had to make a longer defense of the newspaper after several issues. Olwine’s publishing of nonlegal advertisements led to an editorial addressed to the bar. In the fifth issue, Olwine ad-

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3 1 OLWINE L. J. 3 (December 29, 1849). Under the “To the Public” column.
4 Id.
5 The trial lists take up parts of pages only. Id at 13 (January 5, 1850), 23 (January 12, 1850), 27-29 (January 19, 1850), 35-37, 40 (January 26, 1850), 42, 44-45 (February 2, 1850), 50, 53 (February 9, 1850), 59, 61 (February 16, 1850), 66, 69 (February 23, 1850), 75, 77 (March 2, 1850), 85 (March 9, 1850), 93 (March 16, 1850), 98-101 (March 23, 1850), 107-09 (March 30, 1850), 114-117, 123, 125 (April 13, 1850), 130-31 (April 20, 1850), 138-40, 142 (April 27, 1850), 146, 150 (May 4, 1850), 155, 157 (May 11, 1850), 164 (May 17, 1850).
6 Id. at 48 (February 2, 1850).
7 Id. at 43 (February 2, 1850).
dressed this concern that had been sent to him by several subscribers, who felt that they were not appropriate for a legal newspaper. Agreeing that he would prefer not to have nonlegal advertisements, Olwine defended his position because the paper had received no legal advertisements by order of court and so had to raise money by this method. He noted that every subscriber to the Journal received the trial list “printed on fine cap paper, gratuitously.” To the question, “what have we done,” Olwine proudly responded “we almost exterminated two glaring monopolies: and if we should do nothing more, surely the service we have done, should entitle us to the kind of consideration of the bar. One of the monopolies we allude to, is that legal paper, which for years, has received enough patronage from the Court and bar to have incited its publisher to make it, in appearance at least, worthy of that bar whose auxiliary it purported to be.”

To another charge that they would sell their subscription list to the challenging paper, Olwine claimed that the Journal was not commenced for a day, “but for all time.” He criticized the competing paper for only making changes once this paper began publishing, including the publication of the Trial and Motion Lists of the court that were not published before this time. Finally, he agreed that the typography of the Journal was not as “handsome” as he wished but hope it would improve in the future.  

Editorial comments were found on the second page, first column. The editorials dealt with a wide range of topics, not all law-related: an early editorial supported the erection of a new city hall that would include the courts; commented on the Hungarian “patriotic exiles” who visited Philadelphia in mid-January 1850 and a Mr. Glass for his hospitality offered to them; contained a caution warning that a person claiming to represent the Journal to gain admission to amusements did not represent it; commented on an English case involving the defense attorney’s defense of a murderer even though the defense attorney knew he was guilty; reprinted Robert Morris’ commentary on “the legal profession” from the Pennsylvania Inquirer dealing with the role of the lawyer in our society; supported an Indiana law for $500 exemption law for homesteads; supported building a monument in Philadelphia for the 56 members who signed the Declaration of

8 Id. at 34 (January 26, 1850).
9 Id. at 18 (January 12, 1850).
10 Id. at 26 (January 19, 1850).
11 Id. at 42 (February 2, 1850).
12 Id. at 50 (February 9, 1850).
13 Id. at 58 (February 16, 1850).
14 Id. at 74 (March 2, 1850).
Independence; criticism France for not establishing a Sabbath day as that found in the United States; recognized the Forrest Divorce case in New York supporting the husband; acknowledged Judges King and Parsons opinion in a Philadelphia case against the Sheriff's Interpleader Act.

Pennsylvania-related articles included local reminiscences also are published like “Scene in the Sheriff's Office December 1806” or “The Rambles of an Old Philadelphia Lawyer.” The paper reported Mr. Craig Biddle’s speech on the election of judges to be approved in a constitutional amendment upon the electorate later in the year. On one occasion, Board of Examiners for Philadelphia County listed students applying for the bar.

The “pencil sketches” biographies of famous lawyers began with Chief Justice John Marshall, and Bushrod Washington, in the first issues, but did not continue. Later obituary notices include that of Henry Baldwin, Associate Justice of the United States Supreme Court, James Broom, James Whitside, Esq., a leading member of the Irish bar, and Lord Mansfield.

Several articles covered various legal topics. David Paul Brown, a noted Philadelphia practitioner, published a short piece on “Instructions From a Father to A Son” with a subtitle of “Capital Hints in Capital Cases” on instructions on how to deal with a capital case as a defense lawyer. A two-page article on Dr. Web-

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15 Id. at 82 (March 9, 1850).
16 Id. at 90 (March 16, 1850).
17 Id. at 114 (March 30, 1850).
18 Id. at 122 (April 13, 1850).
19 Id. at 25 (January 19, 1850).
20 Id. at 164-65 (May 18, 1850).
21 Id. at 76 (March 2, 1850).
22 Board of Examiners is at the top of the paragraph, Id. at 8 (December 29, 1849). The Supreme Court did not create a statewide system until 1902, see Joel Fishman, The Establishment of the Pennsylvania State Board of Law Examiners, 1895-1902, LXXVI PA. BAR ASSN. Q. 73-92 (2002).
23 Hon. John Marshall, Id. at 6 (December 29, 1849).
24 Judge Washington, Id. at 10 (January 5, 1850), 12 (January 12, 1850).
25 The Late Justice Baldwin, Id. at 121 (April 13, 1850).
26 The Late Hon. James Broom, Id. at 34 (January 26, 1850).
27 Id. at 105 (March 30, 1850).
28 Id. at 84 (March 9, 1850).
29 Id. at 137 (April 27, 1850) and 149 (May 4, 1850). Brown was one of the leading criminal lawyers of his day and so his advice would be useful to other practitioners. 2 J. Thomas Scharff
ster's trial in Boston, Massachusetts by an anonymous member of the Philadelphia bar,\textsuperscript{30} let the editor comment “for beauty of style, argument, logic and truth, has never been excelled, if equalled, by any yet written, that we have seen; and we have read many upon the same subject.”\textsuperscript{31}

One of the more scholarly works published was the “Revival of Saxon Laws in Pennsylvania,”\textsuperscript{32} spread more than four issues on the front pages, as a tract of the Law Academy of Philadelphia. The Law Academy, begun in 1821, was a teaching institution for law students and beginning lawyers to practice moot courts before illustrious members of the Philadelphia bar. It is unclear however who wrote it and how the Academy published it, since it is not part of the annual addresses published by the Academy.\textsuperscript{33}

Court cases from both state Supreme Court and Philadelphia county courts can be found throughout the issues. For the “District Court, Law Points Decided,” contained a summary of multiple cases (10-20 cases) throughout the Journal.\textsuperscript{34} Once in a while a court case from another county was published.\textsuperscript{35}

In addition, Olwine published cases from various other state courts: Tennessee Supreme Court,\textsuperscript{36} Massachusetts Supreme

\textsuperscript{30} Dr. Webster’s Trial, and his Judge, Id. at 153 (May 11, 1850) and 161 (May 18, 1850).

\textsuperscript{31} Id. at 154 (May 11, 1850).

\textsuperscript{32} Id. at 41 (February 2, 1850), 49 (February 9, 1850), 57 (February 16, 1850), 65 (February 23, 1850).


\textsuperscript{34} Id. at 21-22 (January 12, 1850), 29-30 (January 19, 1850), 37-38 (January 26, 1850), 90 (March 16, 1850), 141 (April 27, 1850) [reported phonographically],

\textsuperscript{35} \textit{Patten v. McConnel}, (Pittsburgh District Court), Id. 124 (April 13, 1850), Allegheny County court cases began publication in 1853 in the \textit{Pittsburgh Legal Journal}.

\textsuperscript{36} \textit{Cook v. Bleech} (TN ), 60 (February 16, 1850); \textit{Lessee of Vance's Heirs v. Fisher} [29 Tenn. 210], Id. at 125 (April 13, 1850), \textit{Leake v. State} [29 Tenn. 144], Id. at 129, 132 (April 20, 1850),
Court, Baltimore County, MD, and Court of Common Pleas of New York. There were only two United States Supreme Court cases reviewed: Benner v. Porter10 dealing with the elimination of territorial courts after the creation of Florida as a state and Fleming & Marshall v. Page,41 in which collection of customs duties from Tampico, Mexico during the Mexican War did not come under the federal revenue laws. The Journal reported Parker v. Brant,42 a patent case heard by the current Circuit Court case heard in the current April 1850 term.

Stories and poems also filled the newspaper. James Sheridan Knowles wrote “One Witness: A Tale of the Law,”43 but other stories were non-law related. In addition, there are a variety of poems published throughout the issues. For instance, on the first page of the first issue is a poem “Freedom” and “The Betrayer,” an account of the story of William de Flavy of France, who failed to assist Joan of Arc in her fight against the English and who suffered death for it.44 Other poems are published throughout the work with the one most recognized was “Sons of Blackstone” offered at the Mobile Bar Association.45

Book notices of the publication of new books are interspersed in the issues, covering not just legal publications but general works as well: Jones on Land Office Titles,46 a complimentary review of Binn’s Justice (3d ed. by Frederick Brightly),47 Stephen’s

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**Jefferson v. Cash**, Id. at 148 (May 4, 1850), Elliott v. Lessee of Shultz and Hoard, Id. at 156 (May 4, 1850) (Westlaw appears to have a later case with different text at 30 Tenn. 183 (1850).

37 Reed v. Call [59 Mass. (5 Cush.) 14 (1849 term)], Id. at 65 (February 23, 1850).

38 Williams v. Mayor and City Council of Maryland, Id. at 89 (March 16, 1850) and 97 (March 23, 1850).

39 Luckey v. Frautzkee on liability of tenants, Id. at 99 (March 23, 1850).

40 Benner v. Porter, 50 U.S. (9 How.) 235 (1850), Id. at 149 (May 4, 1850).

41 Fleming and Marshall v. Page, 50 U.S. (9 How.) 603 (1850), 1 Id. at 157 (May 11, 1850).

42 Decision in Case of Parker’s Patent Water-wheel, Parker v. Brant, 18 F.Cas. 1117 (1850), Id. at 133 (April 20, 1850).

43 Id. at 9 (January 5, 1850), 17 and 20 (January 12, 1850).

44 The Betrayal, Id. at 1-2 (December 29, 1849).

45 Id. at 137 (April 27, 1850); a second one offered at the same time was “Amendments” by William Nicholson of the Philadelphia bar, Id. 147 (May 4, 1850).

46 Joel Jones, A Sylabus of Law of Land Office Titles in Pennsylvania, New Books Column, Id. at 11 (January 5, 1850).

47 Review of New Books Column, Id. at 42 (February 2, 1850).
Law of Nisi Prius, in a new edition by George Sharswood, Philadelphia judge and University of Pennsylvania law professor, with a summary from the London Law Times, or The American Quarterly Register and Magazine, No. 2 of Volume 3 received high praise: “This is decidedly the best work of the description ever issued in this country.”

Each issue has from one to two pages of advertisements. First, there is a category for Amusements which provides advertisements for various places and events to attend such as Barnum’s Museum, Virginia Serenaders at the Chinese Museum, Zoological Institute. Advertisements for services were offered in up to two pages of the weekly paper: Hare & Megary’s New Hotel, Irving House, U. S. Shirt Factory, Yerger and Ord (maker of artificial legs), F. H. Smith providing Pocket Book Manufacture, Camden and Amboy Railroad Company train fares. Only a small number of legal advertisements for lawyer services can be found.

In the next-to-last issue, Olwine announced the death of his father, Anthony Wayne Olwine, who served as the Prothonotary of the Court from November 25, 1848 until his death on May 6, 1850. The court informed Isaac that the court expected to name him acting Prothonotary until the Governor assigned a new replacement. However, on the following day, the Judges, through Judge Edward King, decided against giving Olwine this position because they did not have the authority to do it under the law. Although expressing “great confidence” in Isaac, it was “thought that the precedent of appointing an officer, where the law did not clearly warrant it, might, at some future period of time, be pleaded as an excuse for introducing an incompetent and dishonest person to fill a vacancy occasioned by the sudden demise of an incumbent.” Olwine did not receive the appointment, but it went to James Vinyard.

The following week, the last issue of the Journal appeared. There is no statement saying that it was to be discontinued. It is possible that with the appointment of a new prothonotary, Olwine...
may have been dismissed as deputy prothonotary and therefore no longer had the time to maintain the Journal.

The short-lived Journal died for probably several reasons. First, the unknown events of Olwine’s life after the death of his father probably were the main reasons for the discontinuance of the Journal. How much the father aided the son in the publication of the Journal is difficult to speculate. Second, the Journal was competing against the influential and well-established Legal Intelligencer that was the major Philadelphia legal newspaper in existence since 1841 publishing cases from the state courts as well as other jurisdictions. The Journal was unable to compete for court-related advertising and only received income from non-court related legal and nonlegal advertising. Second, the publication of nonlegal articles, poems, stories, and advertisements certainly detracted from the contents of the legal newspaper. Third, the American Law Journal (1848-1852), the successor to the Pennsylvania Law Journal, was also published at the time and continued to print both articles and cases. Fourth, it is unclear if the Journal was making money for its editor. Since it was first distributed to the bar without actual subscriptions being paid in advance, there is no way of knowing if the venture was financially successful. Given the fact that he stopped publication so quickly after the death of his father, it probably was a failed venture.

In conclusion, Olwine’s Law Journal attempted to fill a niche in the Philadelphia legal market, competing as a new newspaper against the established Legal Intelligencer. However, even with the publishing of some trial lists and summary of cases, and some interesting articles, the editor could not make it financially successful and it had a short life in the world of legal newspapers.
A FRONTIER JUSTINIAN:  
AN INTRODUCTION TO THE LIFE AND 
WRITINGS OF HARRY TOULMIN, 
TERRITORIAL JUDGE OF MISSISSIPPI AND 
ALABAMA* 

Paul M. Pruitt, Jr.**

Introduction:

Harry Toulmin was neither the first nor the only territorial judge to hold court in the future state of Alabama, but his was the most significant record. Toulmin was appointed in 1804 by President Thomas Jefferson to preside over courts in Washington County, Mississippi Territory, a sprawling district of settlements north of Spanish-held Mobile along the Tombigbee and Alabama rivers. Surrounded by the tribal lands of Creek and Choctaw Indians, this eastern province of Mississippi was isolated and undeveloped; its few officials were hampered by the distances they had to cover. Toulmin continued in his office after the Alabama Territory was carved out (in all, 1804-1819). As late as 1815, he complained that his authority extended over an area that, by his generous estimation, was 340 miles long and 330 miles wide.1

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* This article was originally published in the Winter 2008 issue of LH&RB.
** Paul M. Pruitt, Jr. is Special Collections Librarian at the Bounds Law Library, University of Alabama School of Law.
From the English Enlightenment to the Bluegrass State:

Toulmin’s early life had prepared him for vicissitudes. Born in 1766 at Taunton, England, he was the son of Joshua Toulmin, a Unitarian minister and a friend of the famous scientist and dissenting clergyman Joseph Priestley. Though he received little formal education, Harry Toulmin drew both information and an inquiring love of knowledge from the men of his father’s circle—even more, perhaps, from the works he read in a bookstore operated by his mother Jane Toulmin. Like his father, the young Toulmin became a Unitarian minister, serving two congregations in Lancashire from 1786 to 1793.2

The times were dangerous for Englishmen who were either religious or political nonconformists, and Priestley and the Toulmins were both. Indeed they were supporters of the French Revolution, men who applauded the fall of the Bastille and hoped that humanity would, in future, be guided by reason toward a state of republican equality and freedom of thought. The English government and the Church of England viewed such ideas as a serious threat to the status quo, if not treason; as a result the authorities did little to prevent violence against Unitarians and republicans. On the second anniversary of Bastille Day (July 14, 1791) a Birmingham mob burned down Priestley’s house, destroying his library, laboratory, and personal papers. Priestley began to plan a move to America, as did Harry Toulmin after “a burning effigy of the radical spokesman Thomas Paine disturbed the Joshua Toulmin family doorstep.” Toulmin’s investigations led him to believe that the newly created state of Kentucky was an ideal destination—in fact Toulmin began to write works promoting immigra-


tion there before he ever took ship. In the end, and with financial support from his congregation, he sailed to America in the summer of 1793.³

Arriving in Virginia, he won the good will of James Madison and Thomas Jefferson (who was a great admirer of Priestley). The Virginians were pleased with Toulmin’s republican enthusiasm; Jefferson would describe him as a “person of understanding, of science, and of great worth,” adding that the young Englishman was “a pure and zealous republican.” Armed with encouragement and letters of recommendation Toulmin and his family (he had sailed with his wife Ann and four children) traveled to Kentucky. There he made what one scholar calls a “complete redirection,” deciding to exchange the life of a clergyman for that of a scholar and teacher.⁴ He may have been concerned that a preacher’s salary would not bring in enough money. Or perhaps—now that he was away from the presence and expectations of his parents—he may have caught something of the ambitious, worldly spirit of the West.

In February 1794 Toulmin was elected president of Transylvania Seminary in Lexington, Kentucky. There he established a demanding curriculum of languages, science, mathematics, philosophy and political studies, which he taught to a growing student body. In these years Lexington presented a scene of intellectual and political ferment, with ongoing discussions of


⁴ Lengel, “Keeper of the Peace,” 8; and Tinling and Davies, The Western Country in 1793, viii-x (Jefferson quotation on ix). Toulmin maintained his connection with Priestley, who emigrated in 1794 and settled in Philadelphia, continuing his occupations as scientist and clergyman. For Priestley’s activities, and for the difficulties attending the formation of Unitarian congregations in America, see John Allen Macaulay, Unitarianism in the Antebellum South: The Other Invisible Institution (Tuscaloosa: University of Alabama Press, 2001, 21-27. As to Toulmin’s family, he had married his first wife, Ann Tremlett, in England; they would have eight children. Toulmin’s second wife was Martha Johnson, likewise an English woman. They were married in Washington County; together they would have two children. See Owen, History of Alabama and Dictionary of Alabama Biography, IV: 1677.
republicanism and deism. Thomas Paine’s anticlerical Age of Reason was available in bookstores and was the object both of attack and defense. It was an atmosphere in which Toulmin might have flourished—might have become a patriarch of Kentucky educators. Yet from his first days at Transylvania he was closely watched by a Presbyterian faction of the school’s board of trustees, who viewed him as a heretic and had opposed his election, and likewise by Federalists in the Kentucky legislature. The continuing intervention of these groups in Transylvania’s affairs finally drove Toulmin to resign in April 1796.5

Law and Politics in the West:

As the academic door closed, a political door opened. Shortly after his resignation, Toulmin accepted appointment as Kentucky’s Secretary of State. He would hold this post for eight years during the administration of Governor James Garrard, a Jeffersonian Republican. One of the Secretary’s duties was to certify acts of the legislature, and as such Toulmin signed Kentucky’s Resolutions of November 1798—by which Kentucky nullified the Federalist-inspired Alien and Sedition Acts.6 In the intervals of his official work he studied law and sold sets of Blackstone’s Commentaries. The knowledge he thus gained stood him in good stead in 1801-1802, when the legislature provided for the appointment of two “revisors” of Kentucky’s criminal law. The latter was derived from Virginia law, which in turn was an offshoot of English law—all modified by the statutes and case law of the new state. Toulmin (with attorney James Blair) was appointed to perform the revision and to “collect from the English reporters and from all such other writers on the criminal law as they think proper.” The result, a minor classic of arrangement and codification, was the

5 Lengel, “Keeper of the Peace,” 8-10; Tinling and Davies, The Western Country in 1793, x-xiv; and Friend, “Inheriting Eden,” 229-232, 233-238. A complicating factor for cerebral theologians, deists and Presbyterians alike, was the growing popularity of emotional, revivalistic religion. Friend, “Inheriting Eden,” 238, quotes Toulmin to the effect that Kentucky was home both to “unbelievers, who freely express their opinions” and “enthusiasts” “who assemble in thousands in the woods, and continue night and day.”

three-volume Review of the Criminal Law of the Commonwealth of Kentucky, published 1804-1806. These books represent Toulmin’s first steps as a scholarly lawgiver or (as he would later be called) “frontier Justinian.”

Toulmin and Blair laid out the criminal law in a manner similar to but not slavishly dependent on Blackstone. They moved from crimes against individuals (their “persons,” their “characters”) to those against property, subsequently taking up offenses against public safety, the “public peace,” the justice system, religion and morality, and the “public trade” (i.e., usury and related crimes). They provided disquisitions on trial procedure, evidence, and indictments—the latter containing diverse examples intended to serve as forms. Unlike Blackstone, they stocked their volumes with lengthy verbatim excerpts from English reporters. It seems reasonable to assume that Toulmin had access to a more than adequate law library, and that he used its resources to provide other lawyers with more than statutory arguments. On the whole, like Blackstone’s work, A Review of the Criminal Law is written in clear, even conversational prose.

The latter consideration was more than an academic matter to Toulmin, who was a Jeffersonian Republican and no partisan of “technical or cant” terminology. In a sense he and Blair had no choice, for the legislature had instructed them to use “no abbreviations, nor any Latin or French phrases.” This was bound to cause some difficulties in dealing with long-established names of actions; but Toulmin met the difficulty by using language designed to provide a “general conception of the nature of the writ alluded to.” He and Blair claimed to offer no opinion on the question of simplified language. But while Toulmin claimed “the same latitude as is usually given to our professional men,” he admitted “that the obvious meaning of some of the provisions of our constitutions and laws is very different to a plain man, from that which

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7 Harry Toulmin and James Blair, A Review of the Criminal Law of the Commonwealth of Kentucky (Frankfort, Kentucky: W. Hunter, 1804-1806), I: ix, and (for Blair’s subordinate role) xii. For the Justinian quote, see Benjamin Buford Williams, A Literary History of Alabama: The Nineteenth Century (Rutherford, New Jersey: Fairleigh Dickinson University Press, 1979), 24.

may be placed upon them through the artificial reasoning and subtle refinement of technical men.”

Two goals—to state the law plainly and to make it accessible in a new country lacking a well-established legal profession—would provide the justification for most of Toulmin’s subsequent writing. In the meantime he dreamed of making money through such works, and it was doubtless with such thoughts in mind that he began to compile a self-help lawbook, which he published in 1806 through Mathew Carey of Philadelphia, one of America’s first mass-distribution publishing houses. This pocket-sized book was the ambitiously titled Clerk’s Magazine and American Conveyancer’s Assistant: Being a Collection Adapted to the United States of the Most Approved Precedents. The book lived up to its title; in just over three hundred pages it delivered 286 forms patterned on those used in England, New York, Massachusetts, Connecticut, New Hampshire, Rhode Island, Pennsylvania, Virginia, Maryland, and (of course) Kentucky. Americans needed guidance, Toulmin wrote, in carrying out simple transactions, for they lived in “a country where property is in a state of incessant fluctuation” and where ordinary citizens carry on more “mercantile intercourse” than anywhere else on earth—with the sad result that “law-suits are multiplied to a most astonishing extent.”

If Toulmin seemed to have frontier on his mind it is not surprising. Prior to the publication the Clerk’s Magazine he had moved to a neighborhood far more isolated than Kentucky. In May 1804 he had written to James Madison, asking for appointment to the recently created “Tombigbee” judgeship in Washington County of the Mississippi Territory. While waiting he deli-

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9 Toulmin and Blair, Review of the Criminal Law, I: x, xi, xii (quoted passages).
10 Harry Toulmin, Clerk’s Magazine and American Conveyancer’s Assistant: Being a Collection Adapted to the United States of the Most Approved Precedents (Philadelphia: Mathew Carey, 1806), [i]-v (quoted passages on i), [xi]-xxi; see iv-v for Toulmin’s sources, chiefly Blackstone, Frederic C. Jones’ Precedents in Conveying (1794), and the statutes of the states listed above. Toulmin’s book was issued in duodecimo; the title page declares that he was “Secretary of the State of Kentucky,” which invites the inference that the book was begun before his appointment as a Mississippi territorial judge. The wily Carey also issued the volume as The American Attorney’s Pocket Book.
11 Lengel, “Keeper of the Peace,” 11-13; Toulmin declared that he planned to settle in the territories in any case. One of his motives for moving was a change of administration in Kentucky, where the newly elected Governor Greenup would soon (Lengel,
covered a July 4th address at Frankfort, defending Jefferson’s acquisition of Louisiana and portraying in darkest terms the ruin that might have followed had the French or English aggressively colonized the new territory. Fortunately a “republican” administration had carried the day though well-informed diplomacy, a method preferable to either force or guile—both of which, Toulmin implies, were favored by partisans of Federalism. Thus Toulmin laid out the pacific principles he would apply as a federal official serving on an unstable borderland. He was optimistic about the future of republican institutions (he was after all speaking on Independence Day); yet he understood the turbulence of frontier politics. Of the limits of republicanism he noted: “Some opposition to the will of the majority may be necessary for the purpose of keeping them within the bounds of reason, of justice, and of constituency.”

Toulmin’s appointment came through in November. By the summer of 1805 he had brought his family down the Mississippi River by flatboat, then taken them by sailing ship from New Orleans to Mobile. From that Spanish-held port they journeyed upriver to Fort Stoddart, an American military post near the confluence of the Tombigbee and Alabama rivers. There they were just above the thirty-first parallel, the northern border of Spanish

12) have “unhorsed him in favor of some political associate of the new regime.”

12 Harry Toulmin, *An Oration Delivered at the Celebration of American Independence at Frankfort, (K.) on the 4th of July, 1804* (Lexington: Thomas Anderson, 1804), 1-8 (quoted passage on 6). As to the results of European colonization, Toulmin argued that “in the course of a few years, that Territory would have been deluged with slaves from the coast of Africa.” For the likely consequences, he advised listeners to consider “the dark & terrific scenes which have been exhibited in St. Domingo.” Though Toulmin’s attitude toward slavery is not a major concern of this study, the *Oration* leaves no doubt that he viewed the institution with horror, congratulating Americans for their (past and future) roles in suppressing the international slave trade. Like many Jeffersonians he believed that slavery was doomed to fade before the advance of reason and enlightenment. Thus with unconscious irony he wrote that by the transfer of Louisiana to the United States, “instead of a new grave being opened for the children of captivity, there is a wide area thrown open to the sons of freedom.” See *ibid*, 4. For the terror that slave revolts in Haiti and San Domingo inspired among southerners, see Michael Olain ’Brien, *Conjectures of Order: Intellectual Life in the American South* (Chapel Hill: University of North Carolina Press, 2004), I: 207-209. See also below, especially Note 47.
West Florida. There at the nerve center of controversy he would soon learn, if he hadn’t known it already, that his new territory was large, populated sparsely if diversely by Native Americans, white settlers (of Spanish, French, British, and American descent) and African Americans. Toulmin’s immediate predecessor described the population in less than enthusiastic tones as “illiterate, wild and savage, of depraved morals, unworthy of public confidence or private esteem.” At least one faction of white settlers—led by one John Caller, member of an obstreperous frontier family, had unsuccessfully proposed their own candidate for the judgeship.

Law and Diplomacy: Flush Times in the Old Southwest:

Toulmin’s responsibilities in the Mississippi and Alabama territories were varied, and several had little to do with holding court. From 1806 to 1810 he “contracted to operate a mail route

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14 Lengel, “Keeper of the Peace,” 15-21. As explained below, the Mississippi Territory was eventually divided into the present-day states of Alabama and Mississippi. Concerning the early population of Washington County, Rowland, *Mississippi*, II: 937 reports estimates (c. 1802) that place the combined white and African American population between 750 and 1200. For Ephraim Kirby’s opinion (the quoted passage) see Aaron Welborn, “A Traitor in the Wilderness: The Arrest of Aaron Burr,” *Alabama Heritage*, 83 (Winter 2007), 14; for similar remarks made in 1803 by famous frontier preacher Lorenzo Dow, see Brantley, *Three Capitals*, 4-5. For an especially good summary of the Caller family, see Philip D. Beidler, *First Books: The Printed Word and Cultural Formation in Early Alabama* (Tuscaloosa: University of Alabama Press, 1999), 16-17.

15 The reference, of course, is to a classic work that covers the same geography, revealing the same human failings that Toulmin would encounter. See Joseph Glover Baldwin, *The Flush Times of Alabama and Mississippi: A Series of Sketches* (New York: D. Appleton and Company, 1854).
from Fort Stoddert to Natchez.” At intervals prior to the long and intermediately-awaited American military occupation of Mobile in 1813, he represented American citizens in their disputes with Spanish officials. The latter controlled the mouth of the district’s extensive river system, routinely charging fees as high as 12 per cent of the value of crops and goods, and sometimes shutting off trade altogether. As the highest-ranking civilian in his jurisdiction he also presided over public functions and entertained dignitaries. In 1817 he would welcome French settlers, the beneficiaries of a federal land grant who came with the intention of establishing a “Vine and Olive Colony.” Year after year he worked at routine judicial tasks: presiding over criminal cases, addressing grand juries, administering oaths, and taking depositions. Certainly he heard many cases involving disputed titles to land, a type of litigation prevalent in frontier communities. Occasionally he referred to his colleagues in the Natchez district such points of law as “whether a writ of error could stop an execution upon property.”

16 David Lightner, “Private Land Claims in Alabama,” XX Alabama Review, 197 (1967); and see American National Biography, 21: 768. For Toulmin’s involvement in diplomatic matters as early as 1805, see Debates and Proceedings of the Congress of the United States, (Washington, D.C.: Gales and Seaton, 1852), 15 (9th Congress, 1st Session), 1186-1187, et seq. For Spanish fees, see Lengel, “Keeper of the Peace,” 31-32, giving the “tariff” at 6 per cent; and Welborn, “Traitor in the Wilderness,” 14, giving the figure as 12 per cent on goods going upstream or downstream. For more information, see below. For a view from the perspective of Washington, D.C., see Frank Lawrence Owsley, Jr. and Gene A. Smith, Filibusters and Expansionists: Jeffersonian Manifest Destiny, 1800-1821 (Tuscaloosa: University of Alabama Press, 1997), 16-31.


18 On the prevalence of land disputes, see John D.W. Guice, “The Cement of Society: Law in the Mississippi Territory,” Gulf Coast Historical Review, 1 (Spring 1986), 77. For the possibility that Toulmin was improperly involved in one potentially rich
Toulmin’s commissions from Natchez included one task common to every phase of his mature career: namely, that he compile the young territory’s laws. The product of this assignment, his 1807 Statutes of the Mississippi Territory, revealed a great deal about both Toulmin’s understanding of his work and the varieties of legal business on the borderlands. Clearly, the judge was determined to blaze a clear path for judges in the future state(s), for within his topical arrangement he devoted more than 200 pages to laws and statutes pertaining to judicial proceedings, including such detail-oriented subject headings as “Demurrers, when frivolous” as well as an interesting section on the licensing and conduct of attorneys. The work is otherwise marked by its attention to land laws and criminal laws, especially the latter. Toulmin devoted more than eighty pages to territorial laws on “Crimes and the Public Police” and another forty to crimes punishable by the United States. Of the numerous federal offenses which he singled out for attention, several quasi-military offenses stand out—such as treason, manslaughter in a fort, violating a safe conduct or assaulting a foreign minister, accepting a commission from a foreign power, launching either a military expedition or a ship against a foreign government, confederacy to become pirates, burning a ship at sea, or participating in the international slave trade.

19 Harry Toulmin, compiler, *The Statutes of the Mississippi Territory, Revised and Digested By the Authority of the General Assembly* (Natchez: Samuel Terrell, 1807), 84-304, (frivolous demurrers, 170-171; attorney regulations 226-229). It seems noteworthy that Toulmin reprinted the Northwest Ordinance, *ibid.*, 467-477, though that famous federal enactment did not control the legislature of Mississippi. However the ordinance includes (on 473) an article that guarantees “judicial proceedings according to the course of the common law.”

20 *Ibid.*, 305-386 (territorial criminal law), 486-546 (federal land laws), and 547-587 (federal criminal law). For criticism and publication information on Toulmin’s *Statutes of Mississippi*, and his justice of the peace manual (see below), For a summary of Toulmin as codifier, see Dunbar Rowland, *Mississippi: Comprising Sketches of Counties, Towns, Events, Institutions, and Persons* (re-
After completing the Statutes of Mississippi, Toulmin agreed to write a manual for use by the Territory’s justices of the peace, elected officials who in the far-flung communities of the Old Southwest were often the local personification of law. Justice manuals based on earlier English works were common in federal-era America. Most of them were notable for a commonsense blending of English and American traditions, so much so that one scholar has called them “the first text-books on Anglo-American law.”

Toulmin’s contribution to the genre was titled The Magistrate’s Assistant: Being an Alphabetical Illustration of Sundry Legal Principles and Usages, Accompanied with a Variety of Necessary Forms. Like other manuals it contained many references to classical Common Law authorities (Coke, Matthew Hale) with few or no concessions to Spanish, French, or Native American practices. And like Toulmin’s Mississippi Statutes, his Magistrate’s Assistant was preoccupied with strategies to put down crimes. Consider the “A” list, consisting of the following topics: Accessories, Affray, Arrest, Assault and Battery, and Assize. Under “Arrest” there was a separate section, as in the Statutes, for federal offenses. A portion of the latter discussed the use of military force “to prevent expeditions from the United States against nations at peace with them.”

In spite of—or more probably because of—the reality of backwardness, violence and insurrection, the world as prescribed by the justice manuals was orderly and procedurally sophisticated. After all, these books were intended to serve as models for com-

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23 Conley, “Doing It By the Book,” 262. See Toulmin, Magistrate’s Assistant, 5, 15, 17, 90, 126 (for cites to the English legal gods), 31-32 (for an historical treatment of assize, “general gaol delivery,” oyer and terminer, nisi prius, and “commission of the peace”), and 102-103 (definition and proposed etymology of the term “felony”).

24 Ibid., 3-5 (Accessories), 5-7 (Affray), 7-29 (Arrest, quoted passage 25), 29-30 (Assault and Battery), and Assize (31-32).
munities suffering through civic adolescence—places where passions and acquisitiveness were unembarrassed by established churches, schools, or hierarchies of business or planting. A number of Toulmin’s neighbors were inclined to resent any authority, whether the Spanish in Mobile or U.S. officials at Ft. Stoddart. Yet when Toulmin, good republican that he was, wrote: “It may be laid down as an invariable rule, that the law favors liberty,” he did not equate liberty with freedom from restraint. Rather, he was laying down a regime of choices and gradations for the justices, a group that he may well have viewed as a republican squirearchy. For their use and the public good use he provided rich circumstantial details, citing (for example) the occasions when officers could break down doors or the types of hearings a coroner could convene; teaching how to interpret the varieties of evidence; providing the (thirty-two) rules of statutory interpretation.

Toulmin’s life in the concrete world required that he strike a nice balance between serving citizens of the Territory and enforcing the will of his federal superiors. Territorial judges had been given broad federal powers by a congressional act of March 1805, and Toulmin was quite willing to style himself “one of the U.S. Judges for the Mississippi Territory.” As such he heard admiralty cases and sought both to prevent and to punish federal

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26 Toulmin, Magistrate’s Assistant, 14-18 (breaking down doors), 67-74 (coroners), 79-96 (evidence), 186-192 (statutory construction), and 189 (quoted passage).


28 For quoted passage see Toulmin, Magistrate’s Assistant, title page. For another example of Toulmin as agent of the federal government, see H.S. Halbert and T.H. Ball, The Creek War of 1813 and 1815 (reprint edition; Tuscaloosa: University of Alabama Press, 1995), Frank L. Owsley, Jr., editor, 212-213. These pages show for Toulmin taking a deposition on the incidents of
crimes, especially those criminal activities likely to have international implications. Toulmin’s role in one such case—perhaps the most dramatic, wide-ranging, and ultimately confusing federal prosecution of the era—began in February 1807, when territorial judges at Natchez heard evidence in the matter of the recently surrendered fugitive Aaron Burr. Toulmin was present (as a spectator) as judges and grand jurors struggled to understand Burr’s alleged conspiracies against the United States and/or the Spanish Empire. Toulmin, very much the loyal Jeffersonian, viewed Burr as a traitor. Traitor or not, there was every reason to see him as a threat to the peace.

When to Toulmin’s distress the Natchez authorities released Burr (who promptly fled eastward), Toulmin issued arrest warrants against the former vice president and his principal allies. Toulmin examined several of the latter and bound them over to grand juries. Burr was eventually captured and briefly confined at Fort Stoddart, Toulmin’s home base. There the charismatic adventurer played chess with Toulmin’s daughter Frances (the wife of fort commander Edmund Pendleton Gaines) and pursued his schemes before being sent off in March to face trial in Richmond. There is no doubt that many residents of the Tombigbee district would have followed Burr in an expedition against the Spanish in Mobile. Burr had been in contact with territorial legislator James Caller, whose brother John had planned a filibustering raid against Mobile a year earlier. Toulmin had talked John Caller out of that project. Now Toulmin’s quick action—plus John’s decision to seek a reward for his nonexistent role in Burr’s capture—had deflected another warlike preparation.29

the Ft. Mims Massacre of 1813. For admiralty, see Hamilton, Anglo-American Law on the Frontier, 98 n.27.

29 For the clearest account of Toulmin’s role in these hopelessly murky affairs, see Lengel, “Keeper of the Peace,” 33-47; and see Hamilton, Anglo-American Law on the Frontier, 78-83. For Burr’s capture, see Albert James Pickett, History of Alabama and Incidentally of Georgia and Mississippi, from the Earliest Period (reprint edition; Birmingham: Birmingham Book and Magazine Company, 1962), 488-502. See also Thomas Perkins Abernethy, The Burr Conspiracy (New York: Oxford University Press, 1954), 198-226, especially 223-225. For a recent summary of the case, see Welborn, “Traitor in the Wilderness,” 10-19. In justice to Burr and Mississippi adventurers in general, it should be pointed out that the U.S. Congress had in February 1804 passed the Mobile Act, asserting American “annexation of all navigable rivers and streams . . . that flowed into the Gulf of Mexico”; see Owsley and Smith, Filibusters and Expansionists, 23, 62. It was the practice of the Jefferson and Madison administrations to assert rights they
However the root causes of friction between American settlers and Spanish colonials remained unsettled, with the result that Toulmin remained a de facto diplomat. In 1810 he interceded when residents of his district joined the Mobile Society—a group in sympathy with an interesting and under-studied revolutionary organization, the Convention of Baton Rouge, whose leaders had recently wrested authority over several “Florida Parishes” (as they are known in Louisiana) from the Spanish. Though he was determined to keep the peace and avoid international incidents, Toulmin understood his neighbors’ frustration with Spanish control over down-river trade. Even as he took every step to discourage lawbreakers, he put out feelers to see if Spanish authorities might relinquish control of Mobile voluntarily.\(^{30}\)

In the long run Toulmin could not prevent violations of the Spanish boundary, the most annoying of which was a November 1810 expedition under the command of Convention agent Reuben Kemper. The latter and his inebriated followers failed to capture Mobile. Indeed in December Toulmin was able to arrest several of the filibusterers’ ringleaders, including Kemper, the ubiquitous James Caller, and Joseph Pulaski Kennedy—the judge’s long-time enemy. These men were acquitted (March 1811) of all charges against them; such was the state of Tombigbee public opinion or the filibusterers’ powers of intimidation. In fact a segment of Mississipians, some of them county and militia officials, considered that Toulmin had been overzealous or even pro-Spanish. But he excused himself by explaining that a judge in a frontier community “must perpetually take a more active part in the early stages of prosecutions than is customary in societies more established, and composed of better materials.”\(^{31}\) Life in the borderlands—six years had little intention of enforcing immediately—but that might come in handy later.

\(^{30}\) Lengel, “Keeper of the Peace.” 57-93, especially 74-77 (Convention activities) and 84-88, 92-93 (Toulmin and Edmund Pendleton Gaines attempting to negotiate with Spanish officials, especially Governor Vicente Folch). See also Isaac Joslin Cox, The West Florida Controversy, 1798-1813: A Study in American Diplomacy (Baltimore: Johns Hopkins Press, 1918), passim, and passages cited below.

\(^{31}\) Lengel, “Keeper of the Peace,” 91-125.; see also Pickett, History of Alabama, 481-487, 505-509. December 1810 was a chaotic month. During this time Toulmin effected his captures (December 9), and Governor Folch attacked the Filibusterers’ camp (December 10), killing, wounding and capturing several of them; these two events effectively crippled the Kemper expedition. And on December 13 there arrived a copy of President Madison’s October 27 proclamation annexing West Florida to the United
of judicial diplomacy, meting out “unequal laws unto a savage race”—had somewhat eroded his Jeffersonian enthusiasms.\textsuperscript{32}

If Toulmin’s prosecutions had angered his filibustrian neighbors, they were even angrier when he was instrumental in preventing a clash between United States troops sent to secure the annexed territory and Spanish forces occupying Mobile. Toulmin and others feared that the Spanish might burn down Mobile if attacked. On reflection, official Washington agreed; so early in February, federal officials were ordered (February 1811) to leave the port in Spanish hands for the moment.\textsuperscript{33} For all such activities Toulmin—though he never lost the support of a core of official and legal friends—became a target for abuse and threats throughout the borderlands. Influenced by his enemies, a Baldwin County grand jury brought a nine-count indictment against him—chiefly accusing him of high-handedness on the bench but also implying that he was carrying on treasonable negotiations with the Spanish.\textsuperscript{34}

In November 1811 the territorial legislature forwarded the charges to the U.S. House of Representatives, which referred them to a committee whose members included territorial delegate

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\textsuperscript{32} The quote is from Alfred Tennyson’s 1842 poem “Ulysses,” lines 3-4.

\textsuperscript{33} Madison had assigned the present-day “Florida Parishes” of Louisiana to the Territory of Orleans as far east as the Perdido River; he would have been happy see the Spanish surrender Mobile and the remainder of West Florida (and East Florida, for that matter) but was unwilling to seize them by force, unprovoked. See Pruitt and Durham, “Sources of law in the Alabama Territory,” 3; McMillan, \textit{Constitutional Development}, 17-18; Cox, \textit{West Florida Controversy}, 487-516, especially, 490, 514-516; Lengel, “Keeper of the Peace,” 111-119; and Owsley and Smith, \textit{Filibusters and Expansionists}, 62-66 and (for East Florida), 67-81. The federal troops in question were supported by militia units packed with Kemper’s men.

\textsuperscript{34} Stagg, \textit{Papers of James Madison: Presidential Series}, 4: 190-191; Toulmin thought that plots against his reputation, even his life, had been planned as early as 1807. See Cox, \textit{West Florida Controversy}, 515-517; and Lengel, “Keeper of the Peace,” 54-55, 80, 98, 114-117, 125-133.
George Poindexter. Toulmin wrote letters defending his conduct at great length, evidently to the satisfaction of President Madison and the investigating committee, for in May 1812 Poindexter closed the investigation with a report commending Toulmin’s “vigilant attention to the duties of his station.”

A Frustrated Founding Father: Toulmin and the Transition to Statehood:

Even as Toulmin suffered for damming up the restless acquisitiveness of his neighbors, demographic currents were shifting in his favor. The second decade of the nineteenth century saw riverborne waves of settlement washing over eastern Mississippi. Land sales boomed along the Tombigbee, Alabama, and Tennessee rivers, bringing slave-worked cotton planting to the district that would be known as Alabama’s Black Belt, and to the Tennessee Valley. These developments led to the growth of several towns, including Huntsville, Selma, Cahawba, and Montgomery, and Tuscaloosa. The new communities (like St. Stephens, close to Toulmin’s base) began to show such appurtenances of civilization as municipal governments, schools, churches, taverns, and dry-goods stores.

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Toulmin surely realized that the advance of “normal American” society\textsuperscript{37} would lessen the influence of rascals like Kemper or the Callers. Yet ironically the pressure of white settlement disrupted the peace—the fragile peace that Toulmin had been at such pains to preserve. A Native American war movement promoted by the charismatic orator Tecumseh found sympathizers among the Creeks of eastern Mississippi; indeed he had addressed their councils as early as the fall of 1811.\textsuperscript{38} When the United States declared war against Great Britain in June 1812 and followed that up by seizing Mobile in April 1813, Tecumseh’s disciples believed (with good reason) that both the English and Spanish would support their fight against the Americans.\textsuperscript{39}

Toulmin observed the outbreak of war in the summer of 1813, and put pen to paper—assessing the situation for his official contacts, noting the panic that caused white settlers, their slaves, and their Indian allies to cluster in forts (“the people have been fleeing all night,” he wrote on July 23), and reporting on the massacre of August 30 of soldiers and refugees at Fort Mims.\textsuperscript{40} Unlike the filibustering exercises that he had formerly opposed, the Creek War was no comic opera affair; and it was prosecuted with all the force of national authority. Pretenders like James Caller (who had led militia forces to an embarrassing defeat at Burnt Corn Creek) were shoved aside by abler frontiersmen, including the epoch-making Andrew Jackson. Following Jackson’s crushing March 1814 defeat of Native American forces at Horseshoe Bend, the Creeks ceded huge tracts of land in the south and east of the future state of Alabama.\textsuperscript{41} From that point the onrush of settlement resumed.

\textsuperscript{37} This phrase was used in the mid-twentieth century by Harry E. Rogers of Greenville, Alabama, to describe the life of south Alabama—a society based on agriculture and small towns.

\textsuperscript{38} Halbert and Ball, \textit{Creek War of 1813 and 1814}, 93; see 94-97 for divisions among the Creeks.

\textsuperscript{39} \textit{Ibid.}, 85, 87; for a survey see Owsley, \textit{Filibusters and Expansionists}, 82-102.

\textsuperscript{40} Halbert and Ball, \textit{Creek War of 1813 and 1814}, 88-90, 91-93, 129 (quoted passage), 143-176 (Ft Mims), 296-300. Owsley, \textit{Filibusters and Expansionists}, 95, places the Ft Mims dead at 250 or more.

\textsuperscript{41} Halbert and Ball, \textit{Creek War of 1813 and 1814}, 125-142 (Burnt Corn), 141-142 (Caller’s disgrace), 241-278 (battles of Holy Ground and Horseshoe Bend). Of course Caller did not cease plotting and scheming prior to his death in 1819, but he was handicapped by the circulation of a mock-heroic poem satirizing his modest military accomplishments; see Beidler, \textit{First Books}, 14-22.
Antebellum judges were typically stretched very thin, forced to cover long distances via primitive transportation; Toulmin was no exception. After the American takeover of Mobile he recommended the establishment of a separate federal court there and volunteered to be its judge.\textsuperscript{42} He wanted to think of himself (as noted above) as a federal official. Indeed his conduct of office had always been informed by his study of national and international laws. But he was painfully aware that however clear his duties might seem in theory, his authority was ambiguous in practice. This was so because territorial legislatures could pass acts restructuring the staffing and jurisdictions of their courts; the Mississippi assembly did so three times.\textsuperscript{43} Another problem, the result of federal stinginess, was that the Mississippi Territory lacked a United States marshal or attorney until 1813. When necessary, territorial attorneys-general represented the United States. But county-level officers were reluctant to act in federal matters (since the latter often transcended county boundaries).\textsuperscript{44} By the end of 1815, Toulmin’s situation was unchanged. He was performing the judicial duties, federal and territorial, in a thriving, litigious, and expanding jurisdiction. Yet in his discouragement he had scaled down his pretensions; he now viewed his court as “merely a territorial court authorized like the state courts to entertain certain suits also belonging to the federal jurisdiction.”\textsuperscript{45}

As Congress began to entertain petitions for Mississippi statehood, Toulmin was firmly identified with the eastern half of the Territory, an area chronically underrepresented in territorial affairs. As early as December 1815, citizens east of the Pearl River had complained to Congress that their counties were more populous than those of the western district but sent “only eight members of the Territorial Legislature, while the Mississippi River Sec-

\textsuperscript{42} Toulmin to President James Madison, June 2, 1813, Carter, editor, \textit{Territorial Papers, Volume VI}, 371-372.


\textsuperscript{44} Hamilton, \textit{Anglo-American Law on the Frontier}, 94-95, 98-99.

tion had sixteen.” Though the Tombigbee and Tennessee River settlers had hoped at times to escape from the political clutches of the Natchez group, the rapid growth of the Mobile and Huntsville trading areas convinced them that they would dominate an undivided Mississippi. In October 1816 a convention at John Ford’s house on the Pearl River petitioned for the admission of Mississippi as a single state, and sent Toulmin to Washington to represent them. Toulmin appeared before congressional committees, prepared statements, and lobbied as best he could. Still he found that powerful interests had taken the side of the Natchez men. As for the Western Mississippians, they now hoped to escape from their formerly downtrodden neighbors; and in the looming sectional conflict over slavery, four U.S. senators were thought to be better than two.46

In two acts of March 1817, Congress prepared for Mississippi statehood and established the Territory of Alabama. In the latter, the lawmakers provided three judgeships. The judges, who were to be (as before) presidential appointees, were expected to ride circuit to preside over “superior courts” in the counties and were required to meet twice yearly at St. Stephens (the capital) to hear appeals and to exercise exclusive federal jurisdiction within the territory. For the remainder of the territorial period, Toulmin shared these duties with John W. Walker of Madison County, a rising politician who would serve as one of Alabama’s first United States Senators, and Henry Y. Webb of Perry and Greene counties in the Black Belt, who would serve as a state circuit court judge.47

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46 Brantley, Three Capitals, 17-24 (quoted passage on 18).
47 Carter, Territorial Papers: Volume XVIII, 54-55, 238-239, 570-571, 666-668; Owen, History of Alabama and Dictionary of Alabama Biography, IV: 1716-1717, 1738. For indications that lower territorial courts continued to handle federal matters, see Carter, Territorial Papers, Volume XVIII, 563, 575-576 (for a suit against a federal officer tried first in Mobile), and 637-638 (for a case involving the importation of slaves). For cases of various kinds over which Toulmin presided in the late Mississippi or Alabama territorial years, see Records Group 21, Records of the District Courts of the United States, U.S. District and Other Courts in Alabama, National Archives and Records Administration, Southeastern Region (Atlanta), Cases 54, 56, 57, 58, 59, 60, 62, 63, 64, 65, 66, 67, 68, 70, et al. Of these, No. 59, U.S. v. Negro Slave, Ben is of interest because it shows the practical application of laws against the international slave trade. One of the documents excerpts an (arguably) anti-slavery jury charge made by Toulmin in October 1816.
Congress passed an Alabama enabling act in March 1819. Toulmin was elected as a delegate to the constitutional convention that met in July.\(^{48}\) The membership was distinguished; its 44 delegates included former congressmen, legislators and other officials, several of whom would subsequently hold high office in Alabama.\(^{49}\) Toulmin was not chosen for of the Committee of Fifteen that drafted the constitution.\(^{50}\) Yet it may be significant that its suffrage provisions (white manhood suffrage with no property, militia-service, or taxpaying limitations) were similar to Kentucky’s and thereby more liberal than those of other southern states.\(^{51}\) Toulmin was most likely pleased, too, with the convention’s relatively liberal approach to slavery.\(^{52}\) Otherwise, he played a modest role, attempting without success “to make more definite the provision guaranteeing religious freedom” and arguing unsuccessfully for the federal (three-fifths) ratio as a basis for apportioning state senate districts. In addition he supported (this time

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\(^{48}\) Between 1808 and 1819, Toulmin’s old judicial territory had been subdivided into twenty-two counties. He was elected as the delegate of Baldwin County, created from Washington County in 1809. For the 1819 convention members and their counties, see Brantley, *Three Capitals*, 44; for county dates, see McMillan, *Constitutional Development*, 22, 25 n. 42.

\(^{49}\) McMillan, *Constitutional Development*, 31-32, sees in this convention a division between north and south Alabama; north Alabama, he said, had 28 votes to 16 for south Alabama.

\(^{50}\) Brantley, *Three Capitals*, 44-45, indicates that the chief architects of the 1819 constitution were Committee of Fifteen chairman Clement Comer Clay of Madison County, committee members Henry Hitchcock of Washington County and William R. King of Dallas County, and territorial governor William Wyatt Bibb. The latter (also the first governor of the state) was not a member of the convention. Hitchcock, a youthful attorney who was (relatively) Toulmin’s neighbor, may have been the conduit (if any) for Toulmin’s influence upon the document as drafted. For Hitchcock’s role in seeing Toulmin’s final statutory compilation published, see below.

\(^{51}\) Alabama’s constitution similarly lacked such restrictions on office-holding. See McMillan, *Constitutional Development*, 35-36. For the 1819 constitution’s tendency to confer power on the legislative branch see *ibid.*, 38-39; and in general see Pruitt and Durham, “Sources of Law in the Alabama Territory,” 14-16.

\(^{52}\) Under the 1819 constitution, the right to own slaves was guaranteed. However, it gave slaves basic legal protections and trial rights, and empowered the legislature to ban the slave trade, require humane treatment of slaves, and provide for manumissions. See McMillan, *Constitutional Development*, 42-43.
on the winning side) popular election of sheriffs, but failed to sway the convention against the popular election of clerks of court.\(^{53}\)

Toulmin had acted as a founding father to a state still undergoing its Jacksonian adolescence.\(^{54}\) Politically he was outdated, superfluous, as the 1819 legislature demonstrated when it failed to elect him to a circuit judgeship. Instead they gave the office (by a vote of 63 to 5) to former territorial legislator Abner Lipscomb.\(^{55}\) Unemployed, fatigued by duties that had expanded dramatically during the recent land boom years—“attending seven circuit courts twice a year and discharging the duties not only of a Territorial but of a Federal Judge”—Toulmin welcomed an offer from the 1821 legislature to examine, correct, and digest the state’s statute law. Even this labor was arduous for a man whose health was probably failing. He was obliged to attend the 1821 and 1822 sessions of the legislature, to “bring a wagon for the purpose of conveying the digest and original acts of the Legislature,” and to hire a clerk.\(^{56}\) He could base some of the work on his 1807 Mississippi statutes; but he was also forced to deal with a digest published in 1816 by Edward Turner.\(^{57}\) Toulmin did not admire Turner’s work, which he described as “mangling and murdering the laws.” Of his own work, A Digest of the Laws of the State of Alabama, he declared that it “has brought them to life again.”\(^{58}\)

\(^{53}\) Ibid., 35 (quoted passage), 36-37 (for the “white basis” of apportionment), 39 (election of sheriffs), 40 (election of clerks). The Committee of Fifteen had proposed that Alabama follow the U.S. Constitution in counting each slave as a three-fifths person for apportionment purposes; but this was struck down in a vote that pitted the more generally slave-owning south Alabamians against spokesmen of the small-scale farmers of north Alabama.


\(^{55}\) Brantley, Three Capitals, 57; For Lipscomb’s long history as a judge, see Brewer, Alabama, Her History, 405-406.

\(^{56}\) Brantley, Three Capitals, 100-101, 100 n. 2, and 118--119 (quoted passages).


Toulmin’s Digest is one of the most impressive works of its kind. Weighing in at nearly a thousand pages of text, it is divided into sixty-seven alphabetical Titles that are in turn subdivided into Chapters. The latter present major acts pertaining to the topic at hand, arranged in chronological order. Since the Digest encompasses statutes of the Mississippi and Alabama territories as well as the acts of the Alabama state legislature, it is unmatched as an historical document of the Old Southwest. Toulmin assured the Alabama legislators, moreover, that he had taken pains to place components of multi-purpose acts under their proper subject headings.\(^59\) The result, almost as much a code as a digest, is yet another instance of Toulmin, Jefferson’s disciple, shaping the public institutions of the wild frontier. Thus we see that laws enacted against dueling receive their own title, and that instead of a title on slavery per se, Toulmin offers a title on “Negroes and Mulattoes, Bond & Free,” with considerable attention devoted to emancipations.\(^60\) On the other hand, Toulmin devoted his considerable intelligence to title groupings that would provide lawyers, politicians, and citizens with information useful in a rapidly growing republic—such as his lengthy title on “Highways, Bridges, and Ferries.”\(^61\)

Conclusion:

Toulmin may not have lived to see his final work in print, though he did survive long enough to wrangle a promise of $1500 from the 1822 legislature—no mean feat for a sick old man.\(^62\) What he left behind, apart from printed pages, was a legacy pointing toward the supremacy of law. It could be justly said of him that neither distance, hardship, danger, intrigue, politics nor po-

\(^59\) Toulmin, *Digest of the laws of the State of Alabama*, iii-xxxiv (contents pages). See Brantley, *Three Capitals*, 118, for Toulmin’s editing; see ibid., 120 n. 2, for information that the *Digest’s* index was produced by Henry Hitchcock after Toulmin’s death.

\(^60\) Toulmin, *Digest of the Laws of the State of Alabama*, 261-266 (Dueling), 627-646 (Negroes and Mulattoes, Bond & Free). Readers should not imagine that early Alabama racial statutes were lenient. Emancipated slaves were commonly required to leave the state, and the state’s January 1823 act “to carry into effect” federal laws against the international slave trade provided that contraband slaves should labor for the state (ibid., 643-644).

\(^61\) Ibid., 387-442.

political persecution could shake his faith in the rule of law. Likewise (and marvelously so for a man whose life had been disrupted by mobs and mob mentality from England to Mississippi) he apparently retained his Unitarian, Jeffersonian faith that popular government was the only legitimate foundation for freedom. He continued, too, to hope that reason could inform republican decision-making, and so promote freedom under law. A judge and legal scholar, Toulmin could not suppress the anarchic features of frontier life. But he could help to determine the structures that would stand when chaos had run its course.

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63 Readers who detect a respectful parody (of Romans 8: 38-39) are quite right.
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Dr. Allison (Senior Lecturer in the Faculty of Law, University of Cambridge and a Fellow of Queens College) “attempts to put forward a historical constitutional understanding of basic doctrines and institutions of English constitutional law, not preoccupied with their supposedly systematic character” (p.xi). England’s admission to the European Union has changed the insularity of the English constitution and is now exposed to the European Communities Act of 1972, the Human Rights Act of 1998, etc.

Allison begins his work with a discussion of Victorian Albert Dicey’s *An Introduction to the Study of the Law of the Constitution* (1885; 10th ed, 1959 is the one Allison refers to), who emphasized the rule of law and parliamentary supremacy as major components of English constitutional law. Allison discusses three different approaches to historical constitutional law studies: the antiquity of law being important just because it is old, an emphasis upon a romantic view of a golden age as in Coke’s writings on common law, and an historical approach that is based on continuity and change as well as observing how European and continental law has affected English law (pp.15-16). Allison discusses the historical approaches of Maitland, Holdsworth, and the Whig history of Herbert Butterfield in providing additional background to the text that follows.

Looking first at the Crown (ch. 3) as the center of the government, Allison recognizes paradoxes between the views of the Crown and how it has evolved through the centuries. During the Middle Ages, based on Roman law and Catholic theology, the Crown stood not just for the king but for the corporate identity of the king which as a corporation sole is distinct from the body of the king, commonly known as the King’s two bodies. Maitland decried this concept, but in mid-twentieth century the crown and government were linked in the Crown Proceedings Act of 1947. Later court cases coming under European law held that actions against agencies of the crown could be held against them overriding parliamentary sovereignty.

Allison then discussed the separation of powers (ch. 4), noting the important distinctions between continental and English concepts, the former evolving from actions during the French Revolution, while English ideas derived from Locke, Montesquieu and Blackstonian ideas of separation of powers have been highly criticized in the past two centuries. Jeremy Bentham, William Holdsworth, William Robson, and most recently Geoffrey Marshall...
criticized the idea of separation of powers when the Lord Chancellor was both a government minister and head of the judiciary. Twentieth century complaints led to the Constitutional Reform Act of 2005 that created a new Supreme Court to replace the House of Lords as a judicial body and an independent Judicial Appointments Commission helped in selecting new judges, and other changes that shows improvements, but still leaves some separation of powers features not completely separate as in the French system.

A discussion of parliamentary sovereignty (ch. 5) begins with Dicey and Jeffrey Goldsworthy views of parliamentary or legislative supremacy as an insular historical development, but is now contradicted by judicial decisions that overrule English legislation under the European Communities Act of 1972. The acceptance of judicial review of legislation has not been part of English constitutional law, but there is an ongoing debate among constitutionalists over the role of the judiciary by William Wade, Lord Bridge, H.L.A. Hart, Trevor Hart and others.

In the following three chapters, Allison deals with the rule of law. First, he presents a discussion of Edward Coke’s emphasis upon the rule of reason and common law as described in his cases (Bonham’s Case) and treatises, contradictions between common law and parliament, and his support of judicial review over parliamentary sovereignty that pose an ongoing controversy.

Second, he discusses Dicey’s “progressive and reactionary rule of law” (title of ch. 7), in which he portrayed historical development of the rule of law after Coke, the application of Whig interpretation of history that made the English rule of law superior to the continental transformation in Europe in the nineteenth century.

Third, Allison in “Beyond Dicey” (ch. 8), analyzes Dicey’s rule of law as it applies in the late twentieth century with the development of public law in Europe. He discusses several judicial cases that rejected Dicey’s parliamentary supremacy over administrative developments, the debates over resources and sources between English and continental scholars (Trevor Allen, Joseph Raz, and Friedrich von Hayek) an extended discussion of England and its relationship to the Human Rights Act of 1998. He further discusses dual or bi-polar sovereignty that refers to sovereignty both in parliament and the courts which is contradictory to Dicey’s view of parliamentary sovereignty. Further, the Human Rights Act of 1998 incorporates the European Convention Act into English domestic law providing for judicial interpretation of its provisions and its application by the courts.

Dr. Allison summarizes his conclusions in the final chapter of the book. He repeats his findings of how the historical constitu-
tion has evolved in the past fifty years based on continuity and change in legislative and judicial changes.

In conclusion, Dr. Allison presents an important work on English constitutional law and its development over the centuries. His ability to show continuity and change in the historical constitution and the current relationship to European law makes this work an attractive study for those interested in this topic.

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

The scholarship dealing with the Framing generation and the writing of the constitution has largely omitted the influence of classicism on that generation. Although discussed, most historians give little credence to any meaningful influence of ancient history and classical ideas on the Framing generation’s political views. Challenging historians such as Gordon Wood and Bernard Bailyn who view classicism as marginal to the Framing generation’s political experience, David J. Bederman argues that classical antiquity provided the foundation for their political values as well as the basis for the writing of the constitution. Bederman, an Emory University law professor, not only challenges traditional constitution historiography, he seeks to provide modern constitutional lawyers with a foundation for understanding the mentality of the Framing generation, and thus the “originalism” of the constitution.

Bederman bases his argument largely on the common educational experience of nearly all of the Framers as well as on the Framers’ voluminous texts that quote or reference classical works. Throughout the eighteenth century, colonial American education strictly adhered to a rigorous training in the classics. Restricted to Latin and Greek sources, classical education in the American colonies had an established canon of works with which all the Framers would be familiar. Ancient historical works such as those by Polybius served as core texts in many of the Framers’ education. Consequentially, as Bederman argues, this generation had a common political language and set of political values derived from classical works. Providing extensive excerpts from many of the Framers’ pamphlets and debates, Bederman demonstrates that they consistently relied upon and drew examples from antiquity to promote their vision of the constitution, whether federalist or anti-federalist. Ultimately, crucial elements of the United States constitution such as bicameralism and separation of powers resulted because of this common classical education.

Although he seeks to reconstitute the role of classicism in the Framers’ political values, Bederman maintains in his conclusion that classicism was not the main influencing element in the writing of the constitution or in the lives of the Framers. He concludes that classicism should be weighed equally alongside the Framers’ understanding of the Enlightenment, religious orthodoxy, and common law. Bederman consistently provides evidence that the Framers frequently cited antiquity. However, he neglects
to provide adequate evidence that they did not equally quote Enlightenment philosophers. Focusing solely on the Framers’ frequent employment of classical references creates a distorted picture of the intellectual influences of this generation. A comparison of the use of both Enlightenment philosophers and classical texts references by the Framers would have created a more balanced representation of the intellectual influences that helped to shape the political views of the Founding Fathers.

Although at times simplistic, Bederman makes a strong case for a reinterpretation of the intellectual framework of the generation that created the constitution. Not only an important addition to the historiography of the American constitution, this book is as well an import work for constitutional lawyers and judges. Bederman provides a new perspective on the origins of many ideas in the constitution.

Joseph A. Hurley
Government Documents Assistant
Hillman Library
University of Pittsburgh

Professor Biancalana has written a highly detailed, complex book on real property law in medieval England. It is written for a scholarly audience and is not an introductory work. Fee tails began during the reign of Henry II as a means “of avoiding the doctrines that enabled royal government to enforce common law rules of inheritance.” (p.1) Fee tail provided for a grant “to B and the heirs of his body, but if B should die without an heir of his body the land shall revert to A; or, it could take the form “to B and the heirs of his body, but if B should die without an heir of his body the land should remain to C.” (p.6) Chapter 1 provides a history of fee tails from Henry’s reign to the statute of De Donis (1285). As part of the chapter, he discusses how maritagium became recognized as only one version of fee tail. Chapter 2 deals with the history of fee tail down to the fifteenth century, emphasizing the alienation to every generation of the first grantee’s lineal heirs. Fee tails became perpetual during this period and could not be ended by mere passage of time. Chapter 3 deals with entails in maritagium in land changed to jointure settlements on marriage. Chapter 4 discusses how collateral warranties could bar entails before the invention of common recovery. Chapter 5 shows how common recovery developed from a writ of right to a writ of entry. Chapter 6, based on 334 transactions from 1440 to 1502 describes the origins for common recovery, the beginnings of the writ of entry after 1489, and the double voucher recovery system in the 1530s and afterwards. An appendix calendars the 334 transactions for which chapter 6 is based upon (pp.352-439). An extensive bibliography follows (pp. 440-453), and an index.

Professor Biancalana has written an important, highly detailed work on the common law of property in medieval England. His wide knowledge and use of both secondary and primary sources not used previously, will make this work the primary focal point of future research on this subject.

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

This monograph is a careful response to Reverend Samuel B. Wylie’s work, *The Two Sons of Oil*, which was published in 1803. *Observations* is valuable for its cautious interweaving of politics with faith and for its many excellent illustrations that invalidate Wylie’s assertions that attempt to unite government and Church. It will appeal to anyone interested in religion and political theory. This book provides critical insight into two early Americans’ views on their impressions of liberty during the American Revolution and the infancy of the Constitution of the United States.

A native of Ireland, William Findley immigrated to Pennsylvania in 1763. He was an anti-Federalist and a forty-year veteran of both state and national office. Findley opposed the approval of the Pennsylvania Constitution because he felt that it did not guarantee protection of some basic liberties, including but not limited to religious freedom. Nevertheless, he condemns Wylie’s assertions that the constitutions of both Pennsylvania and the United States were morally deficient. Findley explicitly declares his opinion, by stating that neither church nor state has any law-making power in the church of Christ. The state has a legislative authority to prescribe rules of civil life to all its citizens, not contrary to the moral law of nature, but has no authority to interfere with the worship of God.

In *Two Sons of Oil*, a Covenanter classic, Wylie sets out to explain how to tell if a government is faithful to Christ. He also gives guidance on how to oppose and split from a government that gets its power from “the beast.” Constantly considered a radical work of Presbyterian theology, Wylie makes clear what the *Bible* requires of civil magistrates, and gives simple grounds why dissent from the United States government is necessary and appropriate. Wylie concedes that the American government is “the best now existing in the Christian world,” but he insists that Covenanters, that is, members of the Reformed Presbyterian Church, cannot, for conscience’s sake, yield obedience to it. He sums up, in the form of nine objections, his reasons for rejecting government as it exists in the United States. In *Observations*, Findley is playing devil’s advocate to this position. It is Findley’s belief that neither the purpose nor the design of the United States government is to have a federal religion and a federal creed.

The book is divided into six chapters. In Chapter I, Findley addresses Wylie’s argument that the gospel ministry and civil magistracy are not distinct governments, but component branches of one government. Chapter II deals with Wylie’s claims of illegitima-
cy and immorality of the government. Findley believes that although our governments are imperfect, being the work of imperfect men, they have not usurped God’s sovereignty over conscience. In Chapter III, Findley dissects Wylie’s analysis of the execution of penalties as punishment for sin against God, and the Law of Moses. Chapter IV confirms Findley’s defense of civil government by attacking Wylie’s claim that all civil governments of the world are immoral robbers. Findley goes as far as stating that certain assertions of Wylie’s are “absolute and palpable falsehood.” The laws of Pennsylvania with regard to murder and slavery are also vindicated. Chapter V examines martyrdom and creeds, scrutinizing Wylie’s use of testimonies of the Presbyterian clergy of England and Scotland and opinion of Reformers. In Chapter VI, Findley reiterates his belief that Wylie has failed to prove his point in regard to moral law. It is Findley’s position that Wylie uses flawed logic and poor analogies to make his point concerning the perpetual obligation of covenants.

The contrasting viewpoints of Findley and Wylie regarding the separation of church and state issue provide vital introspection into America’s ideas of independence and liberty. Findley’s defense of civil government and the protection of religion is the antithesis of Wylie’s insistence that government and religion are inextricably linked, and that government is the moral ordinance of God.

Maureen H. Anderson
Assistant Professor & Reference Librarian
University of Dayton School of Law
Zimmerman Law Library
American Sovereigns explores the development of constitutional theory in the United States from the time of the nation’s independence until the Civil War. Christian Fritz dispels the myth that constitutional theory has survived unchanged from the day it was first implemented. Instead, he shows in stunning detail how the people’s understanding of constitutionalism began before the 1787 convention and continued to evolve through numerous events over the course of the next half century. The founding principle of the constitution is the belief that the power of the government was endowed to the people, also known as the “collective sovereign”. Few at the time of our nation’s independence in 1776 would argue with this, but there were differences of opinions as to what scale the government operates by the permissive will of the people. There were those, including Thomas Jefferson, who believed solidly in a government that operates at the discretion of its citizens but others, including George Washington and Alexander Hamilton, who distrusted the common people with this kind of power. Washington and Hamilton believed that there should be some filter to the rule of the collective sovereign to avoid anarchy and allow the government to function effectively.

Fritz points out that there were numerous state constitutions that were drafted around 1776 to coincide with our nation’s independence from British control. This is important because it shows that the debate that took place during the U.S. Constitutional Convention and the resulting document were based on numerous ideas that had already been debated extensively, and as such the framers were well versed in these principles. The people in the new republic were able to construct their own constitutions through conventions as state democracies would replace the old colonial regimes. Experiments with new states in framing their constitutions would set forth the proposals that would later become a part of the U.S. constitutional convention. The levels of participation of the people as well as their ability to alter their government or constitution were consistently among the most important issues debated. While everyone agreed that these state governments operated at the will of the collective sovereign not everyone agreed as to the method or what checks and balances if any should be placed.

The power of the sovereign would remain a disputed issue throughout much of the early nineteenth century as several states were redrafting their constitutions. Much of the debate
centered on the procedures to change the constitution whether by conventions, amendments, or by methods outside of any procedure. Most believed that the government existed at the will of the people and if the government was acting outside of the boundaries set by the constitution, then actions could be taken to alter or abolish the constitution regardless of the requirements, if any, established by the current document.

Christian Fritz covers several historical events that tested and tempered the nation’s attitude toward allowing the removal of their current governments either at the state or national level. These episodes reflected interposition where certain parties can intervene when the government abuses its power. Earlier tests included the Whiskey Rebellion and more notably the response to the Alien and Sedition acts by the Virginia and Kentucky state legislatures that objected to these laws and issued resolutions declaring the acts unconstitutional.

The next major test would arrive when during the war of 1812 President James Madison decided to nationalize the state militias. Many of the federalist dominated New England states were enraged, and the Hartford Convention was convened to challenge the federal government’s actions. At this convention delegates from several New England states issued resolutions that would at least provide them with reimbursement for the use of the state militias by the federal government as well as a number of constitutional amendments to improve the region’s influence in national affairs. The true test of the sovereign’s right to alter the constitution would come to a head along with the security of the union when South Carolina considered using nullification to declare unconstitutional tariffs that were believed to be designed to transfer wealth to the northern states at the expense of the southern states.

Thomas Wilson Dorr would push the power of the collective sovereign to its limits when he attempted to change the government in Rhode Island by establishing the “People’s Convention” to draft resolutions to replace Rhode Island’s colonial charter constitution that would eventually expand the suffrage to all white males. The resolutions that were passed were approved by a majority of the citizens in the state but his efforts to actually replace the current government failed. The vote was not approved by the state legislature or any procedure in the Rhode Island Charter. Eventually a convention would be called by the state legislature that would result in a new constitution for Rhode Island but the argument of the people’s ability to change the government at any time with or without specified procedures or actions by the state legislature would be debated for many years afterward. Despite eventually being tried and imprisoned for treason Dorr would
eventually be released and exonerated. However, this did little to settle the debate.

Over the course of early American history prior to the Civil War the prevailing belief was that the government derived its authority by the permissible will of the people. Most agreed that there were situations that justified the revolution and overthrow of the government, but many differed on the requirements and whether changes should be sought through procedures provided by a constitution or simply by a movement. The major rebellions especially the South Carolina nullification and Dorr’s revolution in Rhode Island would result in a gradual shift from the idea that the sovereign has the absolute ability to use interposition to change the government.

James Madison, who would be a major player in many of these events including the South Carolina nullification, would find himself clarifying positions in his Report of 1800 where he supported the power to nullify a law deemed unconstitutional. There were two main views with regard to those who had the power to change a tyrannical government through interposition: First, the collective sovereign operating nationally as a people; Second, the sovereign states themselves individually without regard to the people. Madison did not agree with either of these perspectives but instead believed that only the collective sovereign through an individual state acting in concert with people in other states could justify the interposition imposed by the South Carolina nullification.

“He considered the people of the states the ultimate judge of the constitutionality of acts of the government. This involved the ultimate constitutional authority to render national laws void or give constitutional text final meaning. It required the participation of a majority of the collective sovereign.” (p. 233)

As the new nation moved toward the period of the mid-nineteenth century the belief that the government operated by permission of the people would take a back seat to the preservation of the union. Each rebellion that would test the limits of the permissible will of the “collective sovereign” would also be viewed as an endangerment to the nation itself. Hence Americans became dedicated to preserving the union and the concept of correcting the government’s action through interposition faded away.

I was very pleased with American Sovereigns and would recommend it not only to those who have an interest in constitutional law or theory but for those who generally love American history. Fritz gives the reader a new perspective of how the early founders viewed government power and the people’s right to remove that power. The author is very knowledgeable of the events that took place during the period covered in his book and effectively uses them to make his points. I was impressed with how
much detail the author provides, especially with respect to statements from notable figures ranging from the famous, including James Madison, to relative unknowns such as a specific convention delegate or state senator. Fritz also gives plenty of background information on key events and analyzes how they impacted constitution theory. This level of detail shows the depth of research used to compile this book and effectively demonstrates how the constitution was tried and tested, as well as the general public's understanding of how constitutional theory worked. A substantial amount of notes organized by chapter along with credits and an index are included.

Christopher C. Dykes
Reference/Research Librarian
University of Houston
O’Quinn Law Library

*The Cambridge History of Political Thought* is one of the most ambitious projects undertaken by Cambridge University Press. This volume is the sixth and final volume of the series.

Eighteenth century political thought provides an important era as the early modern period moved forward toward the modern world. This work encompasses political, social, economic, religious, and intellectual history. The Enlightenment provided so many important contributors to the history of the world: Beccaria, Blackstone, Bentham, Bolingbroke, Burke, Franklin, Hume, Leibniz, Montesquieu, Pufendorf, Rousseau, Adam Smith, and many others.

This work contains chapters divided into twenty-four chapters divided into six parts: The ancien régime and its critics; the new light of reason; Natural jurisprudence and the science of legislation; Commerce, luxury, and political economy; the promotion of public happiness; and the Enlightenment and revolution. The articles range between twenty and forty pages each. Each article is written by a specialist in the field as shown by the extensive bibliography at the end of the volume.

The scope of this work is balanced between the English Revolution of 1688 and the French Revolution of 1790s. The early chapters deal with the early part of the century as viewed from Montesquieu; the English Revolution and its aftermath into the early eighteenth century; philosophy, scepticism and religion and its related topic of toleration; and “an exploration of political ramifications of the divisions between ‘orthodox’ and ‘heterodox’ within eighteenth-century Europe’s believing communities.” (p.110).

The second group of essays begin with a comparative study of societies by prominent writers like Montesquieu, Voltaire, and Hume (ch. 5). The rise of encyclopedias and their authors are explored in the second chapter (ch. 6) followed by how optimism and progress were interpreted as well as philosophical history explored in the writings of Voltaire and Edward Gibbon. An exploration of the writings of Vico, Rousseau, and Herder on naturalism and anthropology is viewed from the eighteenth-century perspective rather than from a late nineteenth century viewpoint (ch. 8).

Natural law chapters provide important background to the development of the Anglo-American political thought. The first chapter begins with German natural law of the writings of Christian Thomasius, Christian Wolff, and Immanuel Kant (ch. 9). The Scottish Enlightenment’s view of natural rights expressed by
Francis Hutcheson, David Hume, Lord Kames, Adam Smith and Dugald Stewart provide important contribution to the development of American political thought at the time of the Revolution (ch. 10). English constitutional developments of the era deal with the concept of the mixed constitution, parliamentary sovereignty, a balanced constitution, separation of powers, and common law. Finally, social contract theory developed by John Locke, later criticized by Hume and Bentham, and its French transformation of contractarianism by Rousseau and the German Kant. At the end of the century Burke displaced the social contract theory by his historical ‘organism.’ (p.374).

The fourth group of essays deal with commerce, luxury and political economy. The initial essay on commerce and luxury was something entirely new to me as a historical topic including French writers as Fénelon, Montesquieu and Voltaire and English writers such as Mandeville, Shaftesbury, Hutcheson and Berkeley. The ‘rule of nature’ known as physiocracy, and its historical development in French administrative history is explored in ch. 14, while Scottish political economy concentrates on Adam Smith’s works reflect an important contribution to economic history (ch. 15). The development of property theory in eighteenth century differed from the seventeenth century and is discussed through various French authors.

The fifth group of essays deal with the promotion of public happiness as expressed through kingship and enlightened or philosophic despotism of the European monarchs (ch. 17), followed by the rise of cameralism as a method to assist the monarchy in administering the state through the writings of Johann Justi, Joseph von Sonnefels, but which ended by the early nineteenth century (ch. 18). Chapter 19 on utilitarianism and criminal law concerns the various theories of criminal law and punishment during the century including Montesquieu, Beccaria, Howard, and Bentham. French writers like Rousseau, Mably, Diderot, along with German writers like Kant and Fichte provide a range of eighteenth-century views on republicanism and popular sovereignty (ch. 20).

The final series of essays deal with the Enlightenment and revolution. Gordon Wood’s essay on the American Revolution nicely summarizes many of the ideas expressed in his various writings on how the Revolution came about and how many of the ideas expressed in the previous chapters coalesced into the writings of the Founding Fathers (ch. 21). This is followed by a discussion of the political discourses before and during the French Revolution (ch. 22). British radical writers are then surveyed by noted writers like John Wilkes and the American colonies, Edmund Burke and the French Revolution, Richard Price, Joseph Priestly, and Mary Wollstonecraft on rational dissent. Robert
Wolker completes the section with an interesting essay on the origins of social science.

The contributors are well-known senior scholars chiefly from United Kingdom and United States universities plus some institutions from Canada, France, and Switzerland. They include historians, political scientists, French language, philosophy, and specialists of the French Enlightenment, and German and Comparative Literature. Noted authors include the editors as well as Richard Popkin, Melvin Richter, Knud Haakonssen, David Lieberman, Patrick Riley, Donald Winch, and Gordon Wood.

The volume contains a useful biographical dictionary of 331 people discussed throughout the work (pp. 711-786). In addition, there is a 114 page bibliography of primary and secondary sources (pp.787-900). Throughout the essays, there are references by last names and date of publication to the works.

This work continues the excellent work performed in the previous volumes in this series. Drs. Goldie and Wolker have done an excellent job as editors of the volume. All contributors are to be congratulated for their contribution to this work. This History is highly recommended for all libraries.

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

Baseball is America’s pastime. Very few people dispute that. However, while baseball was garnering new fans in the American public, it was simultaneously suppressing its players through the reserve-clause system, which put those athletes at the mercy of the clubs they played for. Curt Flood was told he would be traded to Philadelphia from his home team of St. Louis. Instead of uprooting his life and values, he decided to stand up to the owners of baseball, and started what would become a landmark case, inevitably argued before the Supreme Court. In his book, *One Man Out: Curt Flood versus Baseball*, Robert M. Goldman tells how Flood came to the tough decision to sue baseball by telling the entire story of Flood’s personal and professional life, as well as the media and legal frenzy surrounding the case.

Nearing the end of a storied career with the St. Louis Cardinals, Curt Flood was informed on October 8th, 1969 that he was being traded to the Philadelphia Phillies. A veteran of the team, Flood had no intention of leaving or retiring and was unhappy with the decision, in which he had no say. After discussing his options with St. Louis lawyer Allan H. Zerman, and with the approval of the Baseball Player’s Association, Flood decided to sue baseball. On Friday, January 16, 1970 Flood and his lawyer Arthur Goldberg, a former Supreme Court Justice and U.S. representative to the United Nations, filed suit in the U.S. District Court for the Southern District of New York. The main respondent in the case was then Commissioner of Baseball, Bowie Kuhn.

In chapter two Goldman delves into the life of Curt Flood. Born in Houston, Texas on January 18, 1938 Flood’s parents moved to Oakland, California two years later where his father could find a job on a naval base. In high school Flood was known for his artistic talents more than his ball skills. Goldman quotes the *Sporting News* describing Flood as, “A Rembrandt off diamond” who “paints portraits the way he plays ball. Fast. Smooth. With perfection.” (p.16) Despite the possibility of a career in commercial art, Flood decided to sign with the Cincinnati Reds and play for their farm team out of high school. Two years after being called up to the Reds in 1956, Flood was traded to the St. Louis Cardinals. This trade would be brought up by sport writers in 1970 to explain why Flood’s lawsuit was “inconsistent” meaning that Flood had no problems with being traded in 1958. Why now?
Goldman continues by discussing Flood’s career in baseball (including statistics for the hardcore baseball fans). Here Goldman explains how the sport publications of the day described Flood as having “...relatively small stature, speed, grace and consistency and reliability in all aspects of the game.” (p.23) In the 1960s Flood was an integral part of the team and helped lead them to two World Series championships.

Chapter three is devoted to the history of baseball and the legal cases that were a part of it. Goldman touches on the tumultuous first decades of baseball in which new leagues and players unions were being formed to combat what the players saw as unfair treatment at the hands of the greedy owners. Chapter four picks up where chapter three left off and talks about legal cases and the state of baseball and other professional sports leading up to Flood’s case in 1970. Specifically it highlights the ramifications of the Supreme Court’s Federal Baseball decision, the appointment of a baseball commissioner, the rise of the Negro and Mexican leagues and Congressman Emmanuel Cellar’s Subcommittee on the Study of Monopoly Power and its hearings on baseball.

After a thorough analysis of the history leading up to the case, Chapter five begins looking at Flood’s case in the Federal Court. Goldman does a good job of bringing out the feeling of the courtroom, writing “...it was clear that Judge Cooper did not mind a bit of levity at the hands of the greedy owners. Chapter four picks up where chapter three left off and talks about legal cases and the state of baseball and other professional sports leading up to Flood’s case in 1970. Specifically it highlights the ramifications of the Supreme Court’s Federal Baseball decision, the appointment of a baseball commissioner, the rise of the Negro and Mexican leagues and Congressman Emmanuel Cellar’s Subcommittee on the Study of Monopoly Power and its hearings on baseball.

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Goldman takes great care in detailing the ins and outs of the Supreme Court case in Chapter seven, with the background of the justices involved, the defense's petition to the court, a summary of the briefs submitted by both sides and the ensuing oral arguments. Goldman also discusses a book written by Bob Woodward and Scott Armstrong in 1979 which explained how alliances, feuds and "vote-trading" affected the decisions made by the justices. Woodward and Armstrong used Flood's case to illustrate an example of vote-trading between justices. The court decided for the defendants, stating that the remedy for this situation required Congressional action, not Judicial. Finally in chapter nine Goldman talks about the days and years following the ruling of *Flood v. Kuhn*. Most reporters and legal experts were surprised by the outcome, believing that Flood would emerge victorious. Additionally, the case was being used as a reference in the up and coming Sports Law field. Goldman explains, "...the case became the prime example of how a particular professional sport could maintain its privileged legal status by self-reference to its unique status as a 'national pastime'." (p.24) Eventually, the Curt Flood Act of 1998 was signed into law by William Jefferson Clinton and stated that MLB players were now covered under the antitrust laws. The bill was introduced one day after Curt Flood died of throat cancer and pneumonia on January 20, 1997 in Los Angeles.

Robert M. Goldman has written an interesting book that covers all the bases of the story of Curt Flood and his quest to end baseball's reserve-clause system. Additionally, Goldman uses laymen's terms when describing certain legal aspects of this story, which I believe makes it readable for both legal and non-legal types. By incorporating historical documents, anecdotal observations, and in-depth analysis he is able to create more than a simple story about a court case. Goldman describes it best when talking about the importance of looking at the entire picture, "The statistics do not explain the sometimes intangible yet very real aspects of a team sport like baseball, such as the relationships between the players themselves or the 'spirit' or cohesiveness of the team on and especially off the field." (p.24) The small details of the story serve the same function here and Goldman has brought them together to create a wonderful "spirit" for this book.

Brian Eckel-Hare
Library Assistant III
Barco Law Library
University of Pittsburgh

“Tour de force” is not an encomium that I toss around lightly, but if ever a set of books deserved the accolade, it is surely *The Cambridge History of Law in America* (CHLA). From dust jacket to cover to typography to content, everything about these volumes bespeaks the commitment of the Cambridge University Press, the general editors, and the contributors to the highest standards of excellence. Without question, this is a gift to learning that will stand the test of time. One only wishes it were more moderately priced because its cost puts it beyond the reach of individual readers and some libraries as well, which is a pity because the set merits the widest possible readership.

The scheme for the CHLA hews in the main to a plan for a history of the world devised in 1896 by John Emerich Edward Dalberg Acton, 1st baron Acton of Aldenham (1834–1902), and Regius Professor of Modern History at Cambridge. Acton envisioned a collaborative, multivolume work written by multiple authors who were not only reigning experts in their respective fields but who also were also endowed with abilities to make their erudition accessible to audiences broader than mere specialists. He demanded authority and originality from his writers, just as he expected them to eschew the excessive clutter of academic annotation. His goal, after all, was not merely a rehearsal of the known but an improvement upon historical knowledge. (Although Acton died before publication of the first volumes of the *Cambridge History of the Modern World*, the work itself became the model for the other hundred or so Cambridge histories that now grace libraries the world over.)

Grossberg and Tomlin pitched the CHLA at a three-fold readership: historians at large, the legal profession, and the literate public. To address those audiences, they recruited a stable of sixty collaborators who are collectively a luminous cadre of writers. Readers will immediately recognize certain authors as belonging to the proverbial gang of “usual suspects” who inhabit the world of legal historians. The identities of other contributors will be less recognizable to some readers, either because they are ascending stars or because they are not strictly legal historians in any traditional meaning of the term though they nevertheless recur to legal subjects as a means of illuminating aspects of American society.
that interest them. A few names are conspicuous by their absence, which raises the question of how individual authors came to be drafted. The process of the draft might have been explained in greater detail than may be gleaned from the Editors’ Preface. Be that as it may, to judge from the quality of the workmanship, the entire group was well selected.

Fifty-five essays constitute the collection. Of these, sixteen are in Volume I, which spans the period 1580 to 1815. Another nineteen, embracing the long nineteenth century, form the content of Volume II. The remaining twenty are in Volume III, which covers the years after 1920. I should say that the editors were wise to establish chronological divisions that were independent of the customary categorization of American history. All chronology is an arbitrary method of breaking the past into manageable units of historical analysis. In this instance, the manner of the editors’ apportionment gives the three volumes an organizational integrity they would have lacked had Grossberg and Tomlins opted to follow the ways historians have customarily divided the past four centuries into smaller units of time.

As for the essays themselves, they run about forty pages in length, more or less. Each exhibits its author’s broad grounding in the appropriate literature and her/his ability to craft a sound rendering of a topic. All are uniformly well written as well. Some are especially noticeable because their authors are graced with surpassing gifts of words and phrasing that make their essays soar. Overall, the collection is readily accessible to the intended audiences. It may be read for pleasure, but more likely, given its heft, readers will probably not devour the CHLA from cover to cover, preferring instead to delve into it for specific purposes. Anyone who approaches the set with the latter purpose in mind will be greatly aided by the bibliographic essays that complement each contribution, which are grouped at the end of each volume. Collectively, those essays form as up-to-date a commentary on the state of legal history bibliography as is possible in a printed work, and they will stand as a ready guide for decades to come.

The range of essay topics is broad. That very breadth speaks to the vitality of the history of American law as it is practiced presently. Where there are noticeable omissions, one wonders about the criteria of selection. Seemingly, choice of author dictated choice of topic in a great many instances. So did gaps in existing literature. Here again, I wish that Grossberg and Tomlin had addressed the issue in greater depth.

All things considered, the Cambridge History of Law in America is a signal achievement. If readers of the Newsletter have not already done so, they should acquire the CHLA for their libraries and acquaint their patron with it. They will also want to spend some savoring its contents. And if they can afford the set, they
may want to purchase one of their own. Mine sits within easy proximity to my desk. I expect to reach for it constantly.

Warren M. Billings, PhD
Distinguished Professor of History, Emeritus
University of New Orleans and
Historian of the Supreme Court of Louisiana

In *The Revolutionary Writings of Alexander Hamilton*, Richard Vernier, an adjunct professor of American history at Purdue University at Calumet, has collected 13 of Hamilton’s earliest public writings – essays, letters and pamphlets – written and published during the American Revolution. All of them concern issues central to the revolutionary cause, its philosophical foundation, and the establishment of the new government. Vernier argues in his introduction that these works have been largely overlooked in discussions of Hamilton and his contributions to the nation’s founding, while more attention is paid to his later works, particularly the *Federalist Papers* of 1787-88. The all-too-common result of this, writes Vernier, is an impression of Hamilton as a disingenuous advocate of republicanism, who attempted to install a system of “elective monarchy.” Vernier’s goal in gathering these works into a single volume is to facilitate comparison to the *Federalist Papers* and other later works, to demonstrate Hamilton’s early commitment to the revolutionary cause, and to illustrate that while Hamilton’s views changed in significant ways, many of the broad themes of his early writings remained intact in his later work.

The first two works, *A Full Vindication of the Measures of Congress* and *The Farmer Refuted*, constitute Hamilton’s side of a debate, conducted in the pages of the *New York Gazeteer*. Hamilton’s debate was with Samuel Seabury, a New York clergyman and loyalist writing under the pseudonym, “A Westchester Farmer.” The measures referred to in the first work were the “Declaration and Resolves,” the responses of the Continental Congress to the notorious Coercive Acts, enacted by Parliament as a response to the Boston Tea Party. The effect of these measures was to begin a colonial trade boycott against Great Britain, and Hamilton’s defense of them, particularly in *The Farmer Refuted*, was an extensive argument for the doctrine of natural rights, and denial of the authority of Parliament.

Appearing next in the collection are Hamilton’s comments about the Quebec Act of 1774. The act applied to the Province of Quebec, under British control since the end of the Seven Years’ War in 1763. In its terms, Parliament enlarged the territory of the province, allowed free exercise of Catholicism, and reestablished French civil law. Hamilton was fiercely critical of the act, declaring that it meant, “arbitrary power and its great engine, the Po-
pish religion, are, to all intents and purposes, established in that province.”

His remarks were published, again in the New York Gazeteer, in two parts: the first addressing the reestablishment of civil law, and the second dealing with the religious provisions. Hamilton railed against the “arbitrary power” of the French legal system, which exposed “the lives and properties of subjects to continual depredation from the malice and avarice of those in authority.” While Hamilton did not explicitly mention natural rights in this letter, he refers to them when he provides his chief objection to the civil law system: that under it the King constitutes the “original fountain of law,” a point Hamilton surely meant to contrast with the source of natural rights.

Vernier has next chosen three letters, written by Hamilton under the pseudonym Publius, and published in The New-York Journal, and the General Advertiser. The letters all relate to accusations made against Samuel Chase, then a member of the Maryland delegation to the Continental Congress. Chase had allegedly used inside knowledge that he was privy to as a member of Congress to conspire to corner the flour market. Hamilton was highly critical of Chase, contending that he and his co-conspirators were traitors. But more importantly, Hamilton suggests that public corruption at this point in the nation’s history could significantly damage its chances of survival.

The collection’s final writings were all published as newspaper editorials in the New York Packet, under the title “The Continentalist.” These pieces can be seen largely as preludes to the Federalist Papers. As Vernier points out in his introduction, Hamilton here demonstrates an interest in a balance of power in government. While he makes it clear that “despotism (the natural disease of monarchy),” is not to be tolerated, he likewise insists that the government must be powerful enough to maintain order: “As too much power leads to despotism, too little leads to anarchy, and both eventually to the ruin of the people.”

There is no question that these writings demonstrate Hamilton’s philosophy and devotion to the revolutionary cause. In particular, Hamilton’s embrace and explication of the doctrine of natural rights stand out. His writing is not only persuasive and eloquent, but also at times delightfully acerbic, particularly in his debate with Seabury. Hamilton authored these works between the ages of 19 and 27; he was still in college when the first were published. But his philosophy of law and governance, which would soon help form the basis for a new constitution and nation, already seem fully formed.

As a collection of previously published writings, this title’s value rests largely on its subject focus and editorial enhancements. The book includes an index and a chronology of Hamil-
ton's life, though the chronology is identical to that published in *Works of Alexander Hamilton* by Henry Cabot Lodge. In addition to his introduction, Vernier provides brief commentary for each section of writings which provide some historical context. Previous collections of these writings have been multi-volume works, such as Lodge's collection and the comprehensive *The Papers of Alexander Hamilton*, which are more expensive, and more time-consuming to navigate. A significant benefit to owning this work rests in the fact that these writings are presented together in a single volume for the first time. This book is recommended for students and scholars of Hamilton, the American Revolution, and the philosophical basis of the American system of government. Both undergraduate and research-level libraries will find this a useful addition to their collections, although it is not essential for institutions that already own one or more of the multi-volume collections.

Todd Venie
Reference Librarian
Georgetown University Law Library

Written in two “books” Johann Gottlieb Heineccius (1681-1741) presents his views on the law of nature and the law of nations. Following on the writings of Hugo Grotius (1583-1645) and Samuel Pufendorf (1632-1694) he rejects their positions regarding the essence human obligation. Rather than seeing the law of nature deriving from the obligation to form societies, Heineccius situates such obligation in God, self and others.

He defines moral good as “whatever preserves and protects man” and the essence of natural law as the desire to do good and to delight in its perfection. This is Heineccius’s first rule of obligation, that is, the internal obligation to perform moral actions. But, the desire for moral good is not enough, according to Heineccius. There needs to be a prior rule or standard under a specific authority to define moral good. Seen as an external obligation, the authority is for this standard is God. Thus, Heineccius introduced the two-step notion of internal obligation, followed by an external obligation, or “rule of rectitude.

This 1741 English translation of the first edition in Latin (1738) was written by George Turnbull (1698-1748). Turnbull graduated from Edinburgh in 1721, studied theology at Oxford and subsequently joined the Anglican Church in 1733. He was ordained in 1739 and eventually served as chaplain to the Prince of Wales. Turnbull did not necessarily agree with Heineccius’s theories, specifically the notion of dual obligations. His translations have been criticized for some degree of inaccuracy around topics he felt were not necessarily in accordance with his own. Turnbull subscribed to the political theories of James Harrington (1611-1677) and viewed the “general law of industry” as a means of the natural order of property ownership. Ideally, ownership must be balanced in order to avoid absolute monarchy. Thus his theory of government brings a distinct English tinge to Heineccius.

Book 1, “Of the Law of Nature” discusses the nature of moral good and the two-step theory of obligations. Heineccius makes it clear that the law of nature applies only to man and not to animals or “brutes” because they have no concept of justice. He discusses human actions and whether they are ruled by conscience, free will and ignorance and he considers the impact of God’s will. Much of his discourse is focused on the what he identifies as a
principle of natural law: love, or the “desire of good, joined with delight in its perfection and happiness”. Book 1 also discusses property, occupancy, animals, rules of accession and other matters dealing with possessions as well as inheritance. Rules governing commerce spring from notions of property and the conduct of commerce are considered by his treatment of the nature of contracts.

Book 2, “of the Law of Nations” discusses the rules that govern social contracts such as marriage, family, master and servant. Civil states were formed as a reaction by men “being equal and free in a state of nature” as a defense against “profligate men”. Other societies formed to prey upon the weak. Heineccius goes on to describe the types of governments that exist and the right of sovereign states to conduct wars.

As a proponent of modern eclecticism, Heineccius demonstrates his conviction that philosophy, as proposed by Christian Thomasius (1655–1728), a pure science based on a singular analysis. It is an amalgam of disciplines and traditions. In his Elementa philosophiae rationalis et moralis (1756) Heineccius wrote: “one should not seek truth by oneself, nor accept or reject everything written by ancients and moderns, and so no other method of philosophizing is more reasonable than the Eclectic Method.”

George Turnbull, known as a member of the Scottish school of philosophy, offers a Supplement to Books 1 and 2 “Concerning the Duties of Subjects and Magistrates” as well as a second supplement “A Discourse upon the Nature and Origine of Moral and Civil Laws.

Mary Hemmings, MLS, MA, LLB
Assistant Director, Law Library
University of Calgary

As an undergraduate Classics major, I first read Marcus Aurelius’ *ta eis heauton* (lit. “to himself”), or “Meditations,” in my freshman Humanities Seminar. Pressed to explain the enduring relevance of the Meditations to modern audiences, my classmates variously described it as “Mr. Spock’s Guide to Vulcanisms,” “Murphy’s Law writ prettier,” and “the kinds of things you would think about for a long time if you saw them written on a bathroom wall.” While none of these descriptions are particularly scholarly (or entirely apposite) they all have an element of truth to them. One of the most compelling aspects of the Meditations (indeed, a major reason for its continued popularity throughout the ages) is its sense of relevance and immediacy.

Considering that Marcus Aurelius (AD 121-180) was Emperor of Rome for nearly twenty years, it is hardly surprising that the Meditations has been praised by people in similar circumstances. World leaders (including Bill Clinton and Chinese Premier Wen Jiabao), CEOs, military officers, scholars, philosophers, and theologians, have all found something in the Meditations to which they can profoundly relate. Nevertheless, despite the fact that the author was revered during his lifetime as the son of a god, and also as the leader of the most powerful empire of his day, much of what Marcus Aurelius wrote applies to people from all walks of life (whether freshman Humanities students, librarians, blue- or white-collar workers, homemakers, convicts, customer service representatives, social workers, or anyone else). Why? Because, in general, people, regardless of stature, face many of the same problems and moral quandaries (albeit on a somewhat smaller scale) as the author.

Marcus Aurelius wrote the Meditations during the last ten years of his life, a period which he mostly spent abroad on military campaigns. Consequently, instead of a continuous narrative, the text is a series of diary entries and reflections of varying lengths. With the exception of the first book—an analysis of the impact that various family members and teachers had on his mental and physical development—the structure of the Meditations is haphazard. The same themes (virtue, tolerance, human nature, citizenship, divine providence, the shortness of life, controlling one’s emotions) recur throughout the text. Although this feature makes the Meditations repetitive at times, the common themes serve a purpose. As Marcus Aurelius himself explains:
[Other people] seek retirements in the country, on the sea-coasts or mountains.... But this is all from ignorance. A man may at any hour he pleases retire into himself; and nowhere will he find a place of more quiet and leisure than his own soul.... Have also at hand some short elementary maxims, which may readily occur and suffice [sic] to wash away all trouble and send you back without freting [sic] at any of the affairs to which you return. (IV. 3.).

The public diversions... the Wars [abroad] the consternation, stupidity, and slavery of those about you, will wipe out daily [if you take not heed] those sacred maxims; unless you have settled them upon a thorough consideration of nature, and laid them up in your mind. (X. 9.).

As these passages suggest, Stoicism in the Meditations is not expounded as a philosophical argument (establishing that virtuous behavior is superior to conduct that does not have a moral basis) as much as an outlook intended to promote virtue and enable a happy life (or, at least, “a life free from care”).

Thus, the author repeatedly exhorts himself (and by extension his readers) to act for the greater good, “What is not in the interest of the hive, is not in the interest of the bee,” (VI. 54.), instead of personal benefit, “[P]opular applause, power, riches, or sensual enjoyments....[a]ll these things, if we allow them even for a little to appear suitable to our nature, immediately become our masters and hurry us away.” (III. 6.). According to Marcus Aurelius, life is challenging: “The art of life resembles more that of the wrestler, than of the dancer...” (VII. 61.). However, he also realizes that perspective is the key to happiness, “All depends on your opinions: These are in your power.” (XII. 22.). It is important to form opinions of your own worth, “Don’t entertain such opinions as the man who affronts you has, or wishes you to entertain: but look into these things as they truly are.” (IV. 11.). Additionally, it is essential to focus on enjoying the current situation instead of constantly striving for more, “Don’t let your thoughts dwell upon what you want, so much, as upon what you have.” (VII. 27.). True serenity can be attained only when you have the strength to acknowledge and accept the essential nature of things (or specific people) instead of railing against them, “Is the cucumber bitter? Throw it away. Are there thorns in the way? Walk aside. That is enough. Don’t be adding; ‘Why were such things in the universe?’” (VIII. 50.).

Because the author realizes that following these precepts is a difficult task (hence the repetition and constant exhortations to do better next time), the tone of the Meditations is somewhat less
“cheerful” (to use Aurelius’ term) than, say, a fortune cookie. Nevertheless, as Marcus Aurelius often points out, in the end a life well lived is more important than living well: “The time approaches when you shall forget all things, and be forgotten by all.” (VII. 21.). Everything changes and everyone dies. Thus, the basis for an enduring (although ultimately anonymous) contribution to society is to strive to benefit both other individuals and the state itself (rather than amassing fame and fortune).

Although any edition of the Meditations is an engaging handbook to a life well lived, this particular edition has a dual value. Apart from a modern introduction and endnotes by James Moore and Michael Silverthorne, this text of the Meditations is a faithful reproduction (including errata) of the original 1742 version jointly translated by Francis Hutcheson (1694-1746), a professor of moral philosophy at the University of Glasgow and one of the principle figures of the Scottish Enlightenment, and his colleague the classicist James Moor (1712-1779). The division of labor between Hutcheson and Moor is uncertain. However, the modern editors Moore (no relation to the classicist James Moor) and Silverthorne believe that Hutcheson was responsible for translating ten out of the twelve books of Meditations on which he and Moor collaborated.

Thus, this edition of the Meditations is not only a faithful English translation of the original Greek text but a window into (the principal translator) Hutcheson’s other works on moral philosophy as well. Hutcheson’s footnotes, his biography of Marcus Aurelius, and his inclusion of “Gataker’s Apology” (a defense of “a Christian minister[‘s]... many years’ time and labor on these Meditations of a Heathen Emperor”), from the 1652 edition of the Meditations by the Anglican clergyman Thomas Gataker (1574-1654), are all valuable resources for scholars of the Scottish Enlightenment. Taken as a whole, the original footnotes and commentary (supplemented by the modern editors’ introduction and endnotes) explore the dilemma Hutcheson faced in promoting a work authored by a man whom Christians regarded as one of their major persecutors. His steadfast admiration of Marcus Aurelius is demonstrated however, by the fact that the Meditations’ many precepts (e.g., piety, affection, equity, humanity), which Hutcheson considered to be consistent with the life and teachings of Christ, are emphasized in both the original and modern annotations.

In conclusion, this edition of the Meditations is a very enjoyable and compelling presentation of Stoic ethics and, to a lesser extent, Platonism and Epicureanism. There are some (charming) archaisms in the text (e.g., cheerfulness, unbyassed, chuse, insnare, emerauld, etc.), but for the most part the text is quite readable (although Book II is a little slow in some places) and
holds up well with more recent translations. This edition is not likely to supplant a mass market translation (e.g., Penguin Classics, Modern Library, etc.), but it is particularly timely and insightful for students and scholars with an interest in Hutcheson and the Scottish Enlightenment. The detailed eleven-page index will help these readers identify and locate prominent Stoic themes, literary and philosophical allusions, and references to Christian theology. Scholars of Hutcheson and the Scottish Enlightenment may wish to read the text straight through. However, most readers will likely take a more leisurely approach, reading only a few entries at one sitting and then taking the time to digest them before moving on.

Christopher S. O’Byrne
Research Librarian
Kresge Law Library
Notre Dame Law School

In the first decades of the Republic, Pennsylvania served an important role as the “arch” of the democratic United States. Prof. Kelly has written a short monograph on the case of U. S. v. Peters (1809) providing for its background and its results upon the national-state controversy over sovereignty and a useful discussion of Pennsylvania politics during this period.

In chapter 1, Kelly reviews the background to the case, describing Gideon Olmstead as an able sea captain with considerable experience on the sea. Olmstead was unfortunate to have his first ship taken by the British and him and his crew abandoned and then succeeded in obtaining passage on the ship Active back to North America. On the way back, he was able to overtake the ship and was heading to the Philadelphia shore when a Pennsylvania privateer captured the ship and claimed it as prize for Pennsylvania. Olmstead successfully got off the ship before it landed, reached Philadelphia, and obtained the assistance of the military commander, Benedict Arnold, a fellow Connecticutan, to retrieve his bounty.

Chapter 2 relates the period of 1778-1802 from the time of the first suit in Pennsylvania courts until Olmstead retired from the sea to pursue his suit. Olmstead brought his case into court in September 1778 amidst the disputes between Arnold and the City of Philadelphia, those for and against the democratic 1776 constitution, dispute between Joseph Reed, President of Pennsylvania and political opponents, attorneys James Wilson and William Lewis, who served as Olmstead’s legal counsel. Judge George Ross decided against Olmstead in the Pennsylvania admiralty court awarding him only a quarter of the prize, but who then succeeded in the U.S. Court of Commissioners of Appeals to be awarded the full prize. Rejecting the federal court’s decision, Pennsylvania argued that under a state statute a jury trial award could not be appealed. Olmstead went after the quarter allocated to Pennsylvania who had been taken by David Rittenhouse as treasurer of Pennsylvania. Olmstead sued Ross’s estate and won, but Ross’s heirs could not afford to pay the amount owed and sued Rittenhouse for the funds. The 1792 case rejected the claims since the Olmstead case was an admiralty case and could not be heard in Lancaster county court.

In chapter 3, Kelly portrays the difficult political situation in Pennsylvania in the first decade of the nineteenth century when Federalists opposed Democratic Republicans who supported Pres-
ident Jefferson. The Radical Republicans themselves were divided into two conflicting groups: first there was the Michael Lieb-William Duane “high-flyer” part of the party. Lieb was a German who was a legislator in the General Assembly and William Duane, the powerful editor of the newspaper *Aurora*, whose support was in the city of Philadelphia. A second group of high-flyers had Simon Snyder of Northumberland County as its leader. He was speaker of the House and later governor of the state (1808-1813). The moderate Republicans, known as Quids, included such men as Alexander Dallas, Governor Thomas McKean, and Albert Gallatin.

In 1802, Olmstead sued Rittenhouse’s heirs in the U.S. District Court, in which Justice Peters awarded him his claim. Snyder and others opposed Peters’ award and the legislature passed an act calling upon the Rittenhouse heirs to give the award to the state rather than to Olmstead. The state claimed to be a participant in the case and claimed the Eleventh Amendment supported its position. This case was important also because the New England states were against Jefferson’s embargo and they saw Pennsylvania opposition to the Federal government as representative of their own battle. The United States Supreme Court in *U.S. v. Peters* (1809) supported Judge Peters’ mandamus to enforce his opinion of 1803. Justice Marshall gave a strong opinion in favor of federal jurisdiction against state legislature’s right to set aside decisions of the federal courts. He also found that the case did not fall under the Eleventh Amendment, since Pennsylvania should not be a party in the case when the case was against the executrixes of David Rittenhouse. Although Rittenhouse was treasurer of Pennsylvania, he did not turn in the treasury notes to the state but kept them himself (pp. 70-71).

Following the 1809 case in the U.S. Supreme, Kelly presents a long chapter (5) on the trial of Michael Bright and his militiamen, who guarded the Rittenhouse women and prevented John Smith, the federal marshal, from serving papers upon the women. Alexander Dallas, U.S. Attorney, brought suit against Bright for interfering with Smith. Kelly details the case and discusses the constitutional issues of sovereignty vs. state’s rights and the role of the eleventh amendment in the case. Bright and his men were found guilty, spent six days in jail, before President Madison gave a pardon to the men. Pennsylvanians, especially Philadelphians, strongly supported Bright and his men.

Chapter 6 discusses the aftermath of the Bright trial. William Duane continued to hammer against Snyder in the *Aurora* for his role in the Olmstead case. Duane’s reluctance to drop the issue led to his downfall as a political leader by 1811. Snyder’s Republican faction gained victory in Pennsylvania politics, highlighted by Pennsylvania’s support for Madison in the 1812 election which
if it had supported DeWitt Clinton would have resulted in a Demo-
cratic victory in the presidential election (p.144). Olstead was
awarded $14,075 as a result of the Peters’ case, earning him a to-
tal of $26,924.7 for his thirty-year odyssey. His profits after ex-
penses was $4,059 which Kelly points out was considerable when
the average yearly wage in 1810 was only $400 (p.145).

Only a couple of critical comments. Although the book deals
with U.S. v. Peters, Kelly actually spends less than a page dis-
cussing the actual Supreme Court opinion in 1809 but spends a
whole chapter on the Bright trial. The only factual mistake I
found was a reference to the Pennsylvania Bar Association sup-
porting the Judiciary Act of 1801 (p.57), but the association did
not formally exist until 1895. I believe she meant the leaders of
the Philadelphia bar. Kelly should also have provided citations to
each of court cases cited in the work (the bibliography only pro-
vides the year).

Kelly provides an important short monograph on the
Olmstead case. She corrects some of the misconceptions por-
trayed of Olmstead and places the case of U.S. v. Peters (1809) in
its contemporary period. The case is the predecessor to Marshall’s
major opinions supporting national government in following de-
cade: Fletcher v. Peck (1810), Martin v. Hunter’s Lessee (1816),
McCulloch v. Maryland (1819), and Cohens v. Virginia (1821). This
book is recommended for all academic legal history collections
and for general Pennsylvania history collections.

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

Professor Kesselring provides a useful study of mercy and authority in the Tudor state. The sixteenth century saw the centralization of royal authority in which justice and mercy were an important part of the sovereign’s powers. The sixteenth-century monarchy grew in power as the kings and queens consolidated their power, expanded control over the country with new legislation, its takeover of the state church from Rome, and expanded its authority throughout the island. The dual grant of mercy by the sovereign reflected his/her royal authority, while the penitent had to display a certain presentation in accepting that pardon which reduced or eliminated his punishment.

Chapter 1 provides the historical background to her work and includes the distinctions between approaches to criminal law and punishment that differed between the sixteenth and eighteenth centuries, since the earlier century was more agrarian, the government was still part of the king’s overview compared to parliamentary sovereignty of the eighteenth century, and social conditions favored the social elite (pp.

Kesselring discusses the changing approaches to punishment and mitigation (ch. 2) as the monarchy expanded its control over society through legislation. Parliament expanded both crimes and punishments. Additional felonies, trespasses, and misdemeanors were created as well as the use of royal proclamations to expand the use of fines. Corporeal punishment also increased during the century. Imprisonment was exceeding detrimental to people because of poor conditions within the jails or prisons. New types of punishment like transportation began during this period. Mitigation of services also evolved during this period with a reduction in the use of sanctuary and benefit of the clergy, though maintained throughout the century.

Chapter 3 deals with the history of general pardons—pardons issued by the Tudor monarchs to demonstrate their mercy more often than their predecessors. The pardons hoped to provide for future obedience for those accepting them. Beginning with Henry VII’s issuance of a pardon upon his victory at Bosworth in 1485 until the end of Elizabeth’s reign, pardons played an important role in establishing royal power. Elizabeth offered pardons in return for parliamentary subsidies, while in other situations but made some exceptions for ecclesiastical court matters and to provide for the expelling of Jesuit priests. The rise in general par-
Pardons also offered a balance against an increasing number of punitive statutes. The pardons reduced punishments for many who committed lesser crimes, though over the decades pardons narrowed in scope and excluded more offenses.

Special pardons for individuals, numbering over 14,000 (10% of which were women) during the Tudor era, were a prerogative of the king, that covered all levels of society. Pleas went to the monarch, but beginning with Queen Mary, assize judges petitioned the queen for mercy for individuals. This meant that the judges played an important role in limiting executions as well as providing clemency upon those who they felt did not deserve their punishments. At the same time, the later Tudors began to issue conditional pardons in return for military enlistment, galley service, and exile (for Jesuit priests beginning in 1584).

Chapter 4 deals with patronage and petitions looking at the individual petitions to the monarchs and their issuance of pardons. Kesselring looks at the official correspondence of pardons, petitions for clemency, and text of pardons themselves to see how the process developed. Pardons reflected the social norms of “due pity, justice, and culpability.” (p.91) The author discusses pardons for criminal offenses, for accidental homicide, self defense (over 750), mentally ill and underage, and other types of requests for pardons. Individual petitions show reasons for mercy—lack of malice, youthful indiscretions, familial responsibilities, previous good conduct, offers of service—along with expressions of penitence and humble sorrows fill the petitions. (p.112) Few petitions offered a narrative story similar to French petitions, but concentrated on expressions of remorse. (P.116). Pardons were accomplished through personal relationships and patronage rather than through the bureaucracy of later centuries. The pardons displayed the subservience of the petitioners and emphasized their inequality to the monarch.

Chapter 5 deals with the public display of granting the pardons. Petitioners had to make an appearance at court, show their deference to the monarch before they received their reward. Pardons were also given at times of execution made scenes of punishments replaced by scenes of mercy. Kesselring portrays how pardons followed plays and other literary productions to “demonstrate negotiation of power in hierarchical relationships.” (p.162)

Chapter 6 discusses the granting of pardons following protests, especially the events and aftermath of the Pilgrimage of Grace in 1536-37. Henry VIII offered a general pardon by December 1536, but further revolts in mid-1537 led to executions that Henry claimed were for the events after the general pardon. Later, Queen Elizabeth offered no mercy in the 1569 Northern Rebellion that was offered by Roman Catholic supporters and was seen as a political challenge to the sitting monarchy. The author also dis-
cusses the monarch's role in putting down rebellions in Scotland, Wales, and Ireland.

Chapter 7 summarizes the earlier chapters, noticeably that one has to look at the contemporary state, its government, social conditions, etc. and not to place eighteenth century views upon the earlier century. She does not follow the themes of current historians about consent of the subjects in projecting her story, but recognizes “the coercive and symbolic aspects of the law’s powers.” (p. 206).

Two appendixes discuss first the sources of chancery papers dealing with pardons and the benefit of the belly (delaying punishment of women who were pregnant). A fine bibliography and index round off the book.

Professor Kesselring’s work will become a standard work on this aspect of royal authority in the Tudor era. It provides an important corrective to works on the same subject dealing with in later centuries

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

"It is easy for people to forget the contributions that people make, particularly after the passage of time." Wiley Austin Branton wrote that in response to the death notice of a former mayor of Pine Bluff, Arkansas. It can also be said of Wiley Austin Branton.

Wiley Branton is one of the Six Pioneers at the University of Arkansas School of Law, an esteemed group of courageous men who integrated the law school. Wiley Branton accompanied Silas Hunt to Fayetteville when Hunt registered and became the first African American student admitted to the School of Law in 1947. The pioneers went on to distinguished legal careers but Branton dedicated his life to improving civil rights and opportunities for African Americans as well as all Americans. He lived his life in the midst of the struggle for civil rights and was a nationally recognized leader but was a modest and quiet man. As described by Arkansas Senator David Pryor as "...quiet and unassuming...it is his humility and desire to always put the goals of the civil rights movement before self which probably accounts for the fact that [he] was not more famous than he was." Wiley Austin Branton was well known during the tumultuous times of the civil rights movement. Drawing on Branton's papers, extensive research, as well as interviews with family and friends, Kilpatrick's work brings Branton and his times to life. This is not an account of his personal life, rather it describes a man who "...devoted his entire life to fighting for his own people."

Kilpatrick's *There When We Needed Him* is the slim but very focused account of Branton's life as a civil rights activist. Warrior is an appropriate term to use. Branton's fight began with being one of the first black students at the University of Arkansas School of Law and took him to the highest levels of business and government. From his private law practice in Pine, Bluff, Arkansas, Branton, along with Thurgood Marshall, became counsel for the Little Rock Nine in the 1957 efforts to integrate Central High School. When he was leader of the Voter Education Project, more than 600,000 black voters were registered from 1962 to 1965. Branton served as executive secretary of President Johnson's Council on Equal Opportunity and then as a special Assistant to Attorneys General Katzenbach and Clark. Branton provided leadership to the United Planning Organization, the Alliance for Labor Action and the NAACP. Branton also served as dean of How-
ard University Law School. Between the foregoing positions, he also practised law with Sidley and Austin in D.C.

_There When We Needed Him_ was a pleasure to read. I learned about a remarkable individual whose work still continues. I think this work is essential to any library that has a civil rights focus, American history or biography. With the passage of time and the publication of this book, Wiley Austin Branton and his contributions to civil rights in America will no longer be overlooked.

Lorraine K. Lorne
Assistant Director
University of Arkansas School of Law Library

As Americans, we acknowledge that our democratic government is by definition, intended to be “government by the people” in which “supreme power is vested in the people and exercised by them directly or indirectly through a system of representation usually involving periodically held free elections.”(www.m-w.com). Over time, the idea of political power resting in the hands of “the people” has changed, and it no longer holds the very literal meaning it did when our Constitution and government was being created prior to the American Revolution. Kramer prolifically illustrates the basis on which the U.S. government was formed and the role it was to play in the lives of Americans, focusing on the reality that “the people” were truly intended to be the governing body.

Kramer provides an in-depth look into where the United States was in terms of government leading up to the Revolution, including the influence of the British monarch. The developers of the Constitution not only realized that it was a work in progress, but also that change to the document was inevitable. While the Constitution was developed by legislators, it was the responsibility of the citizens to challenge the laws, which they did in a number of very observable ways that Kramer refers to as “crowd action” – protesting, revolting, boycotting, and voting. Actions such as these played a pivotal role in forming the Constitution. This demonstrates just how much power was directly in the hands of the people, and Kramer argues, more power than that of the legislature. In addition to framing legislation, citizens helped to form law by being involved in the legal process. Juries determined the verdict of a case based on his interpretation of the law and understanding of the Constitution. At this time, there was much debate over the idea of judicial review. Advocates argued that it would serve as yet another outlet to voice the opinions and desire of the citizenry, while opponents felt it would only take power away from the people and put it in the hands of the judiciary. Judicial review was in fact a novel concept, and difficult for many to accept. Like the Constitution, judicial review was a work in progress, and determining the extent of judicial power, and how it would be exercised, had yet to be established.

Kramer details the acceptance of judicial review, albeit limited, in chapter four, largely based on the claim that “unconstitutional laws were void,” and the judiciary was to, like any other governmental body – including the citizenry – to take action on
these unconstitutional laws. Along with judicial review came a serious examination of the branch’s limitations. Americans had recently fought to remove themselves from sovereign rule, and were cautious for any one governmental body to carry more than its fair share of weight. In the end, both state and federal government adopted forms of judicial review for the sake of upholding the Constitution, and ensuring its integrity. Kramer does an excellent job of giving the reader a chronological analysis of the origins of its origins, and how it fit into the Constitutional framework. He also discusses how this history affects present day law and popular opinion.

Kramer’s work is heavily researched, and extremely well documented, including eighty pages of notes organized by chapter. He cites numerous cases to illustrate key points, and provides detailed explanation. This book is highly informative, while being very readable.

Lauren L. Vucic
Librarian
Pepper Hamilton LLP

This book from Professor Kuehn is an academic look at some of the techniques used by potential heirs in Renaissance Florence to avoid coming into possession of an inheritance that could be more trouble than it was worth. In that era, a Florentine’s reputation and success could be bound to their family’s fortunes, for better or for worse. At times, a potential heir might discover that their new inheritance would come saddled with more debts than assets, effectively leaving them with nothing but bills by which to remember the dearly departed. Though he describes several legal approaches, Kuehn’s main focus is on the practice of repudiation, by which an heir could reject their inheritance in full, passing the assets and liabilities from the estate to the next person in line.

Kuehn devotes the early part of his book to a description of the Florentine law on inheritance and its history. Chapter 1 is a brief history of the earlier versions of inheritance and repudiation law, from the ancient Roman era to medieval Italy. Chapter 2 details the law of inheritance and repudiation as crafted by the Florentine government and as evolved from its predecessors. Chapter 3 describes many of the techniques Florentines used to manipulate the law to their best advantage.

The second half of the work provides statistics on the use of repudiation and then gives numerous examples of heirs’ use of repudiation or other tactics to avoid inheriting debts. Much of the information in this part of the book comes from Kuehn’s exhaustive look at Florence’s registry of repudiations, covering 11,317 repudiations from 1365 to 1534. Chapter 4 is a detailed statistical analysis of the repudiations, breaking them down by (among other things) decade, gender of and relationship between the repudiating heir and the deceased, and the location of the repudiation. In the final three chapters of the book, Kuehn concentrates more on providing examples from the registry to illustrate the law of repudiation in practice, although he provides additional statistical analysis in Chapter 6.

This book contains several sections that may be useful to someone with a general interest in legal or Italian history. The first chapter offers a good introduction to inheritance law under the ancient Roman regime, and the book also provides the reader with a useful snapshot of the relationship between debtors and creditors in Renaissance Florence, as well as the importance of family ties in that era. Chapter 7 also contains an interesting description of how *consilia pro parte*, briefs designed by legal experts
to advocate one side’s position in a case, often became well-regarded secondary authority.

It seems a safe bet, though, that Prof. Kuehn created this book with specialists in mind. Kuehn seems to assume that the reader is familiar with the vocabulary and concepts of civil law, ancient Roman law, and Renaissance-era Italian law and society. Though Kuehn defines many terms that may not be familiar to non-specialists, sometimes it is only after using the term several times. Most of the terms that Kuehn did not define were in Black’s, but I eventually had to look up an article on Renaissance Italy to find out what a repetitio (an oral qualifying exam) was in the context of the book. Some of these terms may not have been vital to understanding Kuehn’s main point, but this reviewer still found it distracting.

Despite that, this book provides a fascinating look at the ways Renaissance Florentines manipulated the tools at their disposal under inheritance law – not just repudiation, but trusts and dowries as well – to try to gain as much of the familial estate as possible while shedding themselves of the estate’s debt burdens. People studying Renaissance-era Florence or the history of inheritance will find a treasure trove of resources here; Kuehn has written brief summaries of a number of repudiations selected from the Florentine registry, which one assumes would be just about the only way to get such information in English. An Appendix also reproduces (in their original language) the text of several repudiations, acceptances, and other documents related to inheritances that were filed with Florentine courts and registries. Finally, the statistical analysis of repudiations provides an interesting take on life in that era.

In sum, *Heirs, Kin, and Creditors in Renaissance Florence* would be a valuable resource for libraries at institutions with a substantial interest in the Renaissance era or the evolution of the law of inheritance. Otherwise, most librarians can consider this an interesting but optional purchase.

Fred Dingledy
Reference Librarian
College of William & Mary Law Library

The practice of law has historically been a male-dominated profession. Although Margaret Brent served as an attorney in the colony of Maryland as early as 1638, it was not until 1870 that Ada Kepley received a law degree from Union College of Law (now Northwestern University), becoming the first woman to receive such a degree from an American law school. However, it would be another century before women began enrolling in law schools in significant numbers.

The 1970's brought a great increase in the number of women engaged in the practice of law. Those women brought with them a new way of looking at the law. This new “feminist legal theory,” not tied to the legal precedents derived under centuries of male domination, sought to change the way in which law addresses issues of gender and thereby make equal the legal status of women and men.

In recent years there have been several excellent books written on feminist legal theory. However, none of them truly serves as a primer providing a basic overview of the entire field. *Feminist Legal Theory: A Primer* by Nancy Levit and Robert R.M. Verchick fills that gap in the literature.

The authors are both eminently qualified to write this book. Nancy Levit is the Curators’ and Edward D. Ellison Professor of

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1 Dawn Bradley Berry, *The 50 Most Influential Women in American Law*, 1, (1996). The Margaret Brent Women Lawyers of Achievement Award, named in her honor, was established by the ABA Commission on Women in the Profession in 1991. *Id.* at 3.


3 The reviewer’s alma mater, the Dickinson School of Law, had a single woman in its Class of 1919; her yearbook entry read “Well, well, look who’s here. If it isn’t our only little girlie.” *Senior Law Class*, 1919 Microcosm, 46. This was written more than 20 years after the first female law student arrived at the school.

Law at the University of Missouri-Kansas City School of Law.\textsuperscript{5} Among her many prior publications is \textit{The Gender Line: Men, Women, and the Law.}\textsuperscript{6} Robert R.M. Verchick holds the Gauthier-St. Martin Eminent Scholar Chair in Environmental Law at Loyola University New Orleans School of Law.\textsuperscript{7} In addition to numerous works on environmental law, he previously published \textit{Feminist Theory and Environmental Justice}, in \textit{New Perspectives on Environmental Justice: Gender, Sexuality and Activism}.\textsuperscript{8}

The book begins with a very brief discussion of the struggle for equal rights for women beginning with the suffrage movement and ending with the aftermath of the failed ratification of the Equal Rights Amendment. This is followed by a detailed discussion of the leading postulations of feminist legal theory: equal treatment theory, cultural feminism, dominance theory, critical race feminism, lesbian feminism, ecofeminism, pragmatic feminism and postmodern feminism. While these theories all agree on the need for equality between the sexes, they disagree as to how best to achieve that goal. Feminist theory is followed by application, with a discussion of feminist methods—unmasking patriarchy, contextual reasoning and consciousness-raising. A hypothetical situation is used to show how these methods can be put into practice.

The authors then discuss the application of feminist legal theory to specific topics: workplace discrimination, wages and welfare; education and sports; gender and the body; marriage and family; sex and violence; and globalization. Discussion under each of these topics is wide-ranging, as should be expected in a primer; those who want greater detail on specific issues will need to find another book. Fortunately, the authors have made that easy by ending each chapter with suggestions for further reading.

The longest chapter in the book is that dealing with education and sports, not surprising given the amount of media attention devoted to that subject. It is illustrative of the presentation style of the book. The chapter begins with an historical review of co-education, followed by discussion of current disparities in education ranging from the treatment of elementary students to the tenure of college and university faculty. This is followed by an examination of single-sex education, charter schools and vouchers in light of the Equal Protection Clause\textsuperscript{9} and the statutory re-

\footnotesize{
\textsuperscript{5} Nancy Levit, \url{http://www.law.umkc.edu/faculty/levit.htm} (last visited 30 February 2007).
\textsuperscript{6} \textit{Id}.
\textsuperscript{7} Robert R.M. Verchick, \url{http://law.loyno.edu/faculty/bio/verchick} (last visited 30 February 2007).
\textsuperscript{8} \textit{Id}.
\textsuperscript{9} U.S. CONST. amend XIV, § 1.
}
requirements of Title IX\textsuperscript{10}. Athletics and Title IX are then presented in detail, illustrated by a review of Cohen v. Brown University.\textsuperscript{11} The chapter ends with a discussion of sexual harassment in schools.

Each chapter, with the exception of the Introduction, ends with a series of questions for discussion, making this an ideal classroom text. The book is thoroughly annotated. The index is user-friendly. The flow of the book is logical; the word choice is clear; the writing is animated and never dull.

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

\textsuperscript{10} Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 \textit{et seq} (1972). Surprisingly neither Grove City College \textit{v. Bell}, 465 U.S. 555 (1984), nor the corrective Civil Rights Restoration Act of 1987, 100 P.L. 259, 102 Stat. 28 (1988) are addressed in the chapter. However, the book is true to its name; it is a primer, not an in-depth treatise


Dr. Linxia Liang believes that many Western scholars have created a “distorted” picture of civil procedure in Qing-era China (p. 1). In this picture, imperial China is usually a country where disputes involving private law were often settled outside the empire’s court system. Even when cases were taken to magistrates, the picture continues, the Qing legal code had little to say about private law issues, so the magistrate would often resolve disputes using their own conception of justice rather than by referring to legal precedent.

While Liang seems to think this mistaken belief has eased somewhat in recent decades, she decided that the misperception was still strong enough to warrant a re-examination of Qing-era cases. Thus, we now have her monograph, *Delivering Justice in Qing China.* This book does a fairly good job of supporting her argument, but its most valuable use for legal history scholars may be for the excerpts from and analysis of cases in Magistrate’s Courts from selected counties in Qing China. Liang draws the cases from collections of decisions for Baodi and Ba Counties; court records came from Chinese and Taiwanese archives and from the personal records of Qing magistrates. Liang also consulted several handbooks for magistrates of the era to get an idea of the typical guidance they might receive.

After her introduction, Liang begins the heart of her discussion by countering arguments that the Qing code is primarily penal in nature, and therefore inapplicable to civil law. She also examines the numerous duties magistrates of the era were called upon to perform, perhaps in an effort to lay the groundwork for the idea that actions taken by magistrates may not always be considered “judicial action” as Western scholars would think of it today.

Liang divides her examination into three major parts: first, a description of the procedure involved in having disputes heard by a Qing magistrate; second, an analysis of the Qing code and explanation of how she believes its provisions touch upon issues involving land, debt, and marriage disputes; and finally an examination of several magistrate decisions involving those types of disputes.

Liang ably demonstrates how petitions brought before the magistrate were often resolved in what could be considered a Qing-era equivalent of the pretrial stage, and how such resolutions were often misinterpreted by earlier Western scholars as settling the dispute outside the court system. Liang also nicely
explains in her conclusion how a Confucian ideal of a litigation-free society did not necessarily mean this was a country whose court system and culture avoided litigation at all costs.

Readers with an interest in legal history will, however, probably be most interested in her descriptions of the Qing legal code and of the magisterial decision-making process. Liang does a very good job of illustrating the big-picture mindset that many Qing magistrates would have while making decisions (especially in Chapters 3 and 9), along with an enlightening discussion of the concepts of *qing* (telling the truth in a petition) and *li* (having described the violation of a right worthy of protection), but this book shines best as it gives readers the nitty-gritty of Qing civil procedure.

Some of the book’s most interesting sections come from describing what many might consider tedious procedural minutiae. A discussion of the process involved in creating and submitting a petition for hearing by a magistrate touches upon the unequal legal status of women, the elderly, and people with disabilities, as well as corruption involving “litigation masters” from earlier eras whom people would hire to prepare petitions. Readers will be interested by Liang’s listing of the punishments meted out to those found guilty, including the popular slap to the face. Brief descriptions of sample cases and excerpts from case records add to this monograph’s utility.

This book is fairly accessible to people such as this reviewer who are unfamiliar with Chinese legal history; the one major flaw being the glossary, which only provides transliterations of the Chinese characters for terms used in the book. Chinese terms are usually defined in English the first time they are used, but since many terms are used frequently throughout the book, a single point of reference readers could return to would have been useful.

Overall, Dr. Liang’s work is an insightful and informative look at a portion of the civil justice system under China’s last dynasty, and would make a worthy purchase for anyone interested in the history of Chinese law.

Fred Dingledy
Reference Librarian
Wolf Law Library, College of William & Mary

This book, written by Gerard N. Magliocca, an associate professor of law at Indiana University-Indianapolis, is an accessible and interesting read. Covering United States Constitutional history from 1829 to 1837, Magliocca explores the generational struggle for power and how that struggle affected contemporary interpretations of the Constitution.

This book is organized into nine numbered chapters, with an unnumbered introduction and conclusion, an index, bibliography and case list. Endnotes follow the conclusion. There are black and white illustrations throughout, all of them reproductions of contemporary portraits of the major political actors of the time.

Magliocca’s central thesis is set out clearly in the introduction, which is aptly entitled “On the Constitutional Rhythm.” Magliocca’s theory is that Constitutional interpretations undergo revision as generations of traditionalists and reformers cycle through time: “To see the dynamic cycle of constitutional reform at work, this book looks at one turn of the wheel during the Jacksonian era.”

The book covers a surprising number of important historical movements and events: the rise of Jacksonian Democracy, the Indian Removal Act, Jackson’s veto of the Bank of the United States, the Deposit Crisis, the rise of abolitionism, the advent of the Republican Party, and the Fourteenth Amendment. Magliocca reveals how much of these events were driven by generational pressures and the political realities of an ongoing battle between the establishment and reformers.

While the subject matter is normally considered out of reach of the layperson, Parker’s text is easy to understand and free of legalisms. This book presents constitutional history as an integral part of American history. My only complaint is that the book covers only the Jacksonian period and does not go on to explain all of our Constitutional history. Presumably, Magliocca will someday add to this book’s coverage and treat us to more of this kind of political history.

This book has a place in every academic library, but would find the best fit in academic law libraries. This book is readable and understandable even for the layperson without a law or history background.

Stephanie Towery, JD MLIS
Librarian

This book is the edited seminal work of Scottish legal scholar John Millar which presents the history of England in three periods. Completed at the end of the 18th century, the author skillfully divides his work into (1) the Saxon period (4th century until 1066); (2) the Norman Conquest until the reign of James I (1066-1603); and (3) the Union of the three British crowns until the end of the 18th century (1603-1801). These broad periods are characterized in a straightforward timeline as the period of feudal aristocracy, followed by the period of feudal monarchy, and culminating into the period of commercial government. Millar’s work is deeply influenced by Hume’s *History of England* and it represents his own view of British history. The work is best analyzed within the context of the Enlightenment as support for Millar’s philosophical view that social institutions arise spontaneously to fit various societal needs rather than from specific works of individuals or the character of nations. The clarity, scope and intelligence of author’s ideas are omnipresent here, but they are not found in his research. Scholarly minimalism is the norm of this work, as Millar is vague in his citations which are heavily supplemented by the current editors.

The first part of Millar’s work is referred to as Book I and is broken down into fourteen chapters that focus on early English history. Also dubbed as the period of “feudal aristocracy,” this section culminates in the conquest of the British Isles by the Normans and the reign of William the Conqueror. The first chapter depicts the political and social structure of Britain under Roman rule. The description of the political and military landscape is rich with detail, but scant on references. This is where the additions of current editors make the chapter easy to follow and put the events into context for the modern reader. Without it, one would struggle to keep up unless the reader has some formal education in early English history. This is a dense chapter, where the employed analysis comes from a social science perspective.

The second chapter focuses on the “character and manners of Saxons.” Millar’s vivid descriptions of Saxon tribes, especially Germans, provide a useful historical perspective for students of English history. The descriptions are comprehensive and largely dependent on descriptions of other experts. Notably Millar relies on the German historian Tacitus, as well as passages from the Hebrew Bible. Although the characters and manners of these ear-
ly inhabitants of the British Isles come to life, the scant citations offered by Millar make the editors’ additions here welcome and necessary.

The third chapter of Book I focuses on the settlement of the Saxons in Britain. For the first time, Millar clearly admits that there are very scant accounts of the circumstances of Saxon settlement in Britain. Here the author relies on circumstantial evidence in form of observations of the general conditions of the locals to outline his conclusions. The chapter nevertheless clearly highlights the feudal relationships of the Saxon settlers. His ideas and descriptions flow well together because they follow the logical timeline of development found in many historians’ later works (which prove the importance of Millar’s original work).

The rest of the chapters in Book I provide details of the legal and political framework of the British Isles pre-1066. Religion as a state and legal institution, as expected, plays a large role in the Millar classic. The explanations are detailed, so the reader gets easily immersed in the text. The reader is able to easily discern the influences of various Enlightenment thinkers in Millar’s commentary. He references Adam Smith and hints to the influence of Montesquieu. Millar easily weaves the developments of the early English history into a logical conclusion that this is the age of feudal aristocracy. Most importantly, however, the editors have done an exemplary job of putting a nice polish on a great classic.

Book II is a detailed narrative of the political, social and constitutional landscape of England from the Norman Conquest until 1603. The editors replicated the page numbers in the contents section to the original 1803 edition. In this portion of the manuscript, Millar emphasizes the bases of political institutions and developments by drawing upon comparative histories of people other than the British. The author skillfully supports his thesis that social institutions arise spontaneously to fit various societal needs. Moreover, the great political institutions of this time are given equal treatment. The National Council, the various Courts of Justice and the progress of ecclesiastical institutions are all carefully analyzed only to conclude that societal needs bear these institutional fruits. The most interesting chapter of this segment of the book is reserved for Millar’s treatment of the Parliament. Here the reader is introduced to some of the first signs of democratic principles found in a burgeoning constitutional monarchy as represented by county and borough representatives in Parliament.

The author further describes, in a careful and masterful fashion, the leading democratic institutions of justice, as well as the creation on the jury system and the rise of the Court of Chancery. Another intriguing and well-reasoned chapter deals with the cir-
circumstances leading to the commercialization of England vis-à-vis Europe. Here Millar depicts how commerce, manufacturing and the arts have continued to develop out of necessity on the Old Continent and why these same developments have taken hold in England. Finally, the author analyzes the Reformation and its implications on the Crown of England leading up to the accession of the House of Stewart. The analysis is breathtaking, albeit short on citations, and it represents one of the finest examples of historical analysis. Millar succeeds in blending into his analysis the chronological developments of the era, yet throughout, he remains true to his conclusion that everything naturally leads up to the development of a commercial government.

The third volume of this compilation finds Millar tackling the workings of the English government from the accession of James I to the reign of William III. Here the legal scholar devotes significant treatment to the review of workings by the Scottish government. Millar’s expertise is best highlighted, however, in his expert description and explanation of the complex royal relationships culminating in the government institutions of this crucial time period in the history of England. The eight chapters comprising some 430 pages of text flow seamlessly as the author is not only well versed in the background of the monarchs but also the consequences of their individual reigns. The chapter on Oliver Crowell and the created Protectorate is particularly compelling because it is one of the best analyses of the tangled relationship between religion, government institutions, and autocratic rule. This compelling critique surfaces again when Millar expertly analyzes the implications of Charles I’s reign. Here the legal scholar points out that the direct effect of this monarch’s rule is that every English King was “reduced” to the chief magistrate of a free people rather than through the grace of God, as previously assumed.

The fourth and final Book of this compilation deals with the workings of the English government from the reign of William III to the accession of the three British crowns. This last set of eight chapters contains a strong analysis for what Millar calls a period of the commercial government. Here he examines not only the Irish government but also the advancement of industrial manufacturing, commerce and art under William III. Although he views the onset of the industrial revolution as helpful to the general proliferation of knowledge and literature, he is not shy about his concerns of its profound effects on the nature of government. His admiration of Adam Smith’s ideas found in The Causes of Wealth of Nations is omnipresent here. Millar’s conclusion is well-founded and supported; greater means resulting from commercial and manufacturing gains frequently lead to negative moral and ethical implications. Millar also finds that the proliferation
of arts and sciences has an important and positive impact on the institutions of government. The Enlightenment provides the background for Millar’s analysis.

Overall, this compilation is a classic historical work of English history that must be part of any academic library. It represents a piece of historical analysis copied countless times. Nevertheless, the editors’ additions to this compilation are welcome embellishments. The editors’ notes are well placed and researched, transforming this scholarly, yet originally minimalistic work, into a contemporary, useful compilation with a quick reference to the most pertinent places, characters, events and legal documents of this time period. The book contains the original introduction as well as an introduction written by the editors. The book is conventionally organized, for it contains an alphabetical index, and an appendix of cited authorities. The book is recommended for any academic library.

Dragomir Cosanici
Acting Assistant Dean for Library and Research Services
Pacific McGeorge School of Law

“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.” Morris L. Cohen in 12 *LH&RB* 7 (Summer/Fall 2006.)

*The Chesapeake and New England, 1607 - 1660* is the first of four volumes comprising *The Common Law in Colonial America* by William E. Nelson. It is a significant contribution to the “renaissance of interest in American legal history” referred to by Cohen. Nelson’s volume may be slim, a mere 130 pages from introduction to conclusion, but it is clear, concise and comprehensive. There are 58 pages of notes. By the end of the book I had a better understanding of not only colonial American legal history but also a sense of how that history influenced and shaped our legal system to the present.

Reading the introduction provides an overview of what will be covered. The chapters that follow provide the depth and analysis that emphasize the uniqueness of Nelson’s work. Rather than relying solely on excellent, previous scholarship, Nelson capitalizes on his own forty years of work in archival judicial records. He clearly states “...my hope is to make use of this excellent scholarship...to provide context for and otherwise supplement what I can extract from the archival sources. Combining archival material with existing scholarship will...produce the more general synthesis that the field of colonial legal history so far has lacked.” p. vii. If the first volume is any indication of the volumes to come, Nelson will deliver the goods.

We probably forget more American history than we remember. We might remember dates such as 1607, 1776, 1789; significant events occurred in each of those years. Some of us might believe that whatever colonial laws existed probably came over with the settlers and were immediately put in place to govern each separate colony.

However, *The Chesapeake and New England, 1607 - 1660* clearly and effectively relates that “...[they] came into being as strikingly different places and that the law in force in each both reflected and contributed to their differences...Virginia was founded primarily for economic profit; New England, primarily to create a religious utopia; and Maryland, primarily to establish a haven for persecuted Roman Catholics.” p.7

The rule of law and the reception of the common law in colonial America was not uniform; it did not occur at the same time; it occurred amidst social,
economic and political pressures unique to each colony. The Jamestown colonists did not disembark with a legal system ready to go.

By relying on the judicial records Nelson is able to provide numerous examples that illustrate the gradual process of the reception of common law in the several colonies. He uses cases from Virginia, Maryland, Massachusetts Bay, Plymouth, Rhode Island, Connecticut and New Haven to emphasize differences and similarities among the colonies. Each colony in its turn developed institutions to insure its orderly development relative to its purpose. Fortunately, the colonies could look to England for a framework that could be ignored, accepted or modified to their particular circumstances. Maryland alone adopted the common law by statute within the first few years after its initial settlement.

As important as the early judicial records are to the selective reception of the common law, Nelson clearly makes the case that the colonies confronted circumstances unknown in England. To meet the need for rules to govern society as it spread from the Atlantic seaboard, the colonists began to enact legislation. Nelson identifies this as a distinctly American rather than English foundation. Thus the law of the colonies although “...grounded in the common law.”. p.131 such reception as occurred was”...part of a dynamic policy process; the American colonists ended up receiving only so much of the common law as was appropriate to their needs and circumstances. p.3

The Common Law in Colonial America is a long overdue, groundbreaking work that explores familiar territory while authoritatively synthesizing existing scholarship with new examination of archival materials. I highly recommend this title and look forward to reading subsequent volumes.

Lorraine K. Lorne
Associate Librarian
Young Law Library, Leflar Law Center
University of Arkansas

Historians are interested in petitioning as means by which the subject approached the king, governor, or legislature with a request to perform a certain action. Monarchical acceptance or rejection reflects the distribution of justice by the king. Petitions serve as a means to describe various political, social, economic conditions at the time they were written. A number of various studies have been written over the years dealing with petitioning in medieval times, early modern period, and even in colonial America, e.g., Virginia.

This volume is based on two conferences held in 2006 to investigate petitioning between the thirteenth and fifteenth centuries. At the same time, the National Archives published online digitized collection of the basic SC8 documents, at www.nationalarchives.gov.uk/catalogue and www.nationalarchives.gov.uk/documentsonline.

The current work is a collection of eleven essays on medieval petitioning covering the period from the late thirteenth to fifteenth centuries. In addition, there are two essays, an introductory essay on the volume and one essay on petitioning in antiquity to provide background to medieval petitions. The contributors are all scholars of medieval period and the articles are all exemplary in their scope and scholarship. Professor Ormrod outlines the scope and importance of the work in chapter 1, providing a short introduction to petitioning, the scope of petitioning in the Middle Ages, and a brief summary of the essays. Gwilym Dodd opens the collection with an essay on the Ancient Petitions, more than 11,000, designated as SC8 in the National Archives. Dodd describes the collection and its history from the medieval period to the present. Unfortunately, the collection was broken up and reorganized by Victorian manuscript keepers and so there is the need to tie the petitions into other documents like the curia rolls to identify properly. Many of the petitions are not always dated, not always identified as to whether they were presented to the king himself or through a parliament or the king’s council.

Serena Connolly discusses the history of petitioning in ancient times briefly discussing petitioning in Egypt before reviewing Roman petition through the six hundred years and including the Byzantine Empire and Goths.

Barbara Bombi addresses petitioning to the papacy as part of the diplomatic correspondence between England and Avignon in early fourteenth century (ch. 4). Both oral and written communi-
cations existed between the two governments. Increasing bureaucratic and administrative organizations led to formalizing of petitions and communications. Bombi identifies four types of documents—letters of felicitation, letters of recommendation of the king and his council, supplications and admonitions—that went back and forth between king and papacy. She also discusses the hierarchy of advocates, proctors, and notaries public who served as representatives of the petitioners before the king and pope.

Using the Vatican Archives, Patrick Zutshi surveys papal petitions in early fourteenth century (ch. 5). He identifies six different types of petitions. He discusses the individual and multiple types of petitions presented and the types of responses that the pope may give. Registers in the Vatican Archives summarize thousands of petitions and Zutshi uses them to provide a good description of how petitioning worked among the various popes, notably Urban V who had more than 20,000 petitions in four years! Zutshi concludes that petitions were an “essential element in the machinery by which the papacy governed the Latin Church." (p. 97)

Paul Brand analyzes the petitions to parliament in the reign of Edward I (ch. 6). From 1272 onwards, it appears that written petitions replaced oral communications as a method of requesting aid. As one of the leading historians of medieval England, Brand’s review of the types of petitions is an important contribution to our knowledge of early parliaments. He identifies six categories of business (summarizes by Ormrod as): “royal grants of property, privilege or franchises; for pardons; for licenses; for actions within the legal system; for justice where royal claims or rights injured a private party; and for the remedies of wrongs committed by others of the king’s subjects” (p. 7)

Five specialized studies follow. Guilhem Pépin discusses petitions from Gascony that are found in various English archives as part of the English empire in France. He finds early petitions beginning in 1280 throughout the following century. He notes that the highest number of petitions was in the 1305 parliament (notable for Maitland’s account of the rolls) after the French occupation of the duchy. Although increasing throughout the century, petitions to the king drop during the period that John of Gaunt actually resides in the duchy of Aquitaine (1362-72). Pépin finds little difference between the Gascon and English petitions to the king.

Professor Ormrod’s contribution deals with “murmur, clamour and noise,” (ch. 8) portraying how oral and written petitions overlapped. Thus, the voice of the person presenting the petition was in the third person and hope to add to the text if presenting before the king. The words used in the petition reflect vocalized conversation between king and subject as well as the king’s answer.
Other petitions presented to panels of auditors were read aloud and answered orally with notes on the dorses of the original petitions. He also emphasizes the discursive nature of the text which could be expansive as needed. The theme of noise is also found in petitions in denoting public and collective grievances. Clamor and noise appear in the rhetorical writings of the era (Piers Plowman and Chaucer), and Ormrod shows how they appear in early fourteenth century documents. He finds two distinct meanings, “not merely the general dissatisfaction of the people but also more specific forms of complaint aired before the king by the parliamentary Commons” and in the parliaments of the 1370s relates to the Commons provoking of trials and impeachments. It appears on the parliamentary roll of 1399 at the time of the exclusion of Richard II. “It is the ‘common’ application of the relevant public concern, then, that is asserted and reinforced through the metaphorical language of a public outcry.” (p. 152)

Turning to petitioning of the queen and other nobles, Anthony Musson demonstrates how petitioners appealed to the queen in her own right and/or nobility as another source for petitioning besides the monarch. The queen herself might petition on her own behalf or on behalf of others to the king or in her own right as a tendril overlord or ecclesiastical patron. The petitions also reflect the bureaucratic developments at the time and the development of due process in the channeling of the petitions through government.

Simon Harris then discusses the group of several hundred petitions from 1322 to 1330 during the last years of the Descenders in power (1322-26) compared to the years Queen Isabelle and Roger Mortimer, earl of March, who ruled while Edward III was in minority (1327-30). He finds that the Descenders intervened with the petitions, while the queen and earl permitted the courts to review the petitions and only considered several extraordinary petitions.

Shelagh Sneddon then discussed the language and dating of petitions from the mid-1320s (ch. 11) and their effect on the parliament of 1327 with the changeover of monarchy.

The last two articles deal with specific petitions, one presented by the prisoners at Nottingham in 1330, and one by a single person, Thomas Paunfield in 1414. David Crook’s article (pp. 206-21) on the Nottingham petition the king’s Eyre, served as a superior court to all local jurisdictions sat in Nottingham for eight months hearing more than 200 cases. Crook surmises that Sir Hugh de Eland wrote the petition for which most of the prisoners were found innocent of charges as was the knight himself. Crook spends most of the articles on de Eland’s life before and after the imprisonment. At the end of the article are the petition and the list of the prisoners in the castle.
Dodd’s article on Thomas Plainfield involves a dispute between the Augustinian priory of Burwell and its Chesterton tenants, of whom Plainfield is one. The petition “unconventionally throws into sharp relief the linguistic and cultural conventions that normally determined the way in which parliamentary petitions were drafted.” (p.222). The petition by was written in English vernacular, a long petition of more than 56 separate paragraphs rather than one single paragraph, meant to elicit the assistance of the House of Commons. In addition, there is the shorter French petition written in formal style to reach the monarch.

This volume is an important contribution to monarchical studies of law in the period under review. Bibliographical citations are found only in the footnotes and there is an excellent index. The scholarly articles with their footnotes and access to the documents online will hopefully lead to further studies of this type that will increase our knowledge of medieval English law.

Joel Fishman, Ph.D.
Asst. Director for Lawyer Services
Duquesne University Center for Legal Information/
Allegheny County Law Library
Purdon, Susan & Aladin Rahemtula, eds. *A Woman's Place: 100 Years of Queensland Women Lawyers*. Brisbane, Australia: Supreme Court of Queensland Library, 2005, 833p. ISBN 0-9751230-4-1. $68.38

This outstanding commemorative volume on female members of the legal profession in Queensland was co-edited by a law librarian (Rahemtula) and an attorney (Purdon). The law librarian is the head of the Supreme Court of Queensland Library, and his co-editor was a long-time member of that library’s selection committee and a practicing family law attorney.1 This nicely bound 833 page work celebrates the centennial of Queensland’s *Legal Practitioners Act of 1905*, “An Act to Confer on Women the Right of Practising as Barristers, Solicitors, or Conveyancers.” At core, this compilation profiles 75 female members of Queensland’s legal profession in four sections, with 1) a historical summary, 2) individual biographies [the bulk of the book], 3) future predictions, and 4) statistics. It is similar in some ways to *The 50 Most Influential Women in American Law*,2 but over twice as long, with more historical synthesis, more focus on living individuals, and plenty of statistics for Australia’s north-eastern state.

The first of the book’s four sections contains an excellent (though brief) historical overview of “the admission of women to the legal profession in Australia” (pp. 9-25). This same section includes a chapter on 23 women lawyers outside private practice, emphasizing “firsts” and other accomplishments in academia, community legal services, corporate, government, rural areas, services to Indigenous communities, and in professional legal organizations (pp. 27-96).

The second and largest section of the volume are 52 profiles of Queensland women lawyers, organized alphabetically, and written by fourteen contributors (pp. 97-629). Full page color photographs accompany most of these biographical vignettes, covering female legal practitioners who have made a difference in their state. Included here are a broad cross-section of individuals, everything from Queensland’s 24th governor, many magistrates, judges and justices, a local law school dean, members of the

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state’s Parliament, government attorneys, corporate lawyers, and the first Indigenous Australian appointed to a judicial position in Queensland. Forty-eight of the profiled women are alive (including some retirees), so the book serves as a collective oral history collection of sorts as well. Seeing and reading about these strong women gives the book a vibrant, dynamic feel and provides a depth to the narrative and statistics elsewhere.

A unique feature of the short third section of A Woman’s Place are thirteen brief reflections by recent female law graduates in Queensland on the future of the legal profession (pp. 631-681). These fifty pages of hopes for the next twenty years vary greatly, but are uniform in their optimism for a strong and thriving future for women in the law.

The final of the four parts of the book are useful statistics on Queensland lawyers (pp. 685-784). Here are the names and dates of admission of all of Queensland’s female barristers, solicitors, and legal practitioners from 1905 to 2005. There are also judicial appointments, prize and scholarship winners, and professional association officers, plus gender ratios in a wide variety of related areas. Rounding out the compilation are a table of statutes, table of cases, many footnotes in all sections of the book, plus a name index and a subject index. Reference is made to a bibliography on the same topic (p. 51, fn. 97): Terry Hutchinson, “Women in the Legal Profession in Australia: A Research Start,” Australian Law Librarian, vol. 13, no. 2, pp. 23-35 (Autumn 2005).

A consistent strength throughout is the strong editing and research support under-girding the project. The writing style and voice throughout is upbeat, positive and celebratory, while also realistic about the challenges faced and continuing to face women lawyers in this area of Australia. The editors note that this is a selective rather than comprehensive history, needing further analysis and depth to cover this broad topic. At the same time, A Woman’s Place is a dynamic, living historical record of value to current and prospective female attorneys in any country or state. It is a model for what could—and should—be done in other individual states in Australia, the United States, and elsewhere.

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

American writer and humorist Mark Twain once noted that “[t]ruth is stranger than fiction, but it is because fiction is obliged to stick to possibilities; truth isn’t.” In *True Tales of Trying Times: Legal Fables for Today*, Professor Bob Rains upholds the validity of Twain’s observation; certainly when it comes to the law, truth is often stranger than fiction.

Professor Rains has selected 52 strange but true cases from American state and Federal courts. A premier narrator—Mark Twain would appreciate his sometimes biting style—Professor Rains summarizes each case, then presents, in verse, the moral of the story. Each tale is accompanied by a delightful pen and ink drawing by the sister team of E.A. Jacobsen. Citations for the selected cases are provided at the end of the book “[f]or those who, for some inexplicable reason, prefer to read the unvarnished truth.”

As an example of Professor Rains’ enchanting style, here is his tale of “The Enterprising Entrepreneur Who Didn’t Know the Difference,” otherwise known as *City of Alburquerque v. Sachs*, 92 P.3d 24 (N.M. App. 2004):

In the Great American Southwest, there was an enterprising entrepreneur named Renee who was the owner and operator of a tattoo and “body modification” establishment. One day, Renee published an advertisement offering free nipple piercing to any customer—male or female—on condition that the piercee have this delicate operation performed in the front window of the business. Knowing a good deal when they saw one, customers lined up. So did observers.

Unfortunately for Renee, one of those observers was a police officer. Being observant, he observed a female customer sitting in the store window exposing her frontal anatomy to the viewing public. Renee was busted.

A city ordinance forbade owners and operators of public places to permit or allow public nudity. The ordinance only applied to female breasts, not the male kind.

Renee reasoned that the ordinance violated equal rights by discriminating on account of sex. Based, no doubt, on years of study, the district court took judicial notice that the female breast is different from the male breast. Thus, the law can handle them differently.
Moral:

Justice, so it’s said, is blind;
But surely even blind folks find
Differences in people’s pecs
Associated with their sex.

This is most certainly not Coke or Blackstone, but not every-	hing that we read should be Coke or Blackstone. The stories contained in *True Tales of Trying Times: Legal Fables for Today* are both enjoyable and valuable. As stated by Justice J. Michael Eakin in the Foreword, “Bob Rains gives us lessons worth learn-ing, with fables as broad as the fruited plain, and as addictive as salted peanuts.”

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

Schramm has written an engaging work that cries out for more than its 192 pages. Indeed, when simply perusing the work, it becomes obvious quickly that Schramm has undertaken a quite large task with this volume. The attempt to draw law, literature, and theology at all is commendable. To have done so in a readable manner in such a short span even more so.

In the introduction, we come very early to what might be a stumbling block to drawing the three subjects together. Schramm focuses primarily on fiction instead of personal accounts of the Victorian justice system. It is extremely difficult to make anything other than interpretive judgments about fiction that can be easily rebutted by anecdotal evidence or another, opposite interpretation. Schramm is saved from the inevitable “So what?” that comes of unadulterated literary criticism by recognizing the value of what fiction qua fiction tells us about judicial and theological thought of the day. Quoting Willkie Collins’ biography, we gain some context for what the author is trying to do: In a courtroom, “it came to [Collins] then...that a series of events in a novel would lend themselves to an exposition to this...one could impart to the reader that acceptance, that sense of belief, which was produced here by the succession of testimonies.”(p.2) Here we see the possibility of the suitability of literature to explore conceptions of testimony. What Schramm is endeavoring to do then is to study literature from the Victorian period and see how it converged or diverged with legal theory.

In Chapter 1, we are given an introduction to the primacy of eyewitness testimony in Victorian Britain proceedings, even to the point of prohibiting defense counsel. Schramm cites the assertion that there is a theological component to this: that of “plain speaking”(p.27) Therefore, being honest and truthful is the only defense one needs. There is no need for any intermediary like an attorney.

Chapter 2 brings us closer to the fringes of the area between literature in the law in Schramm’s analysis of the work of Fielding. Most instructive here is Schramm’s discussion of Fielding’s attitude toward the law in his fiction, in what she calls Fielding’s tendency for his work to operate in the “extra-judicial” realm. As she says, “Fielding was aware that a benevolent writer could correct judicial mistakes in accordance with comic and providential
conventions; as a lawyer he knew the gallows awaited the innocent and the guilty.”(p.79)

Chapter 3 heralds a dramatic shift in British culture’s view of eyewitness testimony from the aforementioned “plain speaking” of Chapter 1. With the passage of 1836 legislation, a “skilled advocate was necessary to ensure that conviction did not result from the erroneous assumption that the facts . . . could not lie. We have gone from eyewitness testimony being given the most weight to much less, even to the point of counsel representing people to clean up their stories.

Chapter 4 provides us with some idea for this sea change in opinion on the value of eyewitness testimony from the theological realm. Of particular interest is the discussion of society’s new view of God; to wit, that of the “originator (rather than the author) of the Old and New Testaments.(p.151; footnote omitted). With this new view of God, the Scriptures, which used to form the bedrock of the faith were called into question. How much more, then, the testimony of human beings.

For what seems to be an overly ambitious task, Schramm succeeds admirably with this effort. Legal scholars and those individuals with even a passing interest in law, literature, or theology will benefit from reading it.

Tony Snyder
MLIS Student,
Kent State University

In this small, meticulously researched book, Alison Sneider, Associate Professor of History at Rice University, explores the woman suffrage movement and U.S. imperial history from the post bellum Reconstruction era of the 1870s through the first three decades of the 20th Century. From Sneider's perspective the story of women's struggle to obtain the vote is inextricably linked to U.S. expansion within its borders and imperial expansion abroad. This story not only encompasses the national discussion of states' rights, the meaning of citizenship, but the perceived gender and racial hierarchies of the period.

The introductory chapter explains how for six decades the U.S. suffragists seized every legal and constitutional opportunity presented by U.S. expansion to keep alive the national discussion of the women's right to vote. Sneider posits “that if the United States had not been such an expansive nation after the Civil War suffragists would have had a much harder time raising their question at the national level”. (p. 6) Each successive chapter takes a snapshot look at expansionist events in a chronological time frame.

Chapter 2 focuses on the period between 1870 and 1875 with Congressional efforts to reorganize the government of the District of Columbia from a municipality to a federal territory. During this period President Grant tried to push through the U.S. Senate a treaty annexing the Dominican Republic more popularly known as Santo Domingo. Sneider adroitly weaves together these seemingly unrelated events to reveal how the annexation of Santo Domingo and the woman question would intersect. “[T]he first outlines of a relationship between questions of citizenship and political rights for U.S. women, and questions of citizenship and political rights for other potential new citizens on the borders of an expanding state” become apparent. (p. 20)

Chapter 3 covers the period between 1878 and 1887 with continental expansion, territorial statehood, and the question of woman suffrage raised by efforts to resolve the political status of Indians and Mormons. Sneider discusses the suffragists' attitudes towards the prospect of “uncivilized” Indians and polygamists in Utah gaining the vote before women. Center stage in this chapter is the defeat of the sixteenth woman suffrage constitutional amendment in 1887. Sneider examines the suffragists' various and sometimes conflicting arguments for its passage, the
tension between states’ rights and national authority over this
question, and the national political climate which led to its defeat.

Chapter 4 discusses the period between 1898 and 1902 with the
annexation of Hawaii, the Spanish-American and Philippine-
American wars and the suffragists’ diverse views of U.S. imperial
expansion. Suffragists during this period were concerned with
how U.S. control over new island territories might provide oppor-
tunities to set national precedents for women’s voting rights.
Discussed in this chapter is the “Hawaiian Appeal” presented to
Congress in January 1989 in which suffragists demanded that all
women in Hawaii territory be enfranchised and the duty which
suffragists owed to women in the new Island governments. Pro-
war and anti-war sentiments, as well as generational, ideological,
and racial divisions among suffragists are also explored.

Chapter 5 covers the period between 1914 and 1929 by re-
counting the woman suffrage victories at home and abroad during
the early decades of the Twentieth Century. Sneider explains the
transformation of the suffrage movement as it became more con-
frontational and militant as, for example, when in 1913 suffra-
ghists in the newly formed Women’s Party organized a parade of
more than 5,000 women who marched in the streets of D.C. aided
by local police and the Pennsylvania National Guard. Following
the passage of the 19th Amendment to the Constitution in grant-
ing women in the U.S. the right to vote, the suffrage movement
did not come to an end. Thus suffragists in the U.S. continued
the fight for women in the Philippines and Puerto Rico by attach-
ing amendments to the new governing bills for these U.S. island
possessions.

This book is an engaging and scholarly history of the woman
suffrage movement and will likely become a classic study for
those interested in women’s studies and U.S. imperial history. It
includes 36 pages of notes, an excellent bibliography and index.

Barbara Baxter
Director of Ehrhorn Law Library
Liberty University School of Law

Chantal Stebbings explores the modern day tribunal’s genesis in the Victorian era. The tribunal system, which has both administrative and judicial functions, came from the challenges facing England during the Industrial Revolution. As England evolved, changes in employment, migration, and especially transportation required systematic changes in the legal structure. England required both substantive legal reform as well as a way to implement and administer new regulations. Tribunals arose to exist primarily as legislative bodies, but they increasingly took on a dispute resolution element as well.

One major problem with Stebbings’ book is the structure. She does not provide the reader with any roadmap, nor does she emphasize some portion of the book (or chapter) over the other. She begins the book with a cursory review of modern day tribunals before catapulting the reader into the mid-nineteenth century. This introductory chapter is over 70 pages, and provides no subheadings. Even the title: “Challenges to the legal process,” provides little guidance to the reader, and I was required to consult outside sources a number of times before returning to her book. Admittedly, her audience likely has more knowledge about the subject matter than I, but the structural problems remain.

The structural problems are exacerbated by a peculiar organization. In her chapter on composition and personnel, for example, she talks about the oaths that commissioners of the statutory tribunals of the nineteenth century took before she talks about the appointment process and qualifications of the commissioners. The chapter becomes jarring and confusing with such an organization, despite the fact that is extremely interesting.

And the chapters are interesting. Stebbings does an awfully good job of describing the Victorian era’s willingness to experiment with the legal system. A few of her chapters deal with problems familiar to any regulatory specialist in the States: jurisdiction; administrative powers; and judicial review, but from a historical perspective. Chapter 4 explores how commissioners’ powers varied depending on the tribunal, but makes the case that the powers were definitely adjudicatory. Chapter 6 explains the process by which courts would take appeals from tribunals. The real jewel in the book, however, lies with Chapter 5, which deals with the procedure and practice of the tribunals. She spends some time discussing the tension between adjudication and administration. She goes on to set out the problems that lawmakers
came across in making the tribunals appealing to the public. The tribunals had to be inexpensive and straightforward, but they also required standards inherent in judicial bodies, such as fairness. Lawmakers made an effort to write the parent acts in a manner which could be understood by the general public. Because there was no tradition of a tribunal, parent acts provided clear guidance on procedural issues, such as how to initiate proceedings.

The book made me more interested in legal changes during the Industrial Revolution, and also made me interested in the history behind the creation of American administrative agencies. Despite the organizational problems, I would call it a success. It would be a good purchase for any legal history collection.

Ryan Harrington
Reference Librarian
Yale Law School
Lillian Goldman Library

This work by a distinguished authority on United States courts and their history reflects prodigious research on a subject of monumental dimensions even though its focus is confined to the federal judicial presence in a single state. Laboriously poring over not only readily accessible published cases, treatises, congressional documents and newspapers, Professor Surrency has also mined the holdings of the National Archives Southeast Regional Center to ferret out information from minute books of the district, admiralty, and circuit courts as well as case files and Justice Department correspondence. Armed with the outflow from this rich research lode together with his own accumulated expertise, he conducts readers on an energetic trek through a labyrinth of sometimes mind numbing details relating to every facet of the life of federal courts from the Founding to the present day. He modestly suggests that he offers “vignettes”, but in fact the work probes rather deeply as well as broadly in a kaleidoscope fashion.

The organization of the book is unusual for the genre. Most court histories such as that by Kermit Hall and Eric Rise on the federal district courts of Florida from 1821 – 1990 (1991) are linear in their organization, and the courts, judges and the law molded by them unfold in a more or less chronological manner. Surrency’s approach is different. His first chapter offers an overview of federal justice through two centuries followed by another wherein he expertly considers questions of federal jurisdiction, procedure, and practice including local rules of court. Chapters 3 through 6 focus on district and circuit courts in Georgia: District of Georgia: (Chp. 3) from 1789 to 1848 when at the latter date Congress created two Georgia districts (Northern: Chp. 4), (Southern: Chp. 5) followed by a third in 1926 (Middle: Chp. 6). Within these chapters are found a veritable treasure trove of information or, in some instances, an abject lack thereof. Judges of the early court are identified, but information on some is apparently unavailable, business is light and sessions short, grand juries present political issues (lack of a bill or rights, complaints about the Creek Nation, excise taxes and the Bank of the United States), and judges adjudicate important cases (British Debt Cases) amid a tide of mundane civil and criminal cases. Districting of the state in 1848 raise politically laden questions of cause, especially respecting the Northern District initially placed outside the circuit system, places and housing of the courts.
Although Surrency tends to subordinate partisan politics as a salient element in the judicial process, creation of the Middle District makes clear a patronage–political nexus in the form of Senatorial clout: trade off of a new district with a full panoply of court officers and physical facilities in lieu of an additional judge in an existing district with existing facilities. Within these chapters as well as in a subsequent one are noted judicial appointments including those that failed. The political element is inescapable in President Coolidge’s recess appointment of William Tilson, brother of the Republican leader in the House of Representatives. Senatorial courtesy soon doomed his career on the federal bench. And a cautionary tale is told of the Northern District judge holding a recess appointment who in 1946 dissented from a decision upholding the constitutionality of Georgia’s notorious county unit election system. For his prescience, he is not confirmed by the Senate!

The judicial business of each district is treated comprehensively, an approach that spawns repetition because similar types of cases reach the dockets in other Georgia districts. That the judicial business declines in the 1850s seems significant because such declines occur in other federal courts in the mid-Atlantic South in the midst of heightened sectional conflict. Surrency offers valuable insights into the work of the Circuit Justice from the Supreme Court. He finds that the circuit-rider plays a prominent “hands on” managerial role in the inferior courts: regularly attends circuit court sessions, drafts local rules, exercises inherent judicial power to transfer a term of the circuit court from its statutorily authorized place at Milledgeville to Savannah, issues instructions to the Clerk of Court and possibly holds alone the district court in the absence of a disabled resident district judge and, after congressional provision in 1869 of a circuit judge for each circuit, referees conflicts between the district judges and the circuit judge while the circuit judge in turn referees conflicts among the district judges in Georgia.

Surrency’s format hinders an easy unfolding of law in the district. Although not invariably highlighted, the themes are present nonetheless. A major theme involves sectional opposition to the post-Civil War “foreign” federal courts often presided over by Republican judges (party affiliation not emphasized) exercising vastly expanded federal jurisdiction based on congressional statutes and constitutional amendments, and congressional retaliation suggested by deletion of an additional judge for Georgia contained in the omnibus Judgeship Bill enacted early in the Harding Administration. Reconstruction brings to the courts habeas corpus petitions from civilians confronting military courts, an important African-American voter intimidation case in the Northern District that reaches the Supreme Court as *Ex parte Yarbrough* (1884),
confiscation and excise tax (moonshine”) cases on which one judge temporizes in a manifestation of localistic behavior while another is assailed by the state bar for his fidelity to national law. Political retaliation occurs when Congress authorizes the abolition of the latter’s his seat upon his departure. North-South animosities continued to play out in the federal courts as exemplified by a forty year (1894-1923) long battle over the 300,000 acre Dodge Land Claim. This ejectment case pitted Yankee owners against Georgia squatters, and featured murders of participants as well as threats against the presiding judge.

Fleeting reference is made to Twentieth Century cases arising during the world wars (land condemnation, price controls, conscription) and to railroad rate and New Deal cases although United States v. Darby Lumber Co. (1941) (constitutionality of the Fair Labor Standards Act) from Georgia’s Southern District is omitted. Civil rights litigation receives deserved attention. Important “state action” cases arise in the Georgia districts and reach the Supreme Court to become landmark cases substantially enhancing constitutional protections: Screws v. United States (1944-1945) and that involving the murder of African-American Lemuel Penn and the judicially discovered constitutional right to travel (United States v. Guest (1964)). Civil Rights Act and school desegregation cases are covered in chapter 8. Hovering vaguely in the background is the historic tension between the old Fifth Circuit Court of Appeals and the district courts. Out of Georgia’s district courts emerge Lester Maddox with his axe-handle futilely attempting to fend off the commerce clause based 1964 Act, the Heart of Atlanta Motel case and school desegregation cases from Savannah-Chatham County featuring the irascible Judge Scarlett who challenged Brown v. Topeka at its factual core – the existence of an injury suffered by segregated African-American students.

Between chapters on the Middle District and Civil Rights inexplicably appears Chapter 7: “The Confederate Interlude.” The chapter makes for interesting reading. One wonders, however, if an integral part of a Confederate States government disclaimed by that government as a successor to the United States government, but rather either a de jure or de facto sovereign government, and its most important decisions (sequestration of alien (Yankee) enemy property) deemed by the United States to be illegitimate acts of an illegitimate government merits inclusion in a history of the federal courts? Inexplicable too is the appearance of Chapter 8 on “Admiralty.” This chapter primarily considers antebellum cases presumably heard in the Southern District and most importantly the slave trade cases of the Wanderer which receives brief attention notwithstanding recent books on the famous case and the important Antelope case raising international law questions respecting the slave trade.
There follows a grab bag of four chapters: (10) “Judges and Lawyers” which necessarily repeats earlier presented material and wherein the author bemoans the lack of antebellum opinions published in pamphlet form, although Sixth Circuit Justice Wayne’s 1859 jury charge on the 1820 Piracy Act at Savannah in the *Wanderer* case was published in that form; (11) “Bankruptcy Courts” reporting few cases under the short-lived 1841 act although a flood of such cases filled the dockets in districts from South Carolina to Maryland; (12) “Commissioners to Magistrates” is an exhaustively detailed analysis of minor judicial officers on whom an accretion of judicial powers gradually falls; (13) “Officers Associated with the Court”, a survey of what has become an increasingly bureaucratized element in the federal judiciary including Commissioners (again), bankruptcy commissioners/registers/referees (again), Nineteenth Century steamboat inspectors, clerks who are often difficult to identify (see Appendix F reporting one clerk who presumably served from 1822 to 1852), criers who are nearly impossible to identify, marshals of whom one achieved lasting fame by becoming the first U.S. Marshal killed in the line of duty; U.S. attorneys, court executives, supporting personnel and probation officers whose story ends in 1930 prior to the 1939 establishment of the Administrative Office of the U.S. Courts and its drive to professionalize the service.

There is no concluding chapter, but, of course, the saga of the federal courts in Georgia as elsewhere continues so long as the Republic stands. Nine appendices are included; these provide texts of rules and rosters of court officers as well as brief biographies of the many judges who served the Georgia districts. There is no bibliography. Its absence is something of a problem because the end note citations are not always complete. And, for readers who are neither Georgians nor geographers, the total absence of maps is inconvenient. The author has, however, provided a helpful name and subject index. Shortcomings aside, this significant work is of great value to any serious student of the federal judiciary. Within its scope lie numerous research seeds awaiting germination. Sub-themes thread through this history; they will excite the interest of lay and professional readers alike. All in all, Erwin Surrency’s history of the federal courts in Georgia makes an important contribution to knowledge of these national tribunals, their judges and their law.

Peter G. Fish  
Professor of Political Science and Law  
Duke University

James Wilson (1742-1798), as one of the Founding Fathers, was one of six individuals who signed both the Declaration of Independence and the Constitution. His able defense of the Federalist position in support of the adoption of the Constitution, his role as an Associate Justice of the U.S. Supreme Court, and author of the first extensive lectures on American law, makes Wilson a major figure of the Founding Era. As an Associate Justice of the U.S. Supreme Court, he did not play a major role and because of his outside interests in land and business interests failed to obtain the Chief Justiceship in 1796, actually went to jail twice afterwards, and died peniless in 1798. For a listing of major secondary sources on Wilson, see p.xv, n. vi. The concluding sentence of Hall’s essay nicely sums up Wilson’s contribution: “In some ways Wilson was the first sociologist of American law; his legacy lingers in his admonition to view law as a system of social adaptation.” (p.xxvi)

Maynard Garrison served as the collector of the documents that comprise this volume in consultation with some of the leading historians of the era. He recruited two distinguished historians Kermit L. Hall and David Mark Hall. Unfortunately, Kermit Hall died in the middle of the project and David Mark Hall completed it (p.1215).

The collection is divided into two parts. Part I contains Wilson’s political papers, speeches, and judicial opinions. Among the papers are his earliest work written in 1774 on the nature of legislative authority of the British Parliament, several speeches in favor of the Constitution, two speeches supporting the revision of the Pennsylvania Constitution in the Pennsylvania Constitutional Convention of 1789 and 1790, and four U.S. Supreme Court opinions including his opinion in Chisholm v. Georgia (1793) which was overturned in the following year by the Eleventh Amendment.

Part II covers his Lectures on Law which runs over 700 pages in this edition. As the first law professor at the University of Pennsylvania, these lectures were the first extensive lectures on American law. Unfortunately, they were not published until after his death by his son Bird in 1804. These lectures have been later republished by several later compilers, the latest being Robert McCloskey’s two-volume work in 1967. The current version follows the 1804 Bird publication rather than the later versions. In
several cases, additional notes have been added by the current editor. This is due in part to the donation of Wilson’s manuscript lectures to the Free Library of Philadelphia. This volume arranges materials differently from McCloskey to reflect new materials and to show that the Lectures were self-contained. (p.xxvii).

In compiling this work, Garrison recruited two well-known historians, Kermit Hall and Mark David Hall to prepare introductions both to Wilson’s life and the actual compilation of documents, respectively. Hall notes the importance of Wilson as second only to Madison as a speaker at the convention of 1787 and one of the most eloquent speakers in favor of the people as sovereign base of the new American constitutional system. Wilson objected to the Pennsylvania experience wherein the sole authority was placed in the legislature against the two other branches and now placed sovereignty in the people dispersed through the three branches of government.

Mark Hall’s bibliographical essay (pp.401-13) provides information on the history of the manuscript notebooks and their publication history along with similarities and differences between them. Wilson gave his first lecture on December 15, 1790 and presented 58 lectures, which comprise the first thirteen chapters of the present edition. The second course were never published until the 1804 edition published by his son, Bird Wilson. Subsequent editions included the Bird edition, but it was not until the contribution of the original manuscript lectures in 1968-69 to the Free Library of Philadelphia that scholars have been able to compare the earlier printed editions to the manuscripts.

Hall finds that Bird was a “faithful editor.” He published the lectures in order, though he “rarely altered his father's prose, eliminated passages, elaborated on them, or inaccurately transcribed handwriting.” Bird changed text by combining chapters, did not capitalize words his father had, and did not emphasize words like his father. Each of these changes sometimes changes the importance James Wilson used. Hall points out that the notebooks will assist scholars who may wish to see his original writings with all cross-outs, additions, etc. Hall also notes that there are eight notebooks still unpublished, though some of the materials have been published before such as his grand jury charges.

The book also contains a Bibliographical Glossary, prepared by McCloskey, to provide bibliographical citations to sources that Wilson generally cited in abbreviations (pp.1205-13). This is followed by an index to the current edition (pp.1217-62).

Garrison, Hall and Hall have compiled a new edition of James Wilson’s works that will become the standard edition for many years. Liberty Fund, as usual, has produced an excellent work at reasonable prices that should be purchased by all libraries interested in the Revolutionary Era.
Joel Fishman, Ph.D.
Assistant Director for Lawyer Services
Duquesne U. Center for Legal Information/
Allegheny County Law Library