UNBOUND
An Annual Review of Legal History and Rare Books

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UNBOUND
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THIS ISSUE IS DEDICATED TO THE MEMORY OF

MORRIS L. COHEN

November 2, 1927 – December 18, 2010

When this journal was first published in 2008, Morris said that he would someday like to write an article for it. Unfortunately he never had the chance. However, several years ago Morris did have a column in the Legal History and Rare Books SIS newsletter, *LH&RB*, titled “From my Commonplace Book.”

In memory of a great librarian, historian, scholar, mentor and friend, here is the complete run of that column.
From My Commonplace Book

Morris Cohen

George Orwell, quoted in New York Review of Books, November 6, 2003, p.65:

So long as I remain alive and well I shall continue to feel strongly about prose style, to love the surface of the earth, and to take pleasure in solid objects and scraps of useless information.

... 

From Archibald MacLeish’s poem, “A Library of Law” in his book, Tower of Ivory, p. 46:

Adjudicated quarrels of mankind.
Brown row on row! How well these lawyers bind
Their records of dead sin,—as if they feared
The hate might spill and their long shelves be smeared
With slime of human souls, brown row on row
Span of Philistine span, a greasy show
Of lust and lies and cruelty, dried grime
Streaked from the finger of the beggar, Time.

...


Libraries are as Forrests, in which not only tall Cedars and Oaks are to be found, but Bushes too and dwarfish Shrubs; and as in Apothecaries Shops all sorts of Drugs are permitted to be, so may all sorts of Books be in a Library: And as they out of Vipers and Scorpions, and poisoning Vegetables, extract often wholesome Medicaments, for the Life of Mankind; so out of whatsoever Book, good Instructions and Examples may be acquired.

In sundry Parts of the Earth there were but Seven Wonders dispersed, in one Noble Library many more worthy of greater Admiration and of greater Excellency, are together to be found.

One can remain alive long past the usual date of disintegration if one is unafraid of change, insatiable in intellectual curiosity, interested in big things, and happy in small ways.

... 


Long ago, Humboldt named three strategies for ignoring something: ‘First, people will deny a thing, then they will belittle it; then they will decide that it had been known long ago.’

...

Amos Oz, *Panther in the Basement* (1997), pp. 74-75:

Father’s bookshelves were organized with an iron logic into sections and subsections, by subject and field and language, and alphabetically by author’s name. The top brass, the field marshals and generals of the library, that is the special tomes that always gave me a thrill of respect, were priceless, heavy books clad in splendid leather bindings. On their rough leather surface my fingers sought out the delightful impression of the golden lettering, like the chest of some field marshal in the Fox Movietone newsreels bedecked with rows and rows of gleaming medals and decorations. When a single ray of light from Father’s desk lamp fell on their ornate gold ornamentation, a flickering sparkle leaped towards my eyes, seeming to invite me to join them. These books were princes, dukes, earls, and barons.

Above them, on the shelf just below the ceiling, hovered the light cavalry: periodicals in many-coloured wrappers, arranged by topic, date and country of origin. In striking contrast to the heavy armour of the commanding officers, these cavalrymen were dressed in light robes of exciting colours.

Around the cluster of field marshals and generals stood large clumps of brigade and regimental officers, rough, tough-shouldered books, in strong cloth bindings, dusty, slightly faded, as though dressed in sweaty, grubby camouflage battle dress, or like the fabric of old flags, tested in battle and hardship...

Ranking lower than the officer books in their cloth bindings were the hundreds and hundreds of simple books bound in rough
cardboard, smelling of cheap glue—the grey and brown privates of the library. Even lower than these privates in my estimation were the rabble of semi-regular militias: unbound books whose pages were held together by tired rubber bands or wide strips of sticky paper. There were also some shabby gangs of bandits, in disintegrating yellowish paper wrappers. Finally, beneath these, were the lowest of the low, the non-books, a mixed multitude of mendicant leaflets, offprints, handbills, on the lowest rung of the bookcase—flotsam and jetsam huddled on the bottommost shelf, waiting for Father to remove them to some asylum for unwanted publications, and meanwhile here they were, temporarily camped, out of kindness not of right, heaped up, crowded together, until today or tomorrow the east wind with the birds of the desert would sweep their corpses away, until today or tomorrow, or at the latest by the winter, Father would find the time to sort them out ruthlessly and throw most of these charity cases (brochures, gazettes, magazines, journals, pamphlets) out of the apartment to make room for other beggars, whose day would not be slow to arrive. (Father took pity on them, however. Again and again he promised himself to sort them, make a selection, get rid of some, but I had the feeling that not a single printed page ever left our apartment, although it was bursting at the seams.)

Karl N. Llewellyn, *The Bramble Bush* (1930), pp. 102-103:

It is not easy thus to turn human beings into lawyers. Neither is it safe....Nonetheless, it is an almost impossible process to achieve the technique without sacrificing some humanity first.

Mark Twain, *Roughing It* (1872):

I had studied law an entire week, and then given it up because it was so prosy and tiresome.


The end of the law is peace. The means to that end is war. So long as the law is compelled to hold itself in readiness to resist the attacks of wrong—and this it will be compelled to do until the end of time—it cannot dispense with war. The life of the law is a
struggle,—a struggle of nations, of the state power, of classes, of individuals.

All the law in the world has been obtained by strife. Every principle of law which obtains had first to be wrung by force from those who denied it; and every legal right—the legal rights of a whole nation as well as those of individuals—supposes a continual readiness to assert and defend it. The law is not mere theory, but living force. And hence it is that Justice which, in one hand, holds the scales, in which she weighs the right, carries in the other the sword with which she executes it. The sword without the scales is brute force, the scales without the sword is the impotence of law. The scales and the sword belong together, and the state of the law is perfect only where the power with which Justice carries the sword is equaled by the skill with which she holds the scales.

... 

Amos Oz, A Tale of Love and Darkness (2003), pp. 24-26:

When I was about six, there was a great day in my life: Father cleared a small space for me in one of his bookcases and let me put my own books there. To be precise, he granted me about a quarter of the length of the bottom shelf. I hugged all my books, which up till then had lain on a stool by the side of my bed, carried them in my arms to Father’s bookcase, and stood them up in the proper way, with their backs turned to the world outside and their faces to the wall.

It was an initiation rite, a coming of age; anyone whose books are standing upright is no longer a child, he is a man. I was like my father now. My books were standing to attention.

I had made one terrible mistake. When Father went off to work, I was free to do whatever I wanted with my corner of the bookcase, but I had a wholly childish view about how these things were done. So it was that I arranged my books in order of height. The tallest books were the ones that by now were beneath my dignity, children’s books, in rhyme, with pictures, the books that had been read to me when I was a toddler. I did it because I wanted to fill the whole length of shelf that had been allotted to me. I wanted my section to be packed full crowded, overflowing, like my father’s shelves. I was still in a state of euphoria when Father came home from work, cast a shocked glance toward my bookshelf, and then, in total silence, gave me a long hard look that I shall never forget: it was a look of contempt, of bitter disappoint-
ment beyond anything that could be expressed in words, almost a look of utter genetic despair. Finally he hissed at me with pursed lips: “Have you gone completely crazy? Arranging them by height? Have you mistaken your books for soldiers? Do you think they are some kind of honor guard? The firemen's band on parade?”

Then he stopped talking. There came a long, awesome silence from my father, a sort of Gregor Samsa silence, as though I had turned into a cockroach before his eyes. From my side too there was a guilty silence, as though I really had been some kind of wretched insect all along, and now my secret was out and everything was lost.

At the end of the silence Father began talking, and in the space of twenty minutes he revealed to me the facts of life. He held nothing back. He initiated me into the deepest secrets of the librarian’s lore: he laid bare the main highway as well as the forest tracks, dizzying prospects of variations, nuances, fantasies, exotic avenues, daring schemes, and even eccentric whims. Books can be arranged by subject, by alphabetical order or author’s names, by series or publishers, in chronological order, by languages, by topics, by areas and fields, or even by places of publication. There are so many different ways. And so I learned the secret of diversity. Life is made up of different avenues. Everything can happen in one of several ways, according to different musical scores and parallel logics. Each of these parallel logics is consistent and coherent on its own terms, perfect in itself, indifferent to all the others.

In the days that followed I spent hours on end arranging my little library, twenty or thirty book that I dealt and shuffled like a pack of cards, rearranging them in all sorts of different ways. So I learned from books the art of composition, not from what was in them but from the books themselves, from their physical being. They taught me about that dizzying no-man’s-land or twilight zone between the permitted and the forbidden, between the legitimate and the eccentric, between the normative and the bizarre. This lesson has remained with me ever since. By the time I discovered love, I was no greenhorn. I knew that there were different menus. I knew that there was a motorway and a scenic route, and also unfrequented byways where the foot of man had barely trodden. There were permitted things that were almost forbidden and forbidden things that were almost permitted. There were so many different ways.
A Summary of the Rights of British America, etc.: This response to various repressive British measures against the American colonies was written by Thomas Jefferson and published anonymously and without his consent in 1774 at Williamsburg, Virginia. Surprisingly (at least to me), it contained (at p. 16-17) the following:

It is now, therefore, the great office of his majesty, to resume the exercise of this negative power, and to prevent the passage of laws by any one legislature of the empire, which might bear injuriously on the rights and interests of another. Yet this will not excuse the wanton exercise of this power which we have seen his majesty practice on the laws of the American legislatures. For the most trifling reasons, and sometimes for no conceivable reason at all, his majesty has rejected laws of the most salutary tendency. The abolition of domestic slavery is the great object of desire in those colonies, where it was unhappily introduced in their infant state. But previous to the enfranchisement of the slaves we have, it is necessary to exclude all further importations from Africa; yet our repeated attempts to effect this by prohibitions, and by imposing duties which might amount to a prohibition, have been hitherto defeated by his majesty’s negative . . .

Book Review, London Times Literary Supplement, from February 1957:

He has written a brilliant, incisive, and immensely intelligent monograph; and then proceeded to disguise the fact beneath a monumental heap of digressions, irrelevancies, polemical asides, polyglot citations, and all the disordered garbage which every academic mind stores up for airing at the expense of a University Press. “The bowsprit got mixed with the rudder sometimes”; footnotes are liable to creep into the text on the least provocation, just as the narrative (if such it can be called) bogs down again and again in the thick morass of scholarly controversy. This is not per se evidence of learning, but of an untidy mind; and while Professor X himself is as learned as they come, there are only too many second-rate scholars who ape these distressing external tricks as a disguise for their inner emptiness.

–Anonymous review of a then new edition of Horace (name of editor-translator of the reviewed book is withheld out of decency).

In books I behold the dead alive; in books I foresee things to come; in books the affairs of war are displayed; from books proceed the rightful laws of peace. All things decay and waste away in time, and those whom Saturn begets he ceaseth not to devour. Oblivious would overwhelm all the glory of the world, had not God provided for mortals the remedies of books. Alexander, the subduer of the earth; Julius, the invader of Rome and of the world, who, first in art and first in arms, took on himself the empire in his single person; the faithful Fabricius and the severe Cato would today be out of memory, had they lacked the support of books. Towers are razed to the earth, states are overthrown, triumphal arches have moldered into dust, and neither pope nor king will find aught by which the warrant of eternity is conferred more easily than by books. A book once made renders its author this return, that so long as it shall endure, the author remaining *athanatos*, or immortal, cannot perish.

... 

Book review by Zechariah Chafee, Jr. 30 *Harvard Law Review* 300 (1917):

Headnotes arranged vertically make a digest. Headnotes arranged horizontally make a textbook. Textbooks arranged alphabetically make an encyclopedia. Every few years some investigator has to disintegrate one of these works into its constituent atoms, add some more headnotes from recent decisions, stir well, and give us the latest book on the subject. And so law libraries grow.”

... 

William E. Gladstone (yes, the Prime Minister), *On Books and the Housing of Them* (1898; reprinted by Blackwell’s, 1998) p. 15:

In a private library, where the service of books is commonly to be performed by the person desiring to use them, they ought to be assorted and distributed according to subject. The case may be altogether different where they have to be sent for and brought by an attendant. It is an immense advantage to bring the eye in aid of the mind; to see within a limited compass all the works that are accessible, in a given library, on a given subject; and to have the power of dealing with them collectively at a given spot, instead of hunting them up through an entire accumulation. It must be admitted, however, that distribution by subjects ought in some
degree to be controlled by sizes. If everything on a given subject, from folio down to 32mo., is to be brought locally together, there will be an immense waste of space in the attempt to lodge objects of such different sizes in one and the same bookcase. And this waste of space will cripple us in the most serious manner, as will be seen with regard to the conditions of economy and accessibility.

... 

Franz Kafka, *The Trial* (1948), p. 62:

On the table, which still stood on the platform as before, several books were lying. "May I glance at the books?" asked K., not out of any particular curiosity, but merely that his visit here might not be quite pointless. "No," said the woman, shutting the door again, "that isn't allowed. The books belong to the Examining Magistrate." "I see," said K., nodding, "these books are probably law books, and it is an essential part of the justice dispensed here that you should be condemned not only in innocence but also in ignorance." "That must be it," said the woman, who had not quite understood him.

... 


... I had rather take my chance that some traitors will escape detection than spread abroad a spirit of general suspicion and distrust, which accepts rumor and gossip in place of undismayed and unintimidated inquiry. I believe that that community is already in process of dissolution where each man begins to eye his neighbor as a possible enemy, where non-conformity with the accepted creed, political as well as religious, is a mark of disaffection; where denunciation, without specification or backing, takes the place of evidence; where orthodoxy chokes freedom of dissent; where faith in the eventual supremacy of reason has become so timid that we dare not enter our convictions in the open lists, to win or lose.

...

The History of every major Galactic Civilization tends to pass through three distinct and recognizable phases, those of Survival, Inquiry and Sophistication, otherwise known as the How, Why, and Where phases. For instance, the first phase is characterized by the question How can we eat? The second by the question Why do we eat? and the third by the question Where shall we have lunch?


I have so many Irons in the Fire, that every one burns.-I have common, civil, natural Law, Poetry, Oratory, in Greek, latin, french, english to study, so that when I set down to read or think, so many subjects rush into my mind that I know not which to choose.

What are the Motives, that ought to urge me to hard study? The Desire of Fame, Fortune and personal Pleasure. A critical Knowledge of the Greek and Roman... and french Poetry, History and Oratory, a thorough comprehensive Knowledge of natural, civil, common, and Province Law, will draw upon me the Esteem and perhaps Admiration, (tho possibly the Envy too) of the Judges of both Courts, of the Lawyers and of Juries, who will spread my Fame thro the Province, will draw around me a Swarm of Clients who will furnish me with a plentiful Provision for my own Support, and for the Increase of my fortune. And by means of this Authority and Consideration, with the Judges, Lawyers, Juries and Clients, I shall be able to defend Innocence, to punish Guilt, and to promote Truth and Justice among Mankind.-But besides these Motives, there is another, no less powerful than either, which is the active Acquisition of Knowledge, in a peaceful, undisturbed Retirement.

[The sometimes unusual capitalization, much like German usage, is that of Mr. Adams.]
From *The Bramble Bush, On Our Law and its Study*, by Karl N. Llewellyn (Oceana Publications, 1951) p. 41, designed as an introduction to law study:

. . . It is a pity, but you must learn to *read*. To read each word. To understand *each* word. You are outlanders in this country of the law. You do not know the speech. It must be learned. Like any other foreign tongue, it must be learned: by seeing words, by using them until they are familiar; meantime, by constant reference to the dictionary. What, dictionary? Tort, trespass, trover, plea, assumpsit, nisi prius, venire de novo, demurrer, joinder, traverse, abatement, general issue, tender, mandamus, certiorari, adverse possession, dependent relative revocation, and the rest. Law Latin, law French, aye, or law English—what do these strange terms mean to you? Can you rely upon the crumbs of language that remain from school? . . . I fear a dictionary is your only hope—a law dictionary—the one-volume kind you can keep ready on your desk. Can you trust the dictionary, is it accurate, does it give you what you want? Of course not. No dictionary does. The life of words is in the using of them, in the wide network of their long associations, in the intangible something we denominate their feel. But the bare bones to work with the dictionary offers; and without those bare bones you may be sure the feel will never come.

. . .

From *Oh, the Places You’ll Go*, by Dr. Suess (Random House, 1990):

“You have brains in your head.
You have feet in your shoes
You can steer yourself
Any direction you choose.
You’re on your own. And you know what you know.
And YOU are the guy who’ll decide where to go.”

The City and the River: The Thames in the 
*Liber Albus*

Ian Burke

Abstract: *The Liber Albus*, a compendium of laws pertaining to the governance of London compiled in the early 15th century by John Carpenter, provides a unique perspective on many aspects of life in late medieval London. This essay examines the identity of the river Thames as a natural resource and a defining feature of the London landscape through the lens of the writings contained in the *Liber Albus*.

In the year from the beginning of the World 4032, and before our Lord’s incarnation 1200, the city that is now called ‘London,’ founded in imitation of Great Troy, was constructed and built by King Brut, the first Monarch of Britain... of which foundation, building, and construction the River Thames was the cause.5

The inclusion of the Thames in the above passage is striking. Not only is the river mentioned, it is cited as “the cause” for London’s founding. Today, rivers are understood to be extremely important to the viability of major population centers. The ease of transportation afforded by a navigable river, as well as the easy accessibility of fresh water for drinking and irrigation make rivers natural points for cities to form, especially in pre-modern times. However, the passage above is an excerpt from the *Liber Albus* (or ‘White Book’), an encyclopedic catalogue of the laws of London compiled by John Carpenter, the London Clerk, in 1419. It relates the myth of Brut (or Brutus), who traveled from the ruins of Troy to England, where he became its first human ruler.

The story of King Brut and the founding of Britain are most famously found in Geoffrey of Monmouth’s *Historia Regum Britanniae* (History of the Kings of Britain), at much greater length. However, Monmouth did not set out to tell the story of London, but the story of Britain. In the *Liber Albus*, the story has been adapted to apply specifically to the founding of London. It is clear that the authors of this version had some understanding of the Thames’ role as a part of the city of London. But what was the nature of this understanding?

This paper will explore this question by using the *Liber Albus* as a focal source. Although it collects a wide variety of regulations, the *Liber Albus* contains many entries concerning the Thames, either directly or tangentially. By examining these rules, regulations, and charters, I aim to achieve an understanding of how the river was perceived by the Corporation of London in the early fifteenth century. Was the river understood merely as a geographic feature? As a part of London’s physical design and character? As a source of economic livelihood? As an ecosystem?

I will approach these questions by first examining the natural and built geography of London with respect to the Thames at the time of the *Liber Albus*. I will then provide a description of the various ways fifteenth-century Londoners used the Thames in their daily lives and how these uses were noted in the *Liber Albus*. I begin with these two relationships - connection through place and connection through use - because they are examples unconscious connections to the river. In the course of daily life these relationships would be manifest between Londoners and their river by virtue of proximity.

The regulations recorded in the *Liber Albus* represent conscious extensions of these unconscious relationships. By regulating the ways in which the river was used, the Corporation of London and the royal government demonstrated some understanding of how the river was involved with the function of the City. The form and content of these regulations show how their authors understood the City’s connection to the river. At the very least, the regulations show that London’s administrators had a clear idea of the Thames’ importance to the city as a boundary, a thoroughfare, and a source of nourishment. However, I propose that the *Liber Albus* reveals a deeper understanding of the river in an ecological sense. Regulations concerning fishing, trade, and waste disposal show that London’s administrators understood the Thames as a dynamic ecological entity, and not as a static part of the landscape.
The Liber Albus: About the Source

Before entering into an analysis of the information contained in the Liber Albus, a brief introduction to the source material is prudent. The Liber Albus was compiled in 1419, under the oversight of John Carpenter (c1350 - 1442), who served as the Common Clerk of London from 1414 to 1438. The Common Clerk’s duties were to compile civic records and to act as the head of the London chancery. During Carpenter’s time as clerk, however, he also signed proclamations in the name of the mayor and the aldermen suggesting an increase in the prestige and scope of the office.

John Carpenter’s date of birth is unknown, as are the circumstances under which he grew up. However, his family was not without means, as they were able to afford his education in the field of law and were able to send another son, (who was, confusingly, also named John) into the clergy. Before becoming the clerk of London, he had acted as an attorney in the city courts, and continued to act as a legal advisor even after taking office.

Carpenter was one of the few clerks of London to be referred to as ‘secretary,’ and the only one to have been called ‘beloved’ by the aldermen of the city, implying that he was held in high esteem in his own time. In addition to overseeing the compilation of the Liber Albus, he was the principal executer of the estate of Richard Whittington (c1350 - 1423), the Mayor of London in 1397, 1398, 1406, and 1419. Carpenter was elected to Parliament in 1437 and 1439, and also founded the institution that would later become the City of London School.

Carpenter had a unique interest in the preservation of knowledge, especially the written word. The contents of his will indicate that he had an extremely large library for a medieval layperson. His will specifically disposes of at least fifteen volumes, and makes arrangements for his own memoranda (his “little books and quartos”) to be assumed into the collections of his assistants. Fur-

---

8 Kellaway 68.
9 Kellaway 67-68.
thermore, he named the Guildhall Library as the recipient of any books not dealt with specifically in the will. The care with which Carpenter disposed of his own collection gives some indication of his concern for preserving the written word.

In the *Proemium* (Prologue) to the *Liber Albus*, Carpenter articulates this concern. He writes:

> Since human memory is fallible and life is short, we are unable to learn everything worth remembering even though it has been committed to writing, especially if such writing is without order or arrangement. Furthermore, since the aged and most experienced rulers of the City have frequently perished by pestilence at the same moment, their successors have, at various times, been at a loss for written information and disputes have arisen as to what decisions should be taken. The superior authorities of the City, as well as their inferiors, have long deemed necessary the compilation of a *Repertorium* containing the regulations of the City compiled from the more noteworthy memoranda that lie scattered throughout the books, rolls, and charters of the City.

By taking on the task of compiling the *Liber Albus* for the Corporation of London, Carpenter was acting on his belief that the knowledge should be saved in written memory, and not lost in disorder.

Thus, the *Liber Albus* was intended as a resource for London’s legal authorities as a reference containing the laws and customs of the city in a single volume. Specifically, it compiled many different records into what Carpenter called a “*Repertorium*”, or catalogue. The book was not used as a definitive source, but as a reference containing summaries and locations of relevant material. It was certainly used during its time, as shown by the graffitied verse written on its flyleaf in the early sixteenth century: “The

---

11 *Liber Albus* 4.
12 Kellaway 71.
book once white is white no more/ Made black with grease and thumbed its pages oe’r."\(^\text{13}\)

In its time, the *Liber Albus* was used as a legal resource. As a historical source, it has proven most useful for understanding the day-to-day function of the city of London in the late medieval period. H.T. Riley, who transcribed the *Liber Albus* in 1859 and translated it in 1861, defended the book as a “comparatively superior” compilation that, both because of the information that it offers on social life and civic conduct, and because of the high esteem in which it was held by contemporary civic authorities, represents a significant resource for medieval scholars.\(^\text{14}\) Since the *Liber Albus* was used as it was intended by its target audience, and was well-regarded by that audience, it can reasonably be supposed that the laws it summarizes reflect the concerns of the Corporation of London in the fifteenth century.

The *Liber Albus* draws its material from a number of sources, notably the *Liber Horn* (1311), the *Liber Custumarum* (c. 1324), and the ‘Letterbooks’ of the Corporation of London Records Office – a set of legal folios organized by the letters of the alphabet (A-L).\(^\text{15}\) It is organized into four books, each with its own table of contents. These sections are thematically arranged: Book I comprises descriptions of the duties of city officials; Book II, royal charters and historical freedoms of the City; Book III, customs and miscellany; and Book IV, a directory for locations of the many regulations not summarized at length in the previous four books.

**Geography of the Thames**

There are at least thirty references to the Thames in the *Liber Albus*, and they appear in all four books. The number of references shows that the river was not ignored by the government as a physical feature of the city. The geography of London shows that the river could not be ignored. London’s relationship with the River Thames begins with the physical boundaries set by the river (Figure 1).

\(^{13}\) Anon., *Liber Albus*. Original Latin: *Qui “Liber Albus” erat, nunc est contrarius albo/ Factus et est unctis pollicibusque niger.*


\(^{15}\) Kellaway 72-73.
The fourteenth and fifteenth centuries saw London expand beyond its walls, which were first constructed during Roman times. However, the Thames formed a much greater impediment to the expansion of the City than walls ever could. The Thames forms the City of London’s southern border, separating it from the city of Southwark, which lies outside of London’s jurisdiction. Interestingly, the Thames’ London-area tributaries, the Fleet and the Walbrook, did not have a great effect on London’s jurisdictional boundaries. However, the Fleet River did form a sort of western boundary to the inner city; the city’s walls lined its eastern bank. The greater part of London’s original boundaries were formed by the city ditch, a man-made moat that circled the city walls.

However, it was not the boundaries created by the Thames and its tributaries that made London a thriving city, but the connections that they promoted. Although the area around London had been inhabited since prehistoric times, the first known intensive settlement on the site of present-day London was the Roman fort-city of Londonium, founded circa 50 CE. The Romans most likely built their city in its position because of the geography of the river. London is located at the tidal reaches of the Thames and is accessible by sea-going vessels. The Thames at Londonium was also, at a half-mile across at high tide, just narrow enough to build a bridge with ancient technology. On this site, Londonium connected the north and the south of England by bridge and the east and west by water. This favorable location made London the hub of England, both economically and politically.

The timber bridge built by the Romans at Londonium was the first in a continuing series of bridges on that site. The original bridge was either repaired or similar bridges were built on the same site for the duration of the first millennium CE. In the eleventh and twelfth centuries, the bridge was destroyed three times: by military action in 1013, by high winds in 1091, and by fire in 1136. In 1176, construction began on a stone bridge, which would stand until 1831.

‘London Bridge,’ in all its incarnations, is an extremely important feature of London and the Thames. The bridge, which until 1894 was the easternmost bridge over the Thames, effectively separated the maritime Thames from the upper river. Because of its span and the limitations of materials, the medieval bridge was built on

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16 Barron 51.
a series of nineten close-spaced piers, protected from river debris by large timber structures known as ‘starlings.’ Although small boats could pass under the bridge, the narrow spaces between the starlings were hazardous, especially during tides when the quick-moving water became turbulent in the narrow spaces beneath the bridge. Because of this, river traffic generally stayed on one side or another. In the winter, ice catching on the starlings created a dam, allowing the upper Thames to be frozen solid and for markets known as ‘frost fairs’ to be held on the ice.

The bridge as it stood in 1419 was a unique structure; a stone bridge supported by a series of narrow arches. On the Southwark side of the bridge was a gatehouse, and a drawbridge was located toward the center of the structure. However, the bridge also supported houses, shops and a chapel on its pillars. By 1358, there were at least 139 buildings on the bridge. The structures on the bridge led to several concerns. Although the buildings increased the profitability of the bridge through rent, their presence impeded traffic. Additionally, the growing weight of the buildings threatened to make the aging bridge structurally unsound. In 1437, the Southwark-side tower of the drawbridge collapsed, leading to a special tax for repairs to the bridge.

In the Liber Albus, the bridge is regarded primarily in its capacity as an entrance point to the city. The largest section in the book concerning the bridge is titled, “The Customs of the Bridge,” and details the tolls owed by those crossing the bridge or coming ashore at Oistergate, a landing point beside the bridge. The tolls were to be collected by a city employee known as the Bailiff of the Bridge, who was an employee of the two bridge-keepers appointed by the Common Council. The tolls collected by this administration were meant to provide for the upkeep of the bridge, and as such, targeted non-Londoners taking trade goods into the City.

The Liber Albus makes mention of the rents from the buildings on the bridge itself as well, but leaves these concerns to the appointed bridge-keepers. The bridge-keepers were not to be Al-

19 Schneer 69-70.
20 Barron 44-45.
21 Barron 45.
22 Liber Albus 205-206.
23 Barron, 44. See also Liber Albus 136.
24 Liber Albus 136.
dersmen, and were not beholden to a specific ward, suggesting that London Bridge was understood to have high importance to well-being of the City as a whole.

To accommodate river traffic on the two sides of the bridge, two city-owned harbors, Billingsgate (downstream) and Queenhithe (upstream) were constructed on the London bank of the Thames. Previous to the thirteenth century, Queenhithe took more traffic than Billingsgate, but beginning in the fourteenth century, the use of larger ships for ocean trade and a greater volume of trade between England and the continent led to increased traffic at Billingsgate. The evidence in the Liber Albus suggests that by the early fifteenth century, Billingsgate was a multi-use port, catering to “great vessels” from Europe, as well as to local transit across the water. Queenhithe, on the other hand, was geared toward smaller boats from upriver.

Queenhithe and Billingsgate were not naturally occurring harbors, but artificial havens built into London’s waterfront. In the late eleventh and early twelfth centuries, London’s waterfront began to transform from a gradual riverbank into a constructed landscape. Using reinforced wooden barricades (revetments) to keep out the water, land was reclaimed from the river and buildings were built up to the river’s edge. To guard against the tide, the new buildings were constructed on ground that was artificially raised above the riverbank by at least 1.5 meters. Archeological evidence shows that by the sixteenth century the north bank of the Thames was extended between 50 and 100 m. This waterfront construction was an ongoing process in the fourteenth and fifteenth centuries.

By the fourteenth century, the amount of construction on the water was apparently a source of concern for the City. The Liber Albus contains one regulation, dating from 1315, that established a review process for further construction of “quays and other encroachments,” on the Thames. By the early fifteenth century, the London waterfront was a predominantly built environment. The extension of the city into the water made trading easier - large boats could dock in deep water and unload their goods di-

25 Barron 53.
26 Liber Albus 208-09.
28 Barron 53.
29 Liber Albus 409. Date from Kellaway 82.
rectly onto the shore. However, the revetments on the north bank put additional stress on the river during tides, leaving the less developed Southwark side of the river at risk of flooding.\textsuperscript{30}

Arguably, the development of London’s waterfront was promoted by another built structure on the Thames, the Tower of London. The earliest parts of the castle were constructed by William the Conqueror in the eleventh century, but the structure was greatly expanded by Edward I (r.1272-1307) between the years 1275 and 1285. Notably, Edward added a large outer wall that extended into the Thames. Silt trapped behind the new outer walls created sand bars upriver, which allowed for easier construction on the waterfront between the Bridge and the Tower.\textsuperscript{31} Whether this gradual silting process and its relationship to construction efforts was understood in its time is unclear.

Throughout the late medieval period, London’s waterfront became heavily used and constructed. The Thames was the major highway in and out of London, not only for commerce, but also for wealthy travelers: royals, barons, clergy, and wealthy merchants of the City all used the river as a stage for stately barge journeys.\textsuperscript{32} Unsurprisingly, riverside property became highly valued. Ecclesiastical town houses lined the Strand, which ran along the Thames, west of London proper, towards Westminster. Within the city walls, bishops and merchants maintained stately inns and hostels, many located on the river. Many of these dwellings, especially those of the secular merchants, were built in the fourteenth and fifteenth centuries, as the wealth of the laity increased. A regulation in the Liber Albus underscores the value of the waterfront - it reserves the banks of the Thames for native Londoners:

\textit{Of Hostelers... if perchance any native of a strange land... is about to become hosteler or herbergeour in the City, then let him make provision to dwell in the heart of the City or elsewhere: no such person shall dwell upon the waterside of the Thames, ei-

\textsuperscript{30} Barron 53.
\textsuperscript{31} Barron 53.
ther for keeping hostel or for being herbergeour there.33

The Thames, then, influenced the geography of London in several ways. It acted as a barrier, limiting access to the city from the south on foot to London Bridge. However, the river also acted as a connector. It provided a highway for goods and people, making London the commercial hub of England. Additionally, the Thames influenced the social geography of London; the prosperity facilitated by trade via the Thames made the London waterfront attractive to wealthy Londoners. The City, in turn, influenced the geography of the Thames. London Bridge, which connected London to the south side of the river, divided the river itself and, the course of the Thames was modified by construction on its banks. Although the Thames influenced the location and layout of London, by the time of the Liber Albus, the physical effects of human agency could be seen on the river itself.

Use of the Thames

Geographical knowledge of the river - knowledge of its presence - formed the most basic connection between the people of London and the River Thames itself. However, the citizens of London did not just live by the Thames - they lived on it, gaining knowledge of the river through the use of its resources.

Londoners used the River Thames in several ways. As noted above, the Thames acted as a highway, bringing goods into and out of London. It provided a site for fishing, although it will be seen that fishing and shipping were not entirely compatible uses of the river. Finally, the Thames offered Londoners fresh water for drinking and a convenient site for dilution and disposal of waste.

By the fifteenth century, the River Thames had been in use as a shipping route for centuries. As early as Roman times, London had acted as a freshwater port for seagoing vessels and as a destination for river traffic. By the fifteenth century, London was indisputably England’s dominant port, as customs records show that 60 percent of England’s overseas trade between the years of 1478 and 1482 passed through London. 34 The success of the

33 Liber Albus 234. Riley uses the term ‘hosteler’ here to mean ‘inn-keeper,’ not ‘inn-dweller.’
34 Maryanne Kowaleski, “Port Towns: England and Wales 1300-1540” in The Cambridge Urban History of Britain, D.M. Palliser,
city as a trading center was largely due to London’s location on the Thames. In addition to being the link between England’s hinterland and the coast, London’s riparian location also protected it from coastal raids. However, London’s preeminence was reinforced by royal regulations and by its cosmopolitan nature, which attracted merchants, both local and foreign.

Late medieval London acted as a ‘customs headport,’ which was a mainstay of the royal customs system created by Edward I and continued by his successors. A headport managed the collection of national customs in a given jurisdiction. London’s jurisdiction extended from Westminster to the mouth of the Thames, giving the London ports a great deal of legal authority corresponding to their advantageous geographical position. The port administration created a sizeable number of jobs; high-ranking local merchants acted as chief customs collectors and controllers, while numerous other workers were employed as clerks, surveyors, wine gaugers, packers, and boatmen, to name a few. By concentrating trade in London, the local markets and artisans also made economic gains. The Crown’s interest in the port fed into the London economy, accelerating the city’s already-positive economic growth.

But cooperation was not seamless between the inhabitants of London and the Crown, even with regard to trade. Throughout its medieval history, The City of London struggled against royal control of the city. In 1285, Edward I revoked the right of the City to self-rule for twelve years, and in 1392, Richard II held the liberty of the City to a £30,000 ransom. The second book of the Liber Albus begins with the charters of the City granted by all the Kings of England, beginning with William I, suggesting the historical importance of self-governance to the City. Even with the charters in place, the Crown maintained a special interest in London and the Thames, claiming their fortunes as inseparable from the realm as a whole. It is unsurprising that tensions arose over royal control of trade, in particular, the granting of customs ex-

35 Kowaleski 472-473.
36 Kowaleski 472.
38 Liber Albus 428, for example. “King Richard I. Of Kidels. ...for the common advantage of London and all his realm... no Kidels shall be placed anywhere in the Thames.”
emptions to foreign merchants in return for money and naval assistance.  

In any case, the ports of London were major centers of import and export by the late medieval period. The city-run ports of Billingsgate and Queenhithe received a wide variety of goods. According to the customs regulations in the Liber Albus, Queenhithe was primarily a local river port, receiving goods such as wool and salt, and sending dye, wine, and other imports inland. Billingsgate, on the other hand, provided a major marketplace for both importers and exporters. Ale, cheese, wool, and dye were all exported through the port of Billingsgate. In return, goods like wine, garlic, nuts, iron, and pottery came into the city. While the city traded in all these goods and more, its largest import was wine, while wool and textiles were the City’s major exports.

Of course, the ports also took in fish from the river and from the sea. The customs lists in the Liber Albus note twelve species of fish by name: herring, mackerel, haddock, merling, conger, rays, sea-bass, surmullet, turbot, shad, salmon, and eels. Much of this fishing was done locally, either on the Thames or near the river’s mouth. However, the Liber Albus also lists customs on salted fish (herring and salmon) brought into London from the south coast of England and overseas, indicating some long distance fish trade and a possible lack of local supply.

Throughout the Middle Ages, fishermen used a variety of techniques to catch fish. The most common fishing technology was the use of hook-and line set-ups, either with a hand-held pole or with a fixed line. However, fishing using nets and traps was also practiced with regularity. In deep water, both trawled and cast nets were used, especially for catching smaller fish, like herring. These nets were large and required teams of men to handle. Fixed traps were also common, especially in rivers. These traps had a number of forms that varied by region. In England, these devices included nets staked in place near the shore, simple

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39 Inwood 69-70.
41 Liber Albus 208.
42 Kowaleski 478, 480.
44 Liber Albus 210-211.
45 Hoffmann 351.
46 Hoffmann 359.
basket traps, fish weirs (also known as ‘gorces’), and ‘kidels,’ which were large funneled constructions designed to channel fish into a basket-style trap. These ‘fishing engines’ could be very efficient, especially those based around a weir, mill, or other artificial dam, as they blocked the passage of migratory fish, such as salmon.

When used in a navigable river such as the Thames, the traps posed a hazard to river travel. Fixed nets could catch and foul moving vessels, while poles, weirs, and kidels posed an actual collision danger. The Liber Albus contains an extended section on the regulation of fishing equipment, specifically kidels, in the Thames and the Medwaye (another major navigable river). Although the section comprises seventeen pages of the Liber Albus, the regulations can be easily summarized: the use of fixed fishing devices in navigable rivers was perceived to be dangerous to the safety of trade on the river and was therefore banned by royal decree.

Yet another way in which Londoners used the Thames was as a water source. The river was not the City’s only supply of water, however. London was surrounded by many sources of groundwater, both springs and dug wells. Until population pressure made contamination problematic, wells were even located inside the city. Throughout the Middle Ages, professional water vendors supplied water taken from these places, as well as from the Thames.

Midway through the thirteenth century, London’s Great Conduit was constructed, running water in lead pipes from springs outside London to fountains throughout the city. Although it was a

47 Hoffmann 354. Kidels were essentially the combination of a weir (a small dam or submerged enclosure built in the water and a basket trap, which prevented fish from escaping by trapping them in a space in which they could not turn around.
48 Liber Albus 427-444.
50 Roberta Magnusson, Water Technology in the Middle Ages: Cities, Monastaries and Waterworks after the Roman Empire (Baltimore: Johns Hopkins University Press 2001) 143.
51 Derek Keene, “London from the post-Roman period to 1300” in The Cambridge Urban History of Britain, D.M. Palliser, ed., Vol. I.
great convenience, the conduit was not able to adequately supply the demands of London’s growing population and disputes often arose concerning the rights of tradesmen, especially brewers, to the public water supply. High demand at the public fountains led to the continued use of the Thames as a water source, especially for those who lived close to the river and who could not afford private fountains.

The waters of the Thames were also used as a method of waste disposal, both intentionally and unintentionally. Garbage and human waste was dumped in and collected from open sewers in the street, to be dumped in either the city ditch or the Walbrooke, which drained into the Thames. Additionally, the Thames received contaminated water through rainwater runoff (the city had no closed sewers until 1462, when the Walbrooke was covered), public and monastic latrines that emptied into open water, and groundwater seepage from private cesspits.

Although they lacked scientific proof that polluted water contained diseases such as cholera, medieval Londoners understood that water contaminated with human waste was unhealthy, unpleasant and dangerous. Worries about polluted water were not absent from medieval London. There are complaints of unpleasant smells emanating from the water as early as 1290. The Liber Albus contains many regulations ordering the cleansing of the Thames and other waterways and some specifically forbidding the disposal of “dung, rubbish, gravel, or other refuse into the Thames,” suggesting that the London government shared concerns about the health of the water. However, the degree to which these regulations were followed is questionable.

52 Magnusson 139-142.
53 Holt 100.
54 Magnusson 27.
55 Magnusson 28.
56 Liber Albus 498-504. This section contains a long list of regulations concerning the cleanliness of the water supply. The quoted passage lies on page 499.
57 The quoted regulation is an outlier among the health regulations in the Liber Albus. More common are commissions for ‘cleansing’ specific waterways, implying periodic service to extremely troubled waste streams was a more practicable method of dealing with water pollution.
The Thames was essential to the London’s daily function, but the ways in which its resources were utilized led to conflicts of purpose. Its use as a trade route was essential to London’s economic survival, but precluded its use as a fully exploited fishery. Similarly, the Thames performed a role as a provider of fresh water to the city, but also acted as the final means of transporting waste away from the city and to the sea. Although the river’s current provided some degree of ‘flushing’ by diluting the waste and sweeping it downstream, the river could not support London’s dense population in this capacity without becoming noticeably polluted.

These conflicting uses are clear examples of the complexity resulting from the interaction of human society with the ecological landscape. The regulations from the Liber Albus to be examined in the following section show something of how this complexity was managed and understood by the London authorities.

**Protection and Regulation of the Thames**

The entries in the Liber Albus pertaining to the Thames focus primarily on regulating the use of the river. This is understandable - decrees could do little about the nature of the river. But decisions made by humans as to the use of the landscape can have a great impact on the landscape itself.

The regulations in the Liber Albus concerning the watercourse of the Thames reveal that the Corporation of London was concerned with the impact of a burgeoning waterfront on the nature of the Thames:

*Of the Watercourse of the Thames:* Whereas the watercourse of the Thames, which is wholly pertaining unto the city, is greatly impeded by the purpresture of quays and other encroachments into the said water, to the great damge and peril of all the city; and also for the avoiding of greater perils in the time to come: It is ordained... that from henceforth no purpresture shall be made by the erection of quays or any other manner upon the water of the Thames, without the view of the mayor, Aldermen, and Commons; and by them it shall be ajudged, whether or no peril or damage will from such purpresture unto the City ensue.\(^\text{58}\)

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\(^{58}\) Liber Albus 409.
This regulation responds to the ongoing process of construction on the waterfront during the fourteenth and fifteenth century. By subjecting new construction to review, the Corporation sought to limit and control the expansion of the waterfront.

There are several possible motivations behind this. One probably derived from an urge to direct river traffic towards the municipal docks of Queenhithe and Billingsgate, where customs could be more easily enforced. This corresponds to a trend across England during the late medieval period toward more municipal over ports and trade.\(^{59}\) However, other concerns could have contributed to this regulation. Within the customs lists of the ports are contained penalties for running aground, suggesting that the waterfront was not free from silting and debris.\(^{60}\) There are records of flooding on the south bank of the Thames during the late medieval period, and modern scholars have hypothesized that strain on the river caused by construction was a factor in their severity.\(^{61}\) It is possible that London authorities understood that construction on the waterfront had a direct effect on the nature of the river. At the very least, the wording of the law depicts a dynamic relationship between the citizens of London and the watercourse of the Thames, even if the watercourse is understood primarily as a place of commerce.

The concept of the Thames as a place of commerce is shown most fully in the seventeen-page section titled, “Statutes and Ordinances as to removing Kidels and Trinks in Thames and Medawaye.” Although the section focuses on the various restrictions on traps in England’s rivers, including the London Thames, it also reveals a great deal of how the Thames was understood in terms of its economic and ecological aspects.

Before the regulations begin in earnest, two entries establish royal interest in the Thames and London. The first of these is the story of Brut of Troy, quoted above, which states that Brut founded London and cites the river Thames as the cause for London’s location, thus implying a right of Kings to regulation of London and the Thames.\(^{62}\) This right is given more historical precedent by the following entry, which quotes the statutes of Edward the Confessor and William I. These laws established London as the “head of the realm” and granted the King direct

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\(^{59}\) Kowaleski 470

\(^{60}\) Liber Albus 208

\(^{61}\) Barron, “Later Middle Ages” 53.

\(^{62}\) Liber Albus 427
participation in the governance of the city. These laws gave kings the ability to regulate the Thames as a whole, including the London waterfront.

Following these preliminary passages are pages of mostly reiterative edicts of the kings of England from Richard I to Henry V regarding the presence of kidels and other placed traps in the Thames and other rivers. In the Magna Carta, the ban was even extended “throughout all England, the sea-coasts excepted.” With regard to London specifically, the regulations state that, “the greatest detriment and disadvantage did accrue,” to the City due to the presence of kidels in the Thames. The statutory regulation in effect at the time of the Liber Albus’ completion was that of Edward III (r.1327-1377), upheld by Henry IV (r.1399-1413) and his successor, Henry V (r.1413-1422):

Of Gorces, Mills, Stanks, Stakes, and Kidels...because that the common passage of ships and boats in England was oftentimes impeded by the raising of gorces, mills, stanks, stakes, and kidels, often to the great damage of the people: - it was accorded and established, that all such [traps]... in such rivers whereby ships and boats were impeded... should be removed and wholly abated, without being reinstated.

This version of the ban on traps in the Thames clearly states its justification. Fixed traps in the Thames and other rivers were a clear danger to river traffic. The “detriment and disadvantage” to London was effectively the danger to trade posed by the traps. As with the regulation of construction on the London waterfront, the restrictions on kidels show that the Thames was most important to the city as a trade route.

The importance of keeping shipping lanes safe was the primary motivation for the kidel bans. However, some of the later reiterations of the ban reveal another motive. In the entry recording Henry IV’s adoption of Edward’s statutes, the viability of the fish catch is also cited as a reason for banning kidels.

...by gorces, stakes, and kidels, standing in the water of the Thames and other great rivers of the

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63 Liber Albus 427-428.
64 Liber Albus 429.
65 Liber Albus 428.
66 Liber Albus 434.
realm, the common passage of ships and boats is impeded... and also, the young fish is destroyed, and against reason wasted...67

By the second half of the fourteenth century, there was apparently concern in England over the continued survival of fish stock in rivers. There is evidence that pressure from fishing and pollution led to local scarcity of some fish in medieval Europe, although it is not certain if these scarcities occurred on the Thames of the fourteenth and fifteenth centuries.68 There is no mention of specific scarcity in the Liber Albus. However, there must have been some concern over the impact of fishing practices on aquatic populations. In 1390, Richard II (r.1377-1399) ordered a moratorium on salmon between September 8th and the 11th of November so as to allow for spawning, and prohibited the use of nets and fishing engines that could potentially catch or kill young fish.69 Laws were also in place regulating the size of net meshes so as to ensure that small, younger fish could escape safely.70 Fishery officials known as 'conservators' enforced these laws by inspecting nets and burning those found to be unlawful.71

Around London, fishermen resisted these regulations, even to the point of armed resistance. The Liber Albus records one incident in 1406 in which irate villagers pursued a sub-conservator with bows and swords after the unfortunate official confiscated nets for inspection by city officials, as was his duty.72 By the beginning of the fifteenth century, London authorities were not only dealing with the conflicts between traders and fishermen, but with the conflicts between technology and ecology.

London administrators also had to contend with the problems of disposing of waste in an urban environment, another situation in which the human impact on the landscape could be clearly observed. During the Middle Ages, small and medium rivers were more likely to be heavily polluted by human effluent than were large rivers, due to their lower volume-to-surface ratios.73

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67 Liber Albus 440.
69 Liber Albus 434-435.
70 Liber Albus 331-333, 497. These entries also establish seasons during which various mesh widths could be used.
71 Liber Albus 435-436.
72 Liber Albus 441.
73 Hoffmann, 645.
derstandably, the Fleet and Walbrooke tributaries were more strongly affected by London’s waste than the Thames. By the fifteenth century, the Walbrooke in particular was more akin to an open sewer than a watercourse. The *Liber Albus* shows that these rivers were indeed treated primarily as waste disposal routes rather than as viable river ecosystems. The *Liber Albus* contains numerous orders for the Fleet and Walbrooke to be “cleansed,”

but of the City’s waterways, only the Thames was protected by regulations against throwing rubbish and dung into the river. Additionally, the streets leading towards the Thames were to “be kept clear” of garbage and waste.

The numerous orders for cleansing the streets and waterways of London indicate that the city authorities made some degree of sanitation a priority. One regulation even states that “Certain men” should be “sworn to keep the Watercourse of Walbrok,” suggesting that there were some official mechanisms for city sanitation, and that these ordinances were not un-enforced.

The regulations pertaining specifically to the Thames are curious in their inconsistency. There is anecdotal evidence that the restrictions against garbage disposal in the Thames were enforced. However, latrines such as the one-hundred-twenty-eight seat ‘Longhouse’ financed by Richard Whittington emptied their contents directly into the Thames. These contradictions suggest that the London sanitary ordinances were not so much concerned with preventing water pollution as with minimizing the impact of waste disposal on public health and commerce. London derived obvious social and economic benefits by keeping the waterfront a relatively safe and clean place to conduct business. Although dumping directly into the Thames was minimized by the city ordinances, almost all of the city’s waste eventually found its way to the great river, most often by way of the Fleet and Walbrooke. For London, the solution to pollution was dilution in the Thames.

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74 *Liber Albus* 501, 502, 503.  
75 *Liber Albus* 499, 500.  
76 *Liber Albus* 239, 500.  
77 *Liber Albus* 502.  
78 Magnusson 161. The recorded incident involves a constable of Baynard Castle being assaulted by an apprentice when the constable prevented him from disposing of rubbish on the waterfront.  
79 Magnusson 156.
Conclusions

In writing this paper, I have relied upon recent research on interactions between human technology and the environment in the Middle Ages. It is my hope that my reading of the *Liber Albus* will shed some light on how people of the time understood their own place in their landscape and the effects of their society on the environment. In London, the city authorities had some understanding of the role of the Thames in the function of their city. However, they understood its ecology in the context of its economic importance to the City.

The *Liber Albus* provides a great deal of evidence that the Thames was seen as vital to the city of London. The river is referred to as “the cause” of the city, showing that the river was a major part of the city’s geography and a major reason behind London’s prominence in the late medieval period. Other regulations are worded similarly, writing that the Thames was, “wholly pertaining unto the City,” and that the protection of the Thames was crucial to “the city of London, as also unto the whole realm of England.”80

The Thames was certainly understood as a geographical entity. It was therefore important to keep the river free of impediments, such as kidels and other fish traps. But the regulations in the *Liber Albus* also show that authorities understood that the Thames did not exist independently of human influence. The establishment of a review process for construction on the waterfront reveals the London civic authorities’ interest in directing commerce on the waterfront, but also an understanding that human construction altered the nature of the river’s flow. Sanitary regulations concerning the cleanliness of the waterfront and local tributaries also suggest that the Corporation understood that rivers in an urban environment were susceptible to greater pressures from pollution, and were not capable of effortlessly sweeping garbage downstream.

Evidence that Londoners knew the Thames as something of an ecological entity are revealed by the fishing regulations contained in the *Liber Albus*. The presence of fishing seasons and regulation of net sizes show that fish were not thought of as limitless resources. Migration and spawning had to be allowed to take place, and young fish populations had to be able to escape nets in order to maintain viable fisheries.

80 *Liber Albus*, 427, 409, 428.
The regulations show thought about the effect of humans on the Thames that went deeper than just the regulation of use. In order to maintain the City economically and socially, London authorities had to understand how the city acted upon the river’s ecological and geological cycles through its demand for fish, its position as a center of commerce, and as a place of high population density and pollution. However, this understanding was not synthesized into a conception of the Thames as a unified system. The regulators approached the Thames as I have approached this paper: through instances of interaction. Occasionally, interactions would overlap, as with the kidels, which imperiled both trade and fish stocks. But the Thames was not regulated as a single entity; it was regulated in its various roles as a highway, a border, a fishery, and a conduit. It was as a highway, a route for commerce, that the London authorities best understood the Thames. In all of the regulations pertaining to the river, the preservation of commerce (trade and fishing) appears to be the first motivation for their creation. Even sanitation regulations specifically targeted the waterfront area of London so as to create a clean environment for commerce - the Thames would receive London’s waste regardless. Although the London authorities of the late Middle Ages understood the relationship between London and the River Thames to a surprisingly high degree, they understood it as a trade route first and in its other roles through the context of commerce.

Ian Burke’s essay, “The City and the River: The Thames in the Liber Albus,” was the Runner-up in the 2010 Morris L. Cohen Student Essay Competition. Mr. Burke has since received his MLIS from the University of Denver.
Figure 1. Schematic Drawing of the late medieval London Waterfront (Not to scale).

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By the Old Style calendar\(^1\), 30 July 2009 marked the anniversary of the founding of the Virginia General Assembly. That meeting launched the assembly on a three hundred ninety-year passage from a corporate appendage to a little parliament to the oldest continuing representative legislature in the Western Hemisphere. Convening the General Assembly also set a vital precedent for the American way of self-governance. All that said, what is really known about that initial gathering? Did the meeting matter all that much? The short answer to the first question is a little and a lot. An answer to the second is more open-ended. Hence, the title of this essay, which aims to dispel myths that have long attached themselves to the origins of representative government in early America and to note things that actually happened at Jamestown that summer of 1619.

A recurring fable centers on the reason the founders of the colony created the General Assembly. Historians, public figures, and other commentators have long regarded the founding of the body

\(^1\) Meaning that by modern reckoning the assembly would have sat on 10 August 1619. Seventeenth-century Britons used the Old Style calendar, which dated from the time of Julius Caesar, who introduced that mode of reckoning in 46 B.C. It came into force the following year and remained in use until the year 1582, when Continental Europeans supplanted it with one devised by Pope Gregory XIII. The change necessitated advancing dates by ten days, so 5 October 1582 became 15 October 1582. However, the Britons continued use of the Julian calendar until 1752.
as the consequence of an innate English desire for self-rule. A more prosaic explanation dispels that myth.²

Virginia proved a more difficult undertaking than the Virginia Company of London ever imagined when the investors started the colony in 1607. It limped along as an unprofitable enterprise, despite successive re-organizations, and the venture verged on collapse by the late 1610s. Determined company investors refused to quit, and they launched yet another overhaul of the entire operation. Company treasurer Sir Edwin Sandys scrapped the existing business model in favor of one that would transplant as much of traditional English society as conditions in Virginia would allow.³ To that end, he set forth his scheme in a series of management documents, collectively known as Great Charter of 1618. The plan reformed land tenures by introducing private ownership and by promising a headright of fifty acres of land to anyone who would settle at his or her own expense, plus an additional fifty acres for every other person such would-be planters might import. Next, there were improvements to local administration, one of which substituted elements of English common law for the much-hated Dale’s Laws,² a stern regime of martial regulations that the company imposed in 1611. To create a more palatable resident government, a new governor-general also received orders to convene a general assembly comprised of him, company-appointed councillors of state, and representatives elected by Virginia’s freemen. That body would sit annually. It received power to enact ordinances, grounded in the company’s corporate rights, that addressed local needs or implemented directives from London, any of which the governor-general might veto or company officers

⁴ Dale’s Laws, so-called, take their name from the man who rigidly enforced them, Sir Thomas Dale, who was deputy governor of Virginia. Secretary of the colony William Strachey published them in a London edition in 1612, a modern rendition of which is David H. Flaherty, ed., For the Colony in Virginia Britannia. Lawes Divine, Morall and Martiall, etc. (Charlottesville, 1969).
might reject. The Great Charter also authorized the assembly to act as a court of justice from time to time.\(^5\)

These and other prescriptions represented solutions that Sandys regarded as practical remedies that were most likely to salvage Virginia and produce much-needed income for a profit-starved company. A close reading of the charter documents clearly shows that Sandys had no desire whatever of establishing the assembly as some sort of Parliament in miniature or that Parliament served as his pattern. Instead, he conceived the body wholly as an adjunct to the company’s governing body—its general court. Sandys intended to invest the assembly with sufficient power to do its job, but he never envisioned it as in any way co-equal with corporate authorities in London.\(^6\)

This appraisal runs counter to durable myths about Sandys as an inspiration of liberty in America and a bulwark against the absolutism of King James I. Such views captured the imaginations of late nineteenth- and early twentieth-century Virginia historians. They make pretty stories about the origins of the American political tradition, and Virginia’s premier contribution to representative self-government, but they are readings that speak more to patriotic fervor than to early seventeenth-century realities.

As to the session itself, sometime around 25 June 1619, Governor-General Sir George Yeardley issued writs to the “freemen and Tenants,” ordering them “by pluralitie of voices to make election of two sufficient men” from each settlement to meet with him and the Council of State as a “generall Assemblie.”\(^7\) (These representatives would be called “burgesses” from that day until 1776, when their successors took the title of “delegate,” which is still in use.) Qualifications to vote or to sit in the assembly were looser than those that applied in elections to the House of Commons. A can-


didate or an elector had only to be English, free, male, and above twenty-one years of age, and neither had to own or rent real estate. This more relaxed franchise is yet another indication that replicating Parliament was not Sandys’s intention.

On 30 July 1619, the General Assembly convened at the Jamestown church—the only building in the colony then large enough to accommodate large gatherings. Twenty burgesses, who represented eleven constituencies, six councillors of state, and the governor-general, comprised the body. We know little of the burgesses individually so they are now little more than names on a page. Most never sat in a subsequent assembly. Nevertheless, all shared one common attribute, which also marked the next two generations of their successors as well. Rather than springing from the traditional ruling classes, they were middling sorts of Englishmen with talents for succeeding in the Virginia environment and little skill in governing others. The six councillors of state exhibited similar qualities. Francis West (1586–1634)\(^8\), Nathaniel Powell (d. 1622)\(^9\), and Samuel Maycock lived in Virginia for most of its first decade and were notable for their knowledge of matters military and successes as colonizers. A fourth councillor, John Rolfe (1585–1622)\(^10\), pointed the way to the colony’s eventual economic survival through tobacco culture. Whatever memory of him lingers now, however, has less to with his tobacco experiments than with his marriage a young Indian woman the English knew as Pocahontas (c.1596–1617)\(^11\), The Reverend William Wickham is notable only because he was but one of two clerics ever to sit in the Virginia Council of State before the American Revolution. (The other was the Reverend Dr. James Blair, who founded the College of William and Mary in 1693.) Secretary of


\(^9\) Nathaniel Powell, or Powle, arrived in Virginia in 1607 and was killed in Mar. 1622 at the onset of the Anglo-Indian War of 1622–1632. Further details are in David R. Ransome, “Powle, Nathaniel,” ibid., article 22657, accessed 9 Oct. 2009.


the Colony John Pory was the sixth councillor, and more can be told about him than anyone else.

Pory (bap. 1572, d. 1636?) came from people who sat much higher up the social ladder than any of his councillor colleagues. Educated at the University of Cambridge, he was one of those Jacobean wanderers the historian Alison Games recently styled "cosmopolitans." That is to say, he was a well-travelled Englishman who traversed the globe in search of adventure, personal fulfillment, and glory for king and country. After going down from Cambridge, he assisted the Reverend Richard Hakluyt the Younger, that most influential of late Tudor publicists of English colonizing in the Americas, who aroused Pory’s own curiosity about exploring new worlds. By the early 1600s, Pory’s reputation for honesty, erudition, and diligence produced exceptional political connections and a seat in the House of Commons during the Addled Parliament of 1604–1611. (The latter distinction marked him as one of but three seventeenth-century members of the General Assembly ever to sit in Parliament; the others being Governors-General Thomas Culpeper, 2d baron Culpeper of Thoresway, and Francis Howard, 5th baron Howard of Effingham both of whom were heredity peers in the House of Lords.) Pory’s pronounced penchant for drink neither dulled his wits unduly nor deterred opponents of Sir Edwin Sandys from engineering Pory’s appointment as secretary of the colony in order to keep an eye on Governor-General Yeardley. Pory played an important part in launching the General Assembly before he returned to England in 1623, where he lived out his days as an intelligencer for his patrons. Sir George Yeardley (bap. 1588, d. 1627), was a son of a

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15 Nora Miller Turman, *George Yeardley: Governor of Virginia and Organizer of the General Assembly in 1619* (Richmond,
London merchant tailor. He, like countless other middling Britons, shunned his father’s calling and traded needle and thread for a sword. Time spent time with the English troops that the crown stationed in the Netherlands as a guarantee of Dutch independence imparted lessons in command. Yeardley throve on the military life. He rose to a captaincy before another soldier of fortune, Sir Thomas Gates, took him under his wing. The two of them set off for Virginia in 1609—Gates as lieutenant governor and Yeardley as captain of Gates’s guard. Gates’s ship, the *Sea Venture* foundered on the Bermuda coast; both men survived and eventually reached Jamestown in 1610. A variety of assignments followed until Yeardley returned to England in 1617. A year later he married Temperance Flowerdew, who was John Pory’s niece. By then he had already caught the eye of Sir Edwin Sandys, who named him governor-general, and in November 1618, James I tapped him for knighthood “to grace him the more” in his new office. Touches from the king’s rapier and a good marriage did not elevate Yeardley in the eyes of the Virginians who regarded him as a “meane fellow by way of provision.” Nevertheless, he managed his assignment well, though he was never entirely comfortable with his position. He gave it up in 1621 but returned to office briefly under King Charles I before he died in 1627 and was buried supposedly in the chancel of the Jamestown church.¹⁶

John Pory prepared a “reporte of the manner of proceeding in the General Assembly,” which he wrote and sent copies off to London soon after the session. If he had done no more than this, his reputation would still be secure because the “reporte” is sole record of what happened at the meeting. In that regard, Pory performed a role akin to that of James Madison, whose notes of the Federal Convention of 1787 remain the principal source of information about the drafting of the Constitution of the United States.¹⁷

¹⁷ On the provenance of the “reporte,” see Billings, *A Little Parliament*, 227-228, note 6. A modern rendition is William J. Van Schreeven and George H. Reese, eds., *Proceedings of the General Assembly of Virginia, July 30–August 4, 1619: Written & Sent from Virginia to England by Mr. John Pory, Speaker of the First Representative Assembly in the New World* (Jamestown, 1969), which presents facsimiles of the original manuscript and
like Madison’s notes, Pory’s “reporte” leaves the reader wishing for more. It omits as much as it includes; it does not record floor debates verbatim or speeches in full; and it does not reveal who put motions or how the members voted on them. Notwithstanding such omissions, the “reporte” is the fullest record for any General Assembly before the 1680s.\textsuperscript{18}

July the 30\textsuperscript{th} was a Friday, and everyone gathered in “the Quire of the churche.” According to Pory, Yeardley designated him “Speaker” before naming John Twine as clerk of the assembly and Thomas Pierse its sergeant-at-arms. The Reverend Richard Bucke, the resident priest, prayed for heavenly blessings and divine guidance. Members swore an oath of allegiance to the crown and another that avowed their acceptance of the king as the supreme head of the Church of England. (The latter oath was meant to catch out crypto-Catholics and to prevent them from holding any office.) Everyone stood by until Twine called the roll for their admission one by one as members of the assembly.\textsuperscript{19}

To anyone familiar with the workings of a seventeenth-century Parliament, all of this has a familiar look to it, but a closer inspection discloses some significant differences in proceedings at London and at Jamestown. The governor-general, the councillors of state, and the burgesses sat as one house, not two. Mr. Bucke merely prayed, where as his counterpart at the opening of Parlia-

their transcriptions on facing pages. As for Madison’s notes, the historian Max Farrand published them in his monumental edition, \textit{The Records of the Federal Convention of 1787} (New Haven, 1903; 2d ed. 1937), to which James H. Hutson added \textit{Supplement to Max Farrand’s The Records of the Federal Convention of 1787} (New Haven, 1987). An searchable online version of the first edition, from the Liberty Fund, is available at their web site \url{http://oll.libertyfund.org}.

\textsuperscript{18} If the Virginia Company required transcripts of proceedings after 1619, none has survived. No such requirement existed between the time Charles I declared Virginia a royal colony in 1625 and the 1680s, when royal officials promulgated such a mandate.

\textsuperscript{19} Van Schreeven and Reese, eds., \textit{Proceedings of the General Assembly}, 15-17; John Cay, comp., \textit{An Abridgment of The Publick Statutes in Force and Use From Magna Carta, in the ninth year of King Henry III, to the eleventh year of his Present Majesty King George II. Inclusive}, 2 vols. (London, 1739), 1: s.v. “oaths.” (This and other citations to sixteenth-, seventeenth-, and eighteenth-century law books are to the witnesses to the editions that are in my library.)
ment preached a sermon, and there was no equivalent to the royal speech from the throne. Although Pory styled himself “Speaker,” nothing in his report indicates that he acted like a Speaker in the House of Commons. Instead of being elected by the burgesses, Yeardley appointed him. The burgesses did not drag a protesting Pory to his chair. Nor did he give the customary disabling speech, such as the one the incumbent Commons Speaker, John Bercow, spoke upon his election in June 2009. Yeardley, not Pory, presided over the assembly. Pory was no advocate for the burgesses, which was a principal duty of the Commons’ Speaker in the early seventeenth century. Actually, Pory sat with his council colleagues and devoted the bulk of his time doing secretarial and clerical tasks and setting the assembly’s agenda.\textsuperscript{20}

Calling Pory “Speaker” has long fostered the misbegotten idea that the General Assembly took life as a bicameral legislature, in which each chamber enjoyed distinctly separated powers. Consequently, generations of Virginians and scholars conflated the General Assembly with the House of Burgesses, but that is a little like saying the House of Representatives and the Congress of the United States are one and the same body, when they are not. The General Assembly at its start consisted of three elements, governor-general, councilors of state, and burgesses, all of whom constituted a single entity, which remained unicameral for more than two decades.\textsuperscript{21}

Mistaking Pory’s role clouds how he brought his legislative experience to bear on the dispatch of the assembly’s business in several significant ways. For one, when a challenge to the qualifications of two prospective burgesses threatened a lengthy delay in proceedings, Pory suggested that his colleagues act as Parliament might and judge for themselves who could sit among them, which


they did. By ruling that the disputed credentials were improper, the members laid down a precedent that later General Assemblies translated into an exclusive right that obtains to this day. For another, Pory fixed the legislative agenda. To that purpose, he explained the rationale for the general assembly and detailed the duties the Company assigned to it. Next, he read aloud the Great Charter for the benefit of the whole company, a majority of whom were likely barely literate, and in so doing he took the place of a parliamentary reading clerk. Then he apportioned the legislative work into four parts: determining which sections of the Great Charter needed modification, which company instructions required adoption as local law, what new regulations should be proposed, and what petitions to the Company in London were in order. Finally, Pory seems also to have been responsible for introducing two additional parliamentary habits, giving enactments three readings aloud before passage and employing committees to move bills to the floor in a timely manner.

That Pory exerted so much influence stems from an obvious though often overlooked fact. He alone among the members knew anything about procedures in deliberative bodies. Thus, he was in a unique position to shape how the assembly did its business, and he tailored his knowledge of legislative proceedings to the needs of the moment. His efforts eased the adoption of ordinances that regulated a range of activities that ran from Indian affairs to labor contracts and tobacco prices, and in keeping with its purpose as a court of justice, the assembly also dispatched a number of criminal matters. As a result of his leadership, the assembly did its work smoothly and expeditiously.22

Unquestionably, Pory’s colleagues appreciated his sense of efficiency. An oppressively humid Tidewater Virginia summer discomforted them as they worked in the stifling, cramped little church. The weather carried off an already sickly Walter Shelley, burgess for Smythe’s Hundred, and resulted in an adjournment on 4 August, because in Pory’s words, “(by reason of extream heat both paste [i.e. past] and likely to ensue, and by that meanes, of the alteration of the healthes of diverse of the general Assembly) the Governour, who himself also was not well, resolved should be the laste of this firste Session.”23

When Pory and the others left the churchyard, they had cause to be pleased with what they accomplished in a mere five days. They

23 Ibid.
had shepherded an appreciable measure of self-government into existence. Thereafter the General Assembly grew in popularity with settlers who increasingly saw in it not only an instrument of effective, if limited, home rule but a mechanism by which they could share largely in running the colony.

Little is known about the General Assembly in the first few years after 1619. The frequency with which it sat is uncertain owing to the loss of its journals. It faced an uncertain future following the Crown’s seizure of the Virginia Company charter. Charles I inadvertently cast it deeper into constitutional limbo after he neglected to sanction the assembly in 1625, when he proclaimed the colony a royal dominion.24 Turning Virginia into a crown colony effectively left the settlers to govern themselves virtually unnoticed for the next half century, a freedom that had enormous implications for the development of self-government nevertheless. Yeardley’s successors continued to summon the assembly annually even as they and prominent colonists lobbied Charles I to sanction its right to exist. Such persistence bore fruit in 1639 after the king named Sir Francis Wyatt governor-general and authorized him to convene the assembly yearly. By that time, the body was already well on its way to being Virginia’s principal lawgiver and to a resemblance to Parliament than when it was merely a company adjunct. Its legislation touched increasingly broader areas of colonial life as the members arrogated greater powers to the body, and as they turned themselves into more adept politicians. Still, it remained unicameral and decidedly formless.

The major step towards the transformation of the General Assembly into a little Parliament happened early in the tenure of Wyatt’s successor, Sir William Berkeley. Seeking to build his own power base, Berkeley encouraged the burgesses to sit apart from the councillors. In March 1643, the members responded positively to his urging, and so the General Assembly became bicameral. Thereafter, the assembly gained ever-widening authority as Berkeley made common cause with the great planters who sat in the Council of State and the House of Burgesses and dominated local government to boot.25

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In its own way, then, the General Assembly of March 1643 was every bit as important as the first one that met at Jamestown a quarter of a century earlier.

Warren M. Billings is Distinguished Professor of History, Emeritus, University of New Orleans. This essay derives from the first annual Jamestown Lecture on Representative Government, a series jointly sponsored by the Library of Virginia and Preservation Virginia, which I inaugurated at the Library in Richmond on 30 July 2009. A video of that lecture may be viewed at http://www.c-spanarchives.org/program/288253-1. This article originally appeared in the Summer 2010 issue of LH&RB.
Coke, Selden, Hale and the Oxford English Dictionary

Joel Fishman, Ph.D.

Most readers will of course recognize the names of Edward Coke, John Selden and Matthew Hale as three of the most important judges/lawyers of the seventeenth-century England. Coke is widely known for his role as Chief Justice of King's Bench in the reign of James I and opposition leader in Parliament to Charles I as well as the author of Coke’s Reports and the Institutes of the Lawes of England (4 vols. 1628-1644). John Selden was the major legal historian of his age and also a member of the 1628 parliament (and for whom the Selden Society is named after). Matthew Hale was Chief Justice of Common Pleas in the reign of Charles II and an important author of legal treatises in history and organization of the common law (see my article in the previous issue of this newsletter).

The use of dictionaries has gained some prominence in the use of court cases and statutory interpretation. Legal dictionaries have had a long history from John Rastell’s An Exposition of Certaine Difficult and Obscure Wordes, and Termes of the lawes of This Realme (1579) to John Cowell’s The Interpreter: Or, Booke Containing Significant Words (1607), Giles Jacob’s A New Law Dictionary (1736), ThomasTomlin’s The Law-Dictionary (1811) and John Bouvier’s A Law Dictionary (Francis Rawle, ed. 3d ed. 1914), and finally the multiple edition’s of Black’s Law Dictionary (Bryan

A. Garner, 9th ed. 2008). Because of the importance of our three authors, I was interested in finding out how their works served in the etymology of words. A search of the online edition of the Oxford English Dictionary, performed during the week of March 15-19, 2009), for each author listed as the first time author resulted in the following list of words for each author. I have only listed the words, the dates of inclusion, the dates of publication, and short title abbreviation of the works (extended in the notes). In a couple of instances the Dictionary provided citation to later works that cited one of the authors.

**EDWARD COKE**

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² Edward Coke, The First Part of the Institutes of the Lawes of England, or A Commentary Upon Littleton (1628). The citations to Coke on Littl. or Coke 1st Pt. Inst. Lawes Eng. are the same title. The first volume is a commentary upon Littleton’s Tenures (1485), the first English law book published in English, that dealt with the land law in England. Coke’s first volume was published in 1628 and went through multiple editions in the following two centuries. The other three volumes were publish posthumously in 1644 and also were published in multiple editions thereafter.
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**JOHN SELDEN**

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<sup>5</sup> John Selden, *Titles of Honor* (1614).

<sup>6</sup> Michael Drayton, *Poly-Olbion. Or a Chorographical Description of Tracts, Riverers, Mountaines, Forests, and Other Parts of This Renowned Isle of Great Britaine: with Intermixture of the Most Remarquable Stories, Antiquities, Wonders, Rarityes, Pleasures, and Commodities of the Same: Digested in a Poem by Michael Drayton, Esq. With a Table Added, for Direction to Those Occurrences of Story and Antiquitie, Whereunto the Course of the Volume Easily Leades Not*. London: Printed by [umphrey] Lownes for Mathew Lownes: I. Browne: I. Helme, and I. Busbie, 1613. I have given the full title since it is a work that I am not familiar with. Yale University Library lists 137 entries under his name.

<sup>7</sup> John Selden, *Table-Talk* (1689). This work also went through multiple editions down to the twentieth century.
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11 John Selden, *Tracts Written by John Selden of the Inner-Temple, Esquire: The First Entituled, Jani Anglorum Facies*
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ALtera, RENDRed INTO ENGLISH, WITH LARGE NOTES THEREUPON / BY REDMAN WESTCot, GENT. ; THE SECOND, ENGLAND'S EPINOMIS ; THE THIRD, OF THE ORIGINAL OF ECCLESIASTICAL JURISDICTIONS OF TESTAMENTS ; THE FOURTH, OF THE DISPOSITION OR ADMINISTRATION OF INTESTATES GOODS ; THE THREE LAST NEVER BEFORE EXTANT. (1683).

\(^{12}\) Id. This was the first treatise in his Tracts publication.

### MATTHEW HALE

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14 Matthew Hale, *A Narrative Legall and Historicall Touchinge the Customs*, in S. A. Moore, *A History of the Foreshore* 318-70 (3d ed. 1888). This is from MS Hargrave 98, the first draft of Hale's "De Juris Maris," "De Portubus Maris," and "Concerning the Customs" later published by Francis Hargraves in 1786.


18 Matthew Hale, *Pleas of the Crown* (1678), went through multiple editions thereafter; the citation above appears to be to
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Another Early Pennsylvania Legal Periodical: Journal of Jurisprudence (1821)

Joel Fishman

In 1821, John Hall published the Journal of Jurisprudence, “a new series of The American Law Journal.” It is sometimes cited under the former title or as volume seven of the American Law Journal that was the first law periodical published in the United States. The new volume had 542 pages, divided into three issues of 136, 136, and 270 pages. Mathew Carey & Son, one of the leading Philadelphia printers of early, nineteenth-century Philadelphia, was the printer of the Journal. In antebellum Pennsylvania, Philadelphia served as a major printing center, hosting a number of Irish émigrés that became book sellers, printers, and book publishers of legal materials, such as Mathew Carey.

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I previously published An Early Pennsylvania Legal Periodical: Journal of Law (1830-31), 11 no. 4 LH&RB 1, 5-9 (Summer/Fall 2005) and An Early Pennsylvania Legal Journal: Pennsylvania Law Journal (1842-1848), XLV AM. J. LEG. HIST. 22-50 (2001). The Journal is available on the Hein Online database available to most of our readers as well as many of the other periodicals cited in the article. If you use Hein Online, the Journal’s articles are incorrectly divided with the last page of each article as part of the next article. Hopefully, the staff at Hein Co. will correct this inconvenience for researchers. This is not a criticism of Hein Co., whose contribution to historical legal research in creating Hein Online can only be described in superlatives.

1 Marion Brainerd, Historical Sketch of American Legal Periodicals, 14 LAW LIBR. J. 63-69 (1921).
2 See Earl L. Bradsher, Mathew Carey, Editor, Author and Publisher; A Study in American Literary Development (1912); Kenneth Wyer Rowe, Mathew Carey, a Study in American Economic Development (1933); James N. Green, "Carey, Mathew," AMERICAN NATIONAL BIOGRAPHY ONLINE Feb. 2000. at http://www.anb.org/articles/16/16-00253.html.
4 Carey was the leading law book publisher in early nineteenth century Philadelphia. For a list of his publications, see William Clarkin, Mathew Carey, A BIBLIOGRAPHY OF HIS PUBLICATIONS, 1785-1824 (1984)..
Bioren,⁵ and Patrick Byrne.⁶ These individuals were followed by notable book companies like T. & J. W. Johnson Co. and Kay & Brother.

Hall attempted to promote the Journal through published reviews of the American Law Journal in the introductory pages of the first issue. References from the Philadelphia Freeman's Journal and New York Evening Post,⁷ were followed by the resolution of the Pennsylvania House of Representatives to purchase two copies of the journal.⁸ The first article was from Nicholas Trott's arguments against George Smith who refused to take oaths upon taking office in the South Carolina Council around 1710, which was reprinted from Ramsey's History of South Carolina. The editor pointed out that there were additional charges listed by Trott that the author did not know about. The editor called “uncharitable; it is founded in error, and very happily for us, has long been exploded by better hearts and better heads, see Phillips' Evidence p.21.”⁹

As a periodical published in Philadelphia, a number of articles and cases dealt with Pennsylvania law and history. The trial of William Penn in 1670 provided the third major article in the first issue.¹⁰ The trial is well-known not only for the freedom of Penn for his preaching against a charge of unlawful assembly, but as the lead-in for the history of juries in the succeeding Bushel's

⁵ Bioren first published the Laws of the Commonwealth of Pennsylvania in 1803 and a later edition known in 1810 known as Smith's Laws that is still cited today in Purdon's Pennsylvania Statutes Annotated.

⁶ Byrne is less known than Carey or Bioren. He was a publisher in Ireland in the 1790s before he came to Philadelphia in 1801. He was a bookseller in both Philadelphia and Baltimore. He printed a catalog in 1802 of which twenty-one pages were legal titles (This will be another article.). Besides republishing English works, he published the second edition of volume 1 of Alexander Dallas’s Reports in 1806 and sold at least one collection of six titles to President Jefferson in 1805. He died in 1814.


⁷ 1 JJ iii-viii.

⁸ Id. at viii.

⁹ Id. at 1.

¹⁰ The Trial of William Penn, Id. 33-41.
Case against the jury who had freed Penn.\textsuperscript{11} A second Pennsly

\textsuperscript{11} See \textsc{Thomas Andrew Green}, \textit{Verdict According to Conscience} 200-64 (1985; paperback 1988).

\textsuperscript{12} \textit{Judicial Memoranda in the History of Pennsylvania}, 1 JJ 56-68 (1821).

\textsuperscript{13} Du Ponceau was one of the leaders of the Philadelphia bar in the early nineteenth century, holding not only the position of Provost of the Law Academy, but also President of the American Philosophical Society, noted author (1824), linguist and other interests. For a biographical sketch, see Gerard W. Gawalt, \textit{Du Ponceau, Pierre Étienne,}” \textsc{American National Biography}, February 2000, at http://www.anb.org/articles/11/11-00256.html and my sketch in forthcoming \textsc{Biographical Dictionary of American Law} (Roger Newman, ed. 2008).

\textsuperscript{14} Theodore L. Reimel, Letter to the Editor, XXXVIII \textsc{Pa. Bar Assn. Q.} 84, 86 (1965). For an early account of the Academy, see \textsc{George Sharswood}, \textit{The History and Origins of the Law Academy of Philadelphia} (1853). Reimel is identified by the editor as the President of the Law Academy of Philadelphia that year. I have an unpublished paper, \textit{The Law Academy of Philadelphia, 1821-1940} that is being updated for publication.
Du Ponceau wanted to raise the standard of legal education in the United States by establishing a national legal educational institution. He wanted Philadelphia, and the leading members of its bar, to take the lead in creating such an institution similar to its highly regarded medical school. He wanted to institute moots and readings, and follow up with professors of law giving lectures. Critical of both English legal education and the role of the judiciary in offering court opinions, and the large number of legislation and court cases published by federal and state jurisdictions, Du Ponceau felt that a national law school could eliminate some of these concerns by having important professors leading the way, stopping legislative innovations, making uniform case law decisions, and creating a judiciary free from competition (as in English common law jurists vs. civilian judges and lawyers). Lamenting James Wilson’s inability to continue his law lectures at the University of Pennsylvania, the recent closing of the Judge Reeves’ Law School, and Charles Hare ending his lectures at Harvard, he found there was a need for a new educational institution. He ended his speech urging the students to participate in the new organization, appealed to their pride as the founders of a new national law school, and urged them to promote the organization to other students.

The last issue contained Jared Ingersoll’s 1813 report to the legislature dealing with reform of the penal laws. Early colonial legislation under William Penn provided relatively mild punishments for criminal actions that was repealed in a 1718 act that followed the stricter English law of punishments which lasted until an

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15 An Address delivering at the opening of the Law Academy of Philadelphia, before the Trustees and Members of the Society for the promotion of legal knowledge, in the Hall of the Supreme Court, on Wednesday, the 21st of February 1821. 1 JJ 211-22.
16 Id. at 213-14.
17 Id. at 216-18.
18 Id.
19 Id. at 218-19.
20 Id. at 222.
21 Report, Made by Jared Ingersoll, Esq. Attorney General of Pennsylvania, in compliance with a resolution of the legislature, passed the 3d of March, 1812, relative to the penal code. Communicated to the legislature, January 21, 1813, Id. at 325-44 (1821).
22 1 Sm. L. 105; for the text online, see the first three volumes of Smith’s Laws available at the Pennsylvania Legislative Reference Bureau, at http://www.palrb.us/smithlaws/17001799/1718/0/act/0236.pdf. See Fitzroy, The Code, J. Crim. And Criminology (191).
act of 1794 abolished the death penalty in all cases except mur-der by first degree. The report represented Ingersoll’s moderate suggestions reflecting contemporary viewpoints on the need for penal reform.

The *Journal* published several Pennsylvania cases from both the Supreme Court and the county courts. By 1820, there had been published only twenty volumes of Supreme Court cases by Alexander Dallas (4 vols.), Horace Binney (6 vols.), Jasper Yeates (4 vols.), and the first two volumes reported by Thomas Sergeant and William Rawle and one volume of county cases by Alexander Addison. Hall published a transcript of an early case, *Cooke v. Rambo* (Philadelphia Co., 1686), in which John Rambo invaded the house of Bridget Coke, had sexual intercourse with her, and was now found guilty and fined ten pounds and charged to marry her before her child was born (she was charged ten pounds as well). Of the more recent cases, four of the five were not published elsewhere: *Com. v. Young* (1818), *Commonwealth ex Relatone Joseph Chew et al. v. John Carlisle* (1821), *Dickey’s Case* (Franklin Co., 1820), *Sharpnack v. Wilson* (Franklin County,

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24 The legislature did not respond positively to his proposals; nor did succeeding legislatures over the next four years with nothing being accomplished by 1816. See Carroll C. Moreland, *The Legislative History of Statutory Revision in Pennsylvania*, 1 AM. J. LEGAL HIST. 197, 198-99 (1957).
26 Id. at 323-35. For a collection of seventeenth-century cases, see *Samuel Pennypacker, Pennsylvania Colonial Cases* (1893). This was an address before the Law Academy of Philadelphia for that year.
27 Id. at 47-56.
28 Id. at 225-30. This was a habeas corpus case and dealt with conspiracy among journeymen to increase wages. It was reported in *Brightly’s Reports* 36, but is not found in the nominative reports of the state and is cited once in *Moore & Co. v. Bricklayers Union et al.*, 10 Ohio Dec. Reprint 48 (1889). Brightly’s Reports cover Supreme Court cases heard in nisi prius in Philadelphia. The volume was published in 1851, 30 years after the publication of Hall’s *Journal*.
29 1 JJ 49-53.
In the Case of Accounts of Pleasants (Orphans’ Court, Philadelphia). Com. v. Young (1818), unpublished in the nominative state reports of the period, was an appeal from the Mayor’s Court of Pittsburgh for the right of Young, an auctioneer, to sell a particular piece of land. Under the federal act of August 2, 1813, the President could sell lands in Pennsylvania which had been assigned to the proprietary by which the jurisdiction has been ceded by the state. There was statutory law against violation of state statutory law regulating auctions. William Wilkins served as counsel for the commonwealth and Henry Baldwin, future Justice of the U.S. Supreme Court, served as counsel for Young. Chief Justice Gibson, one of the leading state judges of the era, commented on the balance of powers doctrine between federal and state governments:  

Before the establishment of a federal government every state possessed full, complete, and absolute sovereign power. By the federal constitution a portion of that sovereignty was, for national purposes, transferred to the general government: the residue remained to the states. The sovereignty of the United States is derivative; that of the individual states inherent: but the authority of both is limited, being restricted to the exercise of powers applicable only to particular subjects; neither being sovereign to every purpose, and in every aspect, but only so, when acting within the prescribed limits of its authority. For all national purposes the United States is completely sovereign: for all domestic purposes, unless where there are express or strongly implied exceptions, each state is so. The jurisdiction of both, in the particular aspect in which each possesses the attributes of sovereignty, may, for national and state purposes, be exercised on the same subject and at the same time. In other cases the jurisdiction is exclusive.  

30 Id. 93-96. It is cited in only one contemporary opinion, Gorgas surviving partner of Warner v. Douglas, 6 S.&R 512 (1821). Bradford, defense counsel, cited this case in his argument concerning lien laws.  
31 1 JJ 314-23.  
32 Id. 46-56.  
33 Com. V. Young, Id. 48.
A lower court county case from Franklin County, *Dickey’s case* (1820), was printed from the manuscript notes of Charles Smith, President Judge of the Third Circuit. In a second case, *Sharpnack v. Wilson* (1819) was cited by the defendant’s attorney shortly after it was published in the case of *Gorgas surviving partner of Warner Against Douglas*, 6 S.&R. 512 (1821). A third unreported case of an executor, heard in Orphans’ Court of Philadelphia, asking “to direct an issue to try disputed facts,” was not in the power of the Orphans’ Court, since it was a court of limited jurisdiction and its authority was determined by acts of the legislature.

Hall reported two Connecticut Supreme Court cases of *Andrews v. Pardee* (1811) and *Nichols v. Palmer* (1811). The first case has little importance being cited only a couple of times in later cases; the second case dealt with the granting of property by the husband to a trustee for the use of the wife during her lifetime which a divided court upheld. In other cases reported in this volume the Louisiana the Supreme Court heard the case of *Phillips v. Rogers et al.* (1818). Thomas Phillips died, leaving his brother, the appellant, the nearest relative who was an alien of England, while Rogers et al., as collaterals, were only relatives and citizens of the United States. The lower court supported the collaterals to inherit real estate in

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34 1 JJ 89-92 (1821). Charles Smith was the editor of the *Laws of Pennsylvania* covering from 1700 to 1812 in five volumes. Cited as *Smith’s Laws*, it is a standard reference for the chronological laws of Pennsylvania as referenced in *Purdon’s Pennsylvania Statutes Annotated* (P.S.). For more on the statutory law, see Joel Fishman, *History of the Statutory Law of Pennsylvania*, 86 LAW LIBR. J. 559-96 (1994).


36 *In the case of the settlement of the accounts of Charles Pleasants, executor of Samuel Pleasants, deceased*, 1 JJ 314-23 (1821). The case is post-1817, since the case cites 1 Yeates 552 which court report was first published in 1817.


38 1 JJ 162-76, 5 Day 47 (1811).

39 The case was later cited in *Walker v. Walker Executor*, 76 U.S.743 (1870) and more recently in *Boland v. O’Neill*, 72 Conn. 217, 221 (1899).
Louisiana. The Supreme Court, however, reversed and gave the property to the deceased brother’s.\textsuperscript{40}

In Delaware, the court held that Ralph Munson was discharged upon a \textit{habeas corpus} petition because the warrant for his arrest was too general by not clearly describing the person or presenting his name and therefore was more similar to a general warrant which was not allowed citing both Burn’s Justice of the Peace and the state’s constitution.\textsuperscript{41}

A lower court Ohio case, \textit{Worthington v. Masters} (1803),\textsuperscript{42} has not been reported in any Ohio reports nor cited in later cases. It is one of the first reported cases that discussed the separation of powers between federal and state courts right after \textit{Marbury v. Madison} was decided in the U.S. Supreme Court with a divided court holding the case over until December term 1803 when the demurrer was overruled and state jurisdiction maintained. In April 1804 term, it was determined that assumpsit was not the proper action and the plaintiff’s attorney suffered a nonsuit.\textsuperscript{43}

There were four federal Circuit court cases reported in the volume. \textit{U.S. v. Jonathan Robbins} (1799)\textsuperscript{44} became a major Federalist-Republican controversy at the end of the eighteenth century, when Robbins (actually Thomas Nash, an Irishman) claiming American citizenship, was impressed into the British navy, participated in a ship’s mutiny and killed the captain and a number of other individuals, and was turned over to the British based on Article 27 of the Treaty of Peace of 1794.\textsuperscript{45} In Congress, Representative John Marshall presented a Federalist view of executive power defending the government’s actions that were somewhat contrary to his later views expressed in \textit{Marbury v. Madison} (1803).\textsuperscript{46}

\textsuperscript{40} \textit{Id.} 69-89 Phillips v. Rogers. The running title at the top of the article was “Aliens May Inherit Real Estate in Louisiana.”
\textsuperscript{41} \textit{State v. Munson} (Del 1817), 1 JJ 257-61 (1821). This case is unreported in both Lexis and Westlaw.
\textsuperscript{42} \textit{Id.} at 196-210 (1803).
\textsuperscript{43} \textit{Id.} at 211.
\textsuperscript{44} \textit{Id.} at 13-32; also reported in 1 Bee’s Reports 266 (1810), 27 F. Cases 825. See the Ruth Wedgwood, \textit{Revolutionary Martyrdom of Jonathan Robbins}, 100 YALE L.J.229-368 (1990).
\textsuperscript{45} Wedgwood, 100 YALE at 262-68.
\textsuperscript{46} \textit{Id.} at 333-53. A Shepard’s check on this article shows 60 law review citations to this article since its publication (last viewed on October 28, 2007).
It is unclear why Hall published Judge Thomas Bee’s opinion in 1821, unless related to the recently decided case of U.S. v. Wiltberger (1820), first decided in the Third Circuit case held in Philadelphia and reversed by the U.S. Supreme Court, in which the Robbins’ case was cited as well as reprinting Marshall’s Congressional speech. Although Marshall’s speech appeared as a defense appendix, it might have been added by the reporter, Henry Wheaton.

The case of Phillips v. Insurance Company of Pennsylvania (1799) was decided by a jury in favor of the plaintiff who contended the value of a rupee at 52½ cents rather than 47½ cents over the cost of cargo purchased with rupees in India. In the case of Lesee of Potts v. Gilbert (1819), a claim of adverse possession in Pennsylvania was overturned because the defendant’s possession of land for less than twenty-one years could not attach a previous owner’s possession to his own to claim ownership contrary to the statute of limitations. Also, the claimant could only hold land confined to a specific land. Interestingly, the unreported case was overturned shortly in Overfield v. Christie, 7 S.&R. 173, 177 (1821), but was cited in Miller and others v. Shaw (Pa. 1821) and more than 40 other cases including two U.S. Supreme Court cases and 40 other state cases chiefly at the highest court level.

There are two federal admiralty cases reported in the volume. First, in the Case of the Tigre, Associate Justice Bushrod Washington of the U.S. Supreme Court sitting as the circuit judge in New Jersey, upheld payment of money for public officers for going beyond their duties in stopping the ship before it was taken out of port and lost to its owners and owed money as salvors.

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47 U.S. v. Wiltberger, 18 U.S. 76.
48 Finding this citation was completely serendipity. I shepardized the case and was browsing through the articles and found the following article with the reference. H. Jefferson Powell, The Founders’ and the President’s Authority Over Foreign Affairs, 40 WM. & MARY L. REV. 1471, 1511-1512 and corresponding notes, esp. 152.
49 1 JJ 250-54 (1821), 19 F. Cases 214 (C.C.Pa. 1800).
50 1 JJ 254-57, 3 Wash. C.C. 475, 19 F. Cases 1203 (1819).
51 Miller and others v. Shaw, 7 S.&R. 129 (June 1821).
52 1 JJ 105-131 (1821); The case’s title is actually just Le Tigre, Washington 3 Wash. C. C. R. 567, 15 F. Cases 404 (1820). Bushrod Washington had four volumes of cases published posthumously by Richard Peters in 1829. For an historical account in the early republic, see William R. Casto, Foreign Affairs and the Constitution Under the Age of Sail (2006).
Second, in *Hernandez v. Aury* (D. S.C. 1818), District Judge John Drayton dismissed the case for want of jurisdiction, since both plaintiff and defendant were foreign nationals in this prize case and the person bringing the case, Hugh Vincent, had no standing to bring the case.

There were other short articles dealing with various aspects of other states’ laws. The Louisiana laws of attachment from 1805 to 1811 were published with no commentary. A letter from D. Barton to Justice Samuel Roberts in 1821 described the Missouri statute dealing with taxation of land in response to Roberts request to Barton. A short letter from Samuel Chase, Associate Justice of the U.S. Supreme Court, to the governor of Maryland, dated October 6, 1794, argued that someone committing a crime could not be charged with both federal and state charges for one violation. This was probably written in response to the Whiskey Rebellion going on in western Pennsylvania, wherein the federal government had to send it troops to quell the “rebellion.”

Of foreign law, there were several articles dealing with English law, three cases, and digest of cases. Two short articles dealt with the publication of English laws. Citing a 1729 criminal law against corruption of the members of the House Commons that required this law to be published, the article pointed out that generally the English people did not have access to their statutory law on a continuing basis. A second article detailed the 1651 Cromwellian act to provide for the translation of English laws from Latin to English and appointing Mathew Hale, the leading

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54 The Law of Attachment in Louisiana, *Id.* at 246-48 (1821).

55 *Lands in Missouri, Id.* at 263-64 (1821).

56 *State Jurisdiction, Id.* at 262-63 (1821).


58 *Of the Promulgation of the Laws, Id.* 241-43 (1821).
jurist of the period, to head a committee to reform English laws. Unfortunately, Hale did not have much success with the committee. There also was Leoline Jenkins’ charge in a 1668 grand jury dealing with admiralty jurisdiction within the Cinque Ports. He discussed the English laws, Laws of Oleron, and admiralty laws that needed to be investigated by the grand jury. It is not clear why this charge was printed at this time.

The *Journal* published three contemporary English cases: two Chancery cases of *Wood v. Griffin* (1818) and *Dunnage v. White* (1818), and one common pleas decision (*Harding v. Gardner* (1819).

Another English publication was the reprinting of *The Digest of Cases* published in 1 *Broderip and Bingham Common Pleas Reports*. Issue three contained an anonymously published extensive digest of English cases for 1820.

In the first issue only, there was a section called *Literary Intelligence* wherein the editors announced that Mathew Carey & Sons proposed to republish a series of *Chancery Reports*. It was suggested that the expansion of equity cases in various jurisdictions made this set a valuable set for the profession: “We are fully persuaded that this collection will form a valuable acquisition to the professional library, and we trust that the enterprising publishers will find a reward in the increasing demand for such books, arising from the gradual changes in the administration of justice in

59 *A New Model of the Law*, Id. 243-45 (1821). It was reprinted from an unidentified “old pamphlet.”
60 Id. at 264-72.
61 Id. at 96-105 (1821).
62 Id. at 150-62 (1821).
63 *A Charge Given at a Session of Admiralty within the Cinque Ports*, 2 September 1668, Id. at 264-72 (1821).
64 Id. at 113-31. *An Index to the Principal Matters contained in the first volume of Broderip and Bingham’s Reports, of cases argued and determined in the court of Common Pleas, and other courts, from 59 Geo. III to I Geo. IV, both inclusive. April 1819 to Feb. 1820.* The editor noted this was the latest volume received and that there were no cases from the volume that needed to be reprinted in this country.
65 *An Analytical Digest of the Reports of Cases Decided in the English Courts of Common Law and Equity, of Appeal, and Nisi Prius, in the year 1820*, Id. at 417-537.
66 Id. at 135.
the court of equity and common law." The use of the assumpsit action had become "the most common of all actions," and was "co-extensive in its principles with those formerly belonging exclusively to courts of equity...." Pennsylvania had not had a court of chancery since 1736 and had incorporated equity into common law forms. Recommending such a work of English cases was an important change in Pennsylvania, since just a decade earlier, Pennsylvanians were strongly against citing English sources.

Finally, there were notices of three new publications: John B. Moore and John E. Hall, Digested Index of the Term Reports from 1785 to 1815, A Law Glossary of foreign languages cited in Blackstone’s Commentaries and various American reporters, and Edward Ingersoll’s Digest of the Laws of the United States of America, from 4th March, 1789, to 15th May, 1820.

In the area of international law, Hall had published several articles and Peter Du Ponceau’s English translation of Cornelius Bynkershoek’s Law of War in volumes three and four of American Law Journal. It is not surprising then that Hall continued to provide translations of important admiralty treatises, providing a translation of selections from the Military Ordinance of Louis XIV in 1681 with commentary by René-Josué Valin. In the first selection, the chapter dealt with mariners while the second selection dealt with the hiring and wages of seamen (LIV III..TIT. IV).

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67 Id.
68 An early history of equity in Pennsylvania is ANTONY LAUSSAT, AN ESSAY ON EQUITY IN PENNSYLVANIA (1826; reprint Arno Press, 1972), a dissertation published by the Law Academy of Philadelphia discussed above. It is also reprinted in REPORT OF THE FIRST ANNUAL MEETING OF THE PENNSYLVANIA BAR ASSOCIATION.... [221]-332 (Philadelphia: Published for the Pennsylvania Bar Association,1895).
70 1 JJ 135-36 (1821).
71 Brainerd, supra note 1 at 64.
72 Commentary on the Ordinance of Lewis XIV—From the French of Valin, of Mariners, Commentary, 1 JJ 176-96, 273-314. The actual title is RENÉ-JOSUÉ VALIN, COMMENTARY ON THE MARINE ORDINANCE OF LOUIS XIV It was first published in 1760 as NOUVEAU COMMENTAIRE SUR L’ORDONNANCE DE LA MARINE, DU MOIS D’AOUT 1681. (La Rochelle, J. Legier [etc.] 1760).
73 1 JJ 176-96, 273-314.
Chancellor Kent held Valin’s work in high esteem in his Lecture 42, Of the History of Maritime Law.\textsuperscript{74}

A second major contribution to the readership was James Macintosh’s \textit{Discourse on the Study of the Law of Nature and Nations}.\textsuperscript{75} Macintosh (1765-1832) was a Scottish jurist, politician, and writer. This \textit{Discourse}, the first one of a public series of lectures given at Lincoln’s Inn in 1799 and 1800, was an important contribution to the eighteenth-century view of the law of nations and a refutation of his earlier writings in support of the French Revolution.\textsuperscript{76}

In conclusion, ultimately this single volume reflects the failure of John Hall to continue his periodical publications. Hall’s selection of topics reflects the wide range of cases, historical works, and articles on a variety of topics that helped make the previously published \textit{American Law Journal} successful. Its failure was probably due to a low subscription, since he could not afford to produce a publication at a financial loss.\textsuperscript{77} But at the time it was published, one must remember that there were no other publications of this type available to the general legal public, especially in Philadelphia, where another legal periodical was not attempted until the \textit{Journal of Law} was published in 1830 and the \textit{Legal Intelligencer} newspaper was not published until 1842. For historians of legal literature, this single volume presents another early attempt at publishing a new genre of publications that still needed to be cultivated by the legal profession.

\textit{Joel Fishman, Ph.D. is Assistant Director for Lawyer Services at the Duquesne University Center for Legal Information/Allegheny County Law Library. This article originally appeared in the Fall 2007 issue of LH&RB.}

\textsuperscript{74} \textit{James Kent, Commentaries on American Law} (1826-30), went through more than 16 editions in the 19\textsuperscript{th} century, including Oliver Wendell Holmes 12th edition of 1873; the text of the \textit{Commentaries} is available at \url{http://www.lonang.com/exlibris/kent/kent-42.htm#fn30d}.

\textsuperscript{75} 1 JJ 344-378 (1821).

\textsuperscript{76} For a short description of the work, see Donald Winch’s introduction to \textit{James Macintosh, Vindiciae Gallicae and Other Writings on the French Revolution} (1791, rep. 2006). The Liberty Fund reprinted Macintosh’s work and has made it available on its web site, at \url{http://oll.libertyfund.org/index.php?option=com_statictxt&staticfile=show.php%3Ftitle=1665&layout=html#chapter_62401}.

\textsuperscript{77} Brainerd, \textit{supra} note 1 at 64.
The Loudun Possessions: Witchcraft Trials at The Jacob Burns Law Library

Mary Kate Hunter

Harry Potter. Sabrina, The Teenage Witch. Bewitched. Are there really any “evil” witches anymore? Popular culture has turned once-feared hags and sorcerers into “cool” phenomena. Now it seems we ponder witchcraft mainly for entertainment, during Hallo-"en, or in an election year when a political candidate reveals a youthful dabbling in the satanic.\(^1\) But four hundred years ago, witches were serious business.

The possessions began September 22, 1632, in the west-central French town of Loudun, in a climate of uncertainty. A serious concern which occupied the collective thoughts of many French communities at the time, including Loudun, was the Crown’s attempt to centralize its power by tearing down city walls. The royal order for demolition divided Loudun along the lines of those who wanted to keep the walls – generally, the Huguenots – and those who sided with the Crown and its desire for a strong central government – in large part, the Catholic population. Compounding the distress generated by this political wrestling was a return of the plague to Loudun in May, 1632, which claimed the lives of a significant segment of the Loudun population. These circumstances fueled apprehension about the future, and created an atmosphere of anxiety which set the scene for one of the most notorious witchcraft trials in history.

Urbain Grandier arrived in Loudun in 1617, having been granted two lucrative benefices by the Jesuits: the office of parish priest of Saint-Pierre-du-Marché, and appointment as a canon at the Church of Sainte-Croix. At age twenty-seven, the elegant Grandier was handsome and notably eloquent, with an easy manner, rapier wit, and glamour to spare. Although he had made enemies – he was strongly in favor of retaining the Loudun city walls, an anti-Richelieu, anti-royalist stance – Grandier also had earned

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Urbain Grandier the support of many influential men early in his career. For twelve years, he was a grand success.

Grandier’s favored status did not last. Part of his Hollywoodesque persona was an apparent predilection for philandering. A pivotal event contributing to Grandier’s downfall was the “seduction of Philippe,” the daughter of the prominent Louis Trincant, a king’s prosecutor in Loudun and one of Grandier’s staunchest friends and supporters. Although it cannot be proven, it is likely that Philippe was impregnated by Grandier. After Philippe became pregnant, Grandier’s life began to unravel.  

The first trial in which Grandier was a party (1629) involved Jacques de Thibault, a probable relative of Philippe, who beat Grandier with a cane outside the Church of Sainte-Croix, where Grandier was headed to attend a service. The caning was in response to Grandier’s angry demand that Thibault explain himself regarding his broadcast of tales of Grandier’s lechery. Grandier’s case against Thibault was heard before the Parlement of Paris, and plaintiff Grandier seemed well-positioned to prevail. However, after regaling the court with tales of Grandier’s indecent behavior with women, defendant Thibault dramatically produced an order for Grandier’s arrest for immorality signed by Grandier’s bishop. He read it to the judges, who then ordered the delivery of Grandier to his bishop to be tried in the ecclesiastical court. As a result of the ecclesiastical court’s decision, Grandier was barred from performing the public functions of a priest for five years in the Diocese of Poitiers, and forever in Loudun.

In the wake of this devastating decision, Grandier and his allies worked diligently to restore his livelihood and reputation. His case later was presented at the Parlement of Paris, and was referred to the court at Poitiers (with the possibility of appeal to the Parlement of Paris). Many of the witnesses against Grandier retracted their statements, perhaps because they felt uncomfortable about lying before a royal court. The case against Grandier was set aside, leaving open the possibility that the court could review the matter in the future if new evidence were presented. Momen-

2 It is no wonder, if Grandier’s seduction of Philippe were a fact, that the coterie of Loudun men who aligned themselves as bitter foes against Grandier bore close ties of family or friendship to Philippe and her father Louis Trincant, as Robert Rapley shows in A Case of Witchcraft: The Trial of Urbain Grandier (Montreal: McGill-Queen’s University Press, 1998), 25-29.
3 Ibid., 223, 33.
4 Ibid., 51.
tarily, at least, Grandier had succeeded in staving off ruination or possible execution – but finally, possessions would lead to his undoing.

A relatively new religious order, the Ursuline Sisters, had opened its first convent in Loudun in 1626. By 1632, the young Jeanne des Anges as prioress headed a convent of seventeen similarly youthful nuns whose average age was twenty-five. She has been described as “strong willed, manipulative, highly strung, and a brilliant actor in the parts she designed for herself. When she set out to assume a particular character, whether one of great charity, great learning, great mysticism, or great possession, others would follow.” It is not difficult to imagine how Prioress Jeanne’s powerful position in the convent combined with her charismatic role-playing might have persuaded the other nuns of their own possession.

The possessions commenced shortly after the plague struck in 1632. They began when a junior nun, Sister Marthe, had a vision of Father Moussaut, the nun’s recently deceased confessor. The visions of Father Moussaut soon transformed into erotic visions of Urbain Grandier, whom the nuns never had met. Lustful dreams of Grandier spread among the nuns, including Jeanne des Anges, who became the centerpiece of the later public exorcisms; she was considered the most thoroughly possessed. As the possessions progressed, many began to view them as the revelation of God’s will, showing the Protestants that God was indeed with the Catholic Church. Successful exorcisms by the priests would demonstrate the Church’s power to overcome the Devil and bolster Catholicism, and perhaps even encourage conversions. On the other hand, pronouncing the possessions a hoax would be tantamount to a declaration that the nuns from a convent of well-brought-up young women from privileged backgrounds were either ill-meaning pranksters, or insane.

The exorcisms were impressive, and the lewd and bizarre behavior of the young nuns during the exorcisms attracted an ever-increasing audience. The nuns shouted expletives, barked, exposed themselves, spoke a garbled form of Latin (which they did not know), and contorted their bodies into obscene positions.

Finally, the Crown and Cardinal Richelieu intervened. Their decision to bring the royal presence to bear may have been sparked by a desire to maintain stable relations between the Huguenots

\[5\] Ibid., 75.
\[6\] Ibid., 76.
and the Catholics in Loudun, or perhaps they had concluded that a priest’s seduction of a parishioner was conduct too egregious to ignore, and so felt compelled to assure Grandier’s punishment. On a personal level, Richelieu had suffered a humiliating public slight by Grandier some years before his ascent to power as the King’s first minister. And politically, Grandier had guaranteed Richelieu’s abiding animosity when he vociferously opposed the royal order to demolish Loudun’s city walls.

Whatever the reasons for taking an interest in the affair, the Crown’s intervention sealed Grandier’s fate. A group of local magistrates was assembled by the King’s commissioner, the intendant Laubardemont, to preside as judges. In all, seventy-two witnesses appeared at the trial. Anti-Grandier evidence and testimony included assertions that Grandier had invited someone to a sabbath, that he had made a pact with the devil, and that his body bore insensitive “devil’s marks.”

The trial record was recorded in about five thousand legal-sized sheets, and lasted eighteen days. Grandier appeared before the judges from August 15 through 17. He was found guilty of sorcery, placing evil spells, and possession of the Ursulines, as well as certain nonreligious women. On August 18, 1634, Grandier was tortured and burned at the stake.

The possessions were not extinguished with Grandier’s gruesome death; they continued, and the last exorcism was conducted in 1638. At the trial, the nuns were determined, by both church and state, to have been possessed. Only later did people believe that the nuns had been chosen to endure the possessions for the glory of the church. The prioress Jeanne des Anges emerged from her possessions with great notoriety, and her celebrity only continued to grow after Grandier’s death. She became renowned for the healing power of her chemise and the miraculous markings which appeared on her hand bearing the names of Jesus, Joseph, Mary, and Saint François de Sales. The King and Queen, as well as Richelieu, insisted upon meeting her when she traveled to Paris, where she also visited with Parisian nobles. Jeanne des Anges was considered saintly by many; after her death, her head

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8 Rapley, Case of Witchcraft, 16.
9 Ibid., 175.
10 Ibid., 205.
was preserved in a reliquary, and venerated. The Ursuline convent at Loudun was recognized widely as a holy place.⁷

_Urbain Grandier_
Witchcraft at the Jacob Burns Law Library

The Jacob Burns Law Library’s Special Collections at The George Washington University Law School holds a number of witchcraft-related titles in its collections of trials and criminal law. In addition to the rare materials, the Law Library collects not only translations of the original texts where available, but scholarly writings about the original works. Of the rare witchcraft titles, the most important is the infamous *Malleus Maleficarum*, which marks a turning point in witchcraft writing. The *Malleus* served as a manual which explained in detail how to identify, prosecute, and kill witches. It served as a guide for later witch trials, and the third part of the text offers advice on legal procedures. The Law Library owns a number of early printings of the *Malleus*, including three incunable printings.\(^\text{11}\)

The Law Library holds many excellent examples of the story of Urbain Grandier produced in the years following the Loudun possessions. These books illustrate the extent to which the possessions took form, and also allowed contemporaries to penetrate the workings of a seventeenth-century trial. The materials relating to Grandier and the possession of the nuns proliferated dramatically in the wake of his execution in August, 1634, and the texts themselves show the “splits in mentality that diversify the public” and highlight the “textual modifications due to changes of milieu, interests, or periods.”\(^\text{12}\)

The Law Library holds several “editions” of *Histoire des Diables de Loudun*.\(^\text{13}\) This work first was published in 1693, and its title page features a wolf investigating a beehive in a tree. In 1716, its title appears as *Cruels Effets de la Vengeance du Cardinal de Richelieu*. The title change indicates a willingness to recognize the political overtones of Grandier’s trial. Grandier’s encounters with the local authorities and the problems arising from his conduct created a stir in religious and secular circles that branded him not only as dangerous in Loudun, but as a threat to royal values and initiatives. The author, Nicolas Aubin, was a Huguenot minister who had lived in Loudun, and wrote this book about fifty

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\(^{11}\) One of the incunable *Malleus Maleficarum* copies owned by the Law Library (Nurenberg: Anton Koberger, 1494) is accessible online through the LLMC-Digital database (Law Library Microform Consortium).


years after Grandier’s execution. Aubin describes the seduction of Philippe, which had been simply a rumor. As a Huguenot, Aubin told the story of the possessions from an anti-Catholic perspective. Although later Catholic authors disagreed with Aubin’s version of the possessions, they did not call into question his account of the seduction of Philippe. This seemingly pointed omission makes it appear likely that the story of Philippe’s seduction was true.

A 1735 title attributed to Aubin is *Histoire d’Urbain Grandier.* He calls into question the guilt of Grandier with the first sentence of his work: “s’il est vrai qu’Urbain Grandier ait été innocent du crime de Magie...” Aubin still believed that possessions were real and therefore, exorcisms were necessary.

La Menardaye’s *Examen, et Discussion Critique de l’Histoire des Diables de Loudun* presents the Catholic position on the possession and is a response to Aubin’s works. La Menardaye presented his book in five parts. The first part or “premier entretien,” is styled as a dialogue between an uncle and his nephew. La Menardaye supported the Catholic view by stating that the evidence presented at trial was valid; the nuns’ erratic behavior was due to their possession; Richelieu was not motivated by personal vengeance; and the individuals involved in the trial, including the nuns, exorcists, judges, and Laubardemont, were beyond reproach.

*Histoire Abrégée de la Possession des Ursulines de Loudun, et des Peines du Père Surin* was published in 1828. Father Surin wrote this piece after leaving Loudun as Jeanne’s exorcist in the late 1640s. Like many others of his time, Surin believed in possessions and demons, and as Jeanne’s long-term exorcist, he sincerely believed that she was possessed. The first half of the text

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14 Rapley, *Case of Witchcraft*, 25.
16 “If it is true that Urbain Grandier is innocent of the crime of sorcery...” *Ibid.*, 3.
18 Rapley, *Case of Witchcraft*, 215.
focuses on Loudun and his experiences as Jeanne’s exorcist; in the second half, Surin describes his own possession.

Alphonse Bleau’s *Précis d’Histoire sur la Ville et les Possédées de Loudun* (1877) departs from earlier publications on the possession of the nuns of Loudun. Bleau argued that sickness and possession both were present in the nuns. Also, he stated that Urbain Grandier died the victim of a “judicial assassination.” This book bears an especially droll title page featuring a crafty-looking little devil wrapped around the “P” in “Possédées.”

The Law Library also holds a copy of Jeanne des Anges’ autobiography, *Soeur Jeanne des Anges, Supérieure des Ursulines de Loudun*, which she wrote around 1644. Grandier is barely mentioned; Jeanne mainly focuses on her possession and how she overcame it. The true target of her book appears to be the Huguenots rather than the Devil or Grandier. At the close of this book, two of Jeanne’s letters are reproduced in fold-out format. They are the “Lettre du Démon Asmodée – Écrite de la main de Soeur Jeanne des Anges” and “Lettre de Soeur Jeanne des Anges à Laubardemont.” This work is part of a larger set of works from the publisher entitled the *Bibliothèque Diabolique*, which includes another work about a possession of a nun entitled *La Possession de Jeanne Fery*.

The notoriety and lessons of the case of Urbain Grandier have lived on through books, a play, a movie, and even an opera.

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22 Rapley, *Case of Witchcraft*, 217.
25 The most popular nonfiction book rendition is Aldous Huxley’s *The Devils of Loudun* (1952); its most recent appearance is Harper Perennial Modern Classics’ new edition, 2009. John Whiting's 1960 play, *The Devils*, was based on Huxley’s work. In turn, Ken Russell’s *The Devils* (1971), in which Vanessa Redgrave appears as Jeanne des Anges and Oliver Reed as Urbain Grandier, was based on both Huxley’s and Whiting’s works. The Polish composer Krzysztof Penderecki’s opera (based on Whiting’s dramatization of Huxley), *Die Teufel von Louden [The Devils of Loudun]*, premiered June 20, 1969, in Hamburg. Scholarly treatment of the subject includes two works used in preparation of this article: Robert Rapley’s *A Case of Witchcraft: The Trial of Urbain Grandier*.
And at The Jacob Burns Law Library, they thrive through rare book collection development, research in Special Collections, and writings such as this article. Witch hunts in their many forms have yet to be eradicated from modern societies worldwide. But perhaps the most entertaining form of witch mania we encounter today accompanies the release of the next Harry Potter film.

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Controlled Vocabularies: Not Just for the Parents of Preschoolers

Sarah Yates

Okay, I admit it. I should probably exercise more control over my preschooler’s vocabulary. For every time that I delight in his correct use of a word like contraption or exoskeleton, there is another time that I cringe at hearing that he told a friend’s mother to “get bent” or that he was explaining what hangover means to his preschool teacher.¹

Luckily, catalogers are better able than preschoolers to self-regulate.

Catalogers use controlled vocabularies all the time, the most obvious example being Library of Congress Subject Headings (LCSH). As the title implies, LCSH is controlled by the Library of Congress, though not as exclusively as it was before the advent of the Subject Authority Cooperative Program (SACO). SACO provides libraries with a way to propose new subject headings (and classification numbers) or to propose changes to existing ones. Final approval for the proposals still rests with LC.

LCSH is not the only controlled vocabulary for subject access. The National Library of Medicine’s Medical Subject Headings and the National Agricultural Library’s subject authority file, for example, are used frequently enough to warrant their own MARC indicators in the 650 field. But there is no specialized law subject thesaurus in wide use in U.S. libraries, nor is there a widely used specialized rare book subject thesaurus. For catalogers in U.S. law libraries, including rare law catalogers, practically the only subject headings available are the Library of Congress’s’s.²

¹ He learned both those expressions from comic books, not from me—I swear!
² I do not mean this as a complaint, by the way. For such an enormous subject file covering so many diverse topics, often to an incredible degree of specificity, it works remarkably well. Besides,
Genre/form headings, however, are a different matter altogether. By genre/form headings I mean any heading that would be entered in a 655 field. *MARC 21 Format for Bibliographic Data* gives the field definition and scope of the 655 as follows: “Terms indicating the genre, form, and/or physical characteristics of the materials being described. A genre term designates the style or technique of the intellectual content of textual materials...A form term designates historically and functionally specific kinds of materials distinguished by their physical character, the subject of their intellectual content, or the order of information within them. Physical characteristic terms designate historically and functionally specific kinds of materials as distinguished by an examination of their physical character, subject of their intellectual content, or the order of information with them.”

Not only has the Library of Congress not been the traditional leader in the creation of genre/form headings; it has jumped on the bandwagon relatively late. In September 2007, LC released its first batch of authority records for genre/form headings; these were for moving image works. The next to be added to the authority file will be genre/form headings for radio programs.

Since LC has only just started implementing genre/form headings, and only for a limited number of materials, it should come as no surprise that their use is far from universal. However, there are libraries that have been using these types of headings for years. The 655 field has been an approved MARC field since 1999, but even before that, some libraries were using the now-obsolete 755 field, Added entry-physical characteristics. So where have catalogers been finding genre and form headings all these years? A wide variety of sources has sprung up.

Catalogers of rare and special collections have been some of the most enthusiastic users of genre/form headings, which makes sense given the inclusion of terms indicating physical characteristics in *MARC 21 Format for Bibliographic Data*’s stated scope of the 655 field. Therefore, six special controlled vocabularies are available for rare book and special collections cataloging. The thesauri—*Binding Terms, Genre Terms, Paper Terms, Printing & Publishing Evidence, Provenance Evidence, and Type Evidence*—are all the work of ACRL’s Rare Books and Manuscripts Section’s Bibliographic Standards Committee and are all available online at

there is a lot to be said for not having to choose among competing thesauri.
Terms controlled by these thesauri can be added to a bibliographic record in a 655 field with the second indicator 7 (Source specified in subfield $2): rbbin for Binding Terms, rbgenc for Genre Terms, rbpap for Paper Terms, rbpub for Printing & Publishing Evidence, rbprov for Provenance Evidence, and rbtyp for Type Evidence. (The complete list of all valid source codes can be found in the document MARC Code Lists for Relators, Sources, Description Conventions, available online at [http://www.loc.gov/marc/relators/](http://www.loc.gov/marc/relators/).) A bibliographic record for an eighteenth century German book with a royal binding, for example, would have a 655 that looked like this:

655 #7 $aRoyal bindings (Binding)$zGermany$y18th century$2rbbin$5MnU-L

The subfield 5 at the end of that example, by the way, is for the Institution to which field applies. If the heading in the 655 field applies to an individual copy, the subfield 5 should be used. Its use is more likely to be necessary in conjunction with the terms from certain of the thesauri (e.g., Binding Terms) than with the terms from others (e.g., Type Evidence).

As of its latest update (December 20, 2007), the MARC Code Lists for Relators, Sources, Description Conventions lists 116 thesaurus codes for use in the 655 field, ranging from aat, the Getty Research Institute’s Art & Architecture Thesaurus, to waqaf, the Kuwait Awqaf Public Foundation’s Maknas Uloom Al Waqaf. Clearly, not all the thesauri have an equal potential for usefulness to readers of LH&RB.

But one thesaurus, aside from those maintained by RBMS, that LH&RB readers should be aware of is the one with the code gtm: AALL’s Genre Terms for Law Materials. Compiled by William Benemann, the first edition was published in 2000 and the second in 2006. Benemann writes in the acknowledgments for the first edition that, when he first began work on the thesaurus, it was intended as a list to be added to RBMS’s Genre Terms thesaurus. But since the terms in Benemann’s thesaurus were not added to RBMS’s, law catalogers might choose to use Genre Terms for Law Materials rather than the more general Genre Terms, although there is no prohibition against using both thesauri.

AALL’s Technical Services SIS has a Classification and Subject Cataloging Policy Advisory Working Group (CSCP), which has
been updating the headings in *Genre Terms for Law Materials* in anticipation of the headings’ addition to the Library of Congress authority file. According to the CSCP’s web page [http://www.aallnet.org/sis/tssis/committees/cataloging/classification/, last updated November 15, 2007](http://www.aallnet.org/sis/tssis/committees/cataloging/classification/), the law genre headings will be added following headings for music, which are slated to follow the radio program headings.

While common in the cataloging of certain types of collections—rare and special collections among them—the use of 655 genre and form headings is probably not (yet?) standard practice at most law libraries. Some libraries, mine included, have a policy of not using 655 fields ever, even for rare books.

This is not to say, of course, that libraries like mine give no indication of genres and forms. They are routinely indicated in sub-field v (Form subdivision) of the 650 field; Congresses, Indexes, and Early works to 1800 are among the many examples. Furthermore, many genre headings are currently masquerading as regular subject headings in LCSH and are used in 650 fields in bibliographic records. Just search your catalog for Attorneys general’s opinions or Constitutions, for example. The records you find are not likely to be for books about attorneys general’s opinions and constitutions; they are likely to be for collections of attorneys general’s opinions and constitutions. In fact, the scope note in the authority record for the subject heading Constitutions reads: “Here are entered collections of constitutions or texts of individual constitutions. Works about constitutions or constitutional law are entered under Constitutional law.” In other words, Constitutions is already exclusively a form/genre heading, except that it is authorized for use only in the 650 field.

Many of the genre terms that CSCP is working on (see the A-Z list on their wiki at [http://lawgenre.pbwiki.com/Terms+A+to+Z](http://lawgenre.pbwiki.com/Terms+A+to+Z)) overlap with either existing form subdivisions, such as Indexes and Periodicals, or existing subject headings such as Constitutions and Proclamations. Some, if approved, may replace existing headings. For example, Trial proceedings is currently a see-from tracing for the form subdivision Trials, litigation, etc., and Looseleaf services is almost a see-from tracing for the subject heading Loose-leaf publications, Legal. (The actual see-from tracings are Loose-leaf services, Legal and Looseleafs, Legal.) Still other headings on the wiki are new, such as Pathfinders and Year books (English law reports).

When the Library of Congress starts adding law genre headings in 655 fields in its own records, many law libraries will no doubt fol-
low suit. And for law libraries with significant rare or special collections, this may lead to a rethinking of the use of terms from other thesauri. Cataloging is never dull. Just when you think you’re in a comfortable groove, the rules change! Kind of like living with a preschooler.

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Inhuman Murder!!!, or, The Court TV of the Nineteenth Century

Sarah Yates

An authentic and faithful history of the atrocious murder of Celia Holloway, with an accurate account of all the mysterious and extraordinary circumstances which led to the discovery of her mangled body ... : including also the trial for the murder and the extraordinary confessions of John William Holloway, together with his life.

Inhuman murder!!! : the trial of Richard Patch, for the horrid & inhuman murder of Mr. Blight, of Rotherhithe, on the 23d of September, 1805.

The Ging murder and the great Hayward trial : the official stenographic report containing every word of the wonderful trial from its opening to sentence of death, the rulings of the court, speeches of Frank M. Nye [and others], the court’s charge, etc. : supplemented by a dramatic story of the great crime by Oscar F. G. Day.

You will have to forgive me if this column is only tangentially related to cataloging. But my rare book cataloging work for the past few months has been almost exclusively devoted to pre-1870 trials, and I have been running into titles like the above with great frequency. These reports interest me for much more than the cataloging issues they raise.

With “books” (mostly pamphlets, really) like these, the actual cataloging is usually straightforward. The main entry for criminal trials is the defendant—which is probably confusing to many users, since most OPACs label the main entry (i.e., the name in the 1XX field) the “author,” and defendants are not usually the authors of reports of their own trials. But for the cataloger, once he or she has learned this rule, the only challenge arises when there is a question about the authorized form of the defendant’s name. An unfortunate number of criminal defendants from the past had common names, and they are usually not represented in the LC authority file because they did not author any other works. Of course, if the defendant was found guilty and hanged, a death date is easy to establish.
Subject analysis is usually not much of a challenge either. First subject heading: the defendant’s authorized name entry, subdivided by –Trials, litigation, etc.; second subject heading: Trials (Murder) subdivided by the place of the trial. I could not find an actual cataloging rule for whether to subdivide by the jurisdiction (e.g., United States for trials in federal courts, versus Minnesota for trials in state courts) or by the city in which the trial was held (e.g., Minnesota—Minneapolis), but Library of Congress practice favors the city, so that is what I do. And finally: --Early works to 1800, if applicable.

Many trial reports do exist where the subject analysis is anything but clear. These tend to be civil trials, in my experience. I have had to catalog many a report with a generic title such as Smith v. Johnson, where the actual legal charge is never specifically named. But since these trials are, almost by definition, boring, they are not the type I am writing about here.

Getting back to the type that I am writing about here, the main subject-related difficulty I have is that I get interested in the trial and have a hard time cataloging instead of reading. Take, for example, The tryal of Charles Bradbury, for the detestable crime of sodomy said to be committed on the body of James Hearne: at Justice-Hall in the Old-Bailey, on Thursday the 11th of September, 1755: in the twenty-ninth year of His Majesty's reign, and the seventh sessions in the mayoralty of the Right Honourable Stephen Theodore Jannssen, Esq., Lord-Mayor of the city of London. I opened this one up, expecting to sympathize with poor Chuck Bradbury and his unjust persecution. That was until I read enough of James Hearne’s very convincing testimony to realize that this wasn’t really a trial about “sodomy” so much as it was a trial about child rape. Hearne was fourteen at the time of the alleged crime, a naïve apprentice, later completely dependent on the accused, who assumed that anything Bradbury, a preacher, did to him must not be wrong. And when he did realize there was something wrong, Bradbury silenced him with threats to his life. In a dramatic twist at the end of the trial, in Hearne recanted,

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1 Or Trials (Name of crime) for whatever crime was alleged. The only trouble is when there is no authorized subject heading for the type of trial you are cataloging. For example, Trials (Teaching evolution) is not an authorized subject heading, so catalogers have to use other subject heading syntaxes for subject analysis of the Scopes monkey trial. The Scopes trial wasn’t pre-1870, but you get the idea.
and despite the evidence of a history of threats, Bradbury was acquitted.

So little has changed. This is a thought I come back to again and again while I’m dutifully recording main entries, subject headings, collations, etc. There has been plenty of technological and even social progress (trials for sodomy between consenting adults being much rarer today, for example, at least in the Anglo-American sphere), but human nature is still largely the same as it was in 1755.

It is not only the criminals who have not changed much in 150 years; the public’s interest in criminals and their exploits has not changed much either. In this way, early criminal trial reports remind me of nothing more than Court TV.

Court TV didn’t exist in the nineteenth century, of course. And it doesn’t exist now, at least not under that name. Court TV is now TruTV, which boasts the perplexing slogan: “Not reality. Actuality.” TruTV offers reality actuality programming in the evenings, but trial coverage is still aired during the daytime on its “In Session” show.

Although trials are “inherently legal,” legal scholars and practitioners were not the intended audience for sensational criminal

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2 “Inherently legal” is the term used by catalogers to designate Library of Congress Subject Headings that do not need and cannot be combined with the subdivision “Law and legislation.” All crimes fall into the “inherently legal” category. For example, “Murder” is a correct subject heading, while “Murder—Law and legislation” is not; works with “Murder” as their first assigned subject should be classified in the Ks...unless of course the work is about the criminological aspects of murder rather than the legal aspects, in which case the subject heading is still “Murder” but the work should be classified in the Hs.

The Inherently Legal Subject Headings Project (http://www.aallnet.org/sis/tssis/committees/cataloging/legalheadings/), initiated under the auspices of AALL’s Technical Services SIS and led by Yael Mandeltam, has compiled a lengthy list of such headings that warrant see-references from headings with the subdivision. The group has submitted proposals for changes to the authority records for subjects on this list to the Library of Congress. If the changes are approved and implemented, anyone looking up “Murder—Law and legislation” will be instructed: “See: Murder.” The classification issue, K versus H, remains the same.
trial reports, any more than they are the audience for live television coverage of criminal trials. The public’s prurient interest in the gory and salacious details of crime is not a new phenomenon.

And yet, readers and viewers can’t escape the legal technicalities of the justice system. Trial reports were often published verbatim, including some less than thrilling exchanges:

Q: Do you know the prisoner at the bar?
A: Yes.
Q: How long have you known him?
A: Ten years and upwards.
Q: Do you know where has his residence been for the last four years?
A: I believe in France.
Q: Your belief is not evidence; did you ever hear him say where he had resided?
A: I have heard him say that he had resided in France latterly. I have missed him from England two or three years.
[Et cetera.]  

In this respect, television has a clear advantage over written reports: even if trial coverage is “gavel-to-gavel,” commentators are on hand to blather through the boring parts and thus (the network hopes) hold the audience’s attention. The commentators serve another purpose too, namely, explaining some of the legal and procedural nuances to a lay audience. This function could be served in trial reports by an introduction, but more often than not, there was no explanation of the legal issues involved. Where introductions existed, they were more often designed to grab the reader’s attention—as were many of the titles, as seen above.

Of course, readers of trial reports may not have needed as much explanation of the intricacies of the judicial system as viewers of televised trial coverage do today. For one thing, the readers of trial reports were, by definition, literate. Most American television viewers today are literate too, of course, because literacy is near-universal nowadays. In the nineteenth century (and earlier), literate.

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racy was not as widespread, so calling a group of people “literate” is a meaningful distinction. Also, one could make the argument that television viewers today expect to have anything complicated spelled out for them, whereas no such expectation existed in the olden days.

Another, even more obvious, difference between trial pamphlets and the erstwhile Court TV is that televised court proceedings are much more immediate. In this respect, newspaper coverage of popular trials would be a better analogy, although these, too, were delayed in comparison. However, even the published “monograph” reports of trials were remarkably timely given the technology of the era, often being rushed off the presses within days of the conclusion of a trial.

Lest I create a false impression, I should point out that not every published trial report—not even the majority—was intended for laypersons. A great many dealt with technical issues involving wills or estates or other arcane legal points. For example, I recently happened across two ecclesiastical law trials that appear to have been published mainly because they settled points of law that had not been previously adjudicated. The first was a trial of an Anglican priest who knelt during a service and placed candles on the altar, even though said candles were not necessary for providing light. The second priest was tried for refusing an Anglican burial to a child whose parents had had him baptized by a dissenting minister. (In both cases the courts found that the priests had acted illegally.)

And then there are trial reports that were published in order to publicly exonerate acquitted defendants. Often these were written by the defendants themselves, as in John Mackcoul’s 1809 *Abuses of justice, as illustrated in my own case: disclosing various practices of the officers of criminal law, with an account of several interesting trials, anecdotes of certain bankers, and hairbreadth escapes of the innocent and the guilty: being a vindication of the author from several charges of forgery*. To what extent the public was interested in such self-exonerations is a question I can’t answer. Quite possibly there were few readers who cared as much as the authors would have hoped.

Sometimes the defendants even published their own trial reports, especially if the defendants happened to be publishers by trade. The most bizarre example of this scenario I have encountered was *The three trials of William Hone*. The wacky thing about this title was the number of permutations it was published in. My library has six different editions of this, plus one each of just the second
trial and just the third trial; additionally, the main university li-
brary has three print editions and electronic access to one of the
editions via HeinOnline.

When I refer to the different editions, I am at once overcom-
plicating and oversimplifying. All except one edition were published
right after the trial in 1818. (An 1876 reissue, with a different
publisher and new notes, is the exception.) There is no difference
in the texts of these different editions, except that I did find one
minor typographical error in one edition that was corrected in the
others. What makes them different editions is that they have dif-
ferent edition statements. This is not so strange; William Hone
was neither the first nor the last publisher to reissue the same
work without real changes but with a new edition statement. The
strange thing is that in any given book containing the three trials,
each trial had its own title page with a seemingly random edition
number. For example, one book contains the fifteenth edition of
the first trial, the thirteenth edition of the second trial, and the
eleventh edition of the third trial; another contains the nineteenth
dition of the first trial, the seventeenth edition of the second tri-
al, and the sixteenth edition of the third trial. Each copy that we
own is different.

Some of the copies/editions have a fourth work included: Trial by
jury and liberty of the press: the proceedings at the public meeting,
December 29, 1817, at the City of London Tavern, for the purpose
of enabling William Hone to surmount the difficulties in which he
has been placed by being selected by the ministers of the Crown as
the object of their persecution. From this title I have gathered that
the reason for so many different “editions” of the three trials is
that Hone desperately needed to raise money to pay his legal bills.
What surprises me is that so many different combinations of ed-
tions were actually sold, survived, and ended up being collected
by libraries such as mine. (And we are not the only one.) Don’t get
me wrong, it’s an interesting and important legal case dealing
with freedom of the press. But do we really need so many diffe-
rent copies that are nearly identical in content? Believe me when I
tell you that we didn’t collect them as examples of book art.

So what’s the one conclusion I can bring this column to? When
you’re good to Mama... Sometimes the most interesting thing
about special collections cataloging has more to do with the col-
lection than with the cataloging.

Sarah Yates is Cataloging Librarian at the University of Minnesota
Law Library. This article originally appeared in the Summer 2010
issue of LH&RB.
This Column Is Published

Sarah Yates

Catalogers have a reputation for obsessing thinking about odd things. Now, I'm not saying the stereotype is true across the board, but I have found myself concerned with some things, even in my non-work, life that the vast majority of people would never even think of. Case in point: I used to write a little newsletter about my kid and send it to relatives, in addition to posting it online. The odd part is that I thought it should have an ISSN, so I applied to the Library of Congress for one. Actually I applied for two, because everyone knows that the print and electronic versions of a serial can't share an ISSN.

My little newsletter is obviously a published work—“obviously” because, according to electronic resource cataloging rules, everything on the web is considered published. But what about the photo book I just had printed by Shutterfly? The book is on the web, technically, but you can only see it if I send you an e-mail invitation or if you manage to guess my user name and password. (And if you care enough to try, just e-mail me and I'll send you an invitation.) I only had one copy printed, but I or anyone else with an invitation or my user name and password could order more at any time, until Shutterfly goes out of business or changes its policies. So I decided to include only a date, not any “publication” information, on the title page. I didn't credit the printer, but don't worry: Shutterfly makes sure its name appears prominently.

I do realize, of course, that it doesn't matter whether my photo book is a published work or not. It doesn't even matter for cataloging purposes, as no one is likely ever to catalog this title. But it was an all-too-familiar dilemma for me: I have often struggled to determine whether to treat certain works as published or unpublished.

Few works in most law libraries pose any difficulty to the cataloger deciding whether they are published or not. If the title page has the Thomson/West logo, for example, the question never even arises. Even most books predating Thomson/West by a couple centuries are obviously published, often with lengthy statements of by and for whom. Early print manuscripts are similarly easy to identify, the tell-tale sign generally being the handwriting.
Where there sometimes is a question is not with general or even rare books so much as with archives and special collections. And, at least in my own work, the question is not so much with print materials as with works in other formats. I’ll give you two examples that I deal with regularly, one from archives and one from special collections.

My library has been collecting and cataloging videorecordings of law school lectures for a few years now. Actually, we’ve been collecting them since probably about the time the law school acquired its first video recording equipment, but we’ve only been cataloging them for a couple years. In addition to lectures there are DVDs of some miscellaneous law school events: the annual student musical, for example, and my personal favorite, only because someone other than me had to catalog it: a videotape of a cocktail party at the law school. The camera was just set up in a corner and left running throughout the reception. (Surprisingly, this video is rarely requested.)

As for special collections, we happen to have a largish and expanding collection of materials related to Clarence Darrow. The collection started with some correspondence and has grown to include not just all manner of print materials by and about him, but also videorecordings having something to do with him, sound recording of radio programs about him...and, especially, photographs. The video- and audiorecordings have been straightforward so far, but the photographs have given me a few headaches. As most catalogers do, I turn to the rules when I’m in need of guidance. Unfortunately, the rules don’t have much guidance to offer on this question. AACR2 has this to say in rule 1.4C8: “Do not record a place of publication, distribution, etc., for unpublished items (e.g., manuscripts, art originals, naturally occurring objects that have not been packaged for commercial distribution, unedited or unpublished film or video materials, stock shots, nonprocessed sound recordings, unpublished electronic resources). Do not record a place of publication, distribution, etc., for unpublished collections (including those containing published items but not published as collections). Do not give s.l. in either case.” And rule 1.4D8 instructs, using nearly identical language, not to record the name of the publisher of unpublished items (which should be self-evident). Manuscripts, art originals, and objects are defined in AACR2’s glossary, but unpublished, sadly, is not.

So which of the categories of unpublished items might the materials in my examples fall under? Obviously, neither DVDs nor photographs are manuscripts, naturally occurring objects, non-
processed sound recordings, or unpublished electronic resources. That leaves “art originals,” “unedited or unpublished film or video materials,” and “stock shots” as possibilities.

Unlike photographs, film and video materials—specifically, “unedited or unpublished film or video materials”—are specifically mentioned in the list of unpublished items, so let’s consider the lecture DVDs first.

First, are they unedited? Mostly they consist of a continuous shot of the person(s) introducing the speaker and then the speaker speaking. So if edit means “to assemble (as a moving picture or tape recording) by cutting and rearranging,” then yes, these are unedited. But wait! That isn’t AACR2’s definition of edit; it’s (one of) Merriam-Webster’s. AACR2 doesn’t have a definition of unedited, edited, or even edit. It does, however, have a definition of editor: “One who prepares for publication an item not his or her own...” The DVDs I deal with have been prepared by someone whose own work the lectures are not, though only minimally. The preparation is usually limited to recording and producing the DVD itself, adding a title screen, and printing labels for the disc and container. But since we still don’t have a definition of publish (or published or unpublished), how can we say whether the DVSs are prepared for publication?

And even if we decide that the DVDs are “edited,” the problem remains unresolved. Remember: the list mentions “unedited or unpublished film or video materials” (emphasis added). In other words, we can consider even edited videorecordings unpublished if they’re...unpublished. Thanks a lot, AACR2.

Now we move to the even less clear case of the photographs. Art originals are defined in the glossary, so I look there first to see if photographs are included. I don’t even have to read the full definition, “An original two- or three-dimensional work of art (other than an art print (q.v.) or a photograph)...,” to see that they are not. “Stock shots” might apply to photographs—there is no definition in the glossary that limits this term to video footage. However, it is not difficult to realize, even without an AACR2 definition, that a photo of Clarence Darrow on a ship with the Massie family, for example, is not a stock shot.

So if my Darrow photos aren’t “art originals” and they aren’t “stock shots”, they must not be “unpublished”—right? Not necessarily. Look again at that list in 1.4C8 of items that are unpublished. Notice that before the list are the letters e.g., not i.e. In
other words, these are just examples; the list is not necessarily exhaustive.

There are more cataloging rules than just AACR2, of course. What about DCRM(B)? Well, the B stands for books, so scratch DCRM(B) in this case. The LCRIs? They contain nothing to elaborate on what little we’ve already learned from AACR2. How about RDA? After all, if RDA can offer definitive guidelines, it’s just a matter of waiting until RDA becomes the law of the land.

RDA does have some guidelines on how to describe unpublished items. For example, under the rules for recording the name of the publisher, rule 2.8.4.7 tells us: “If the resource is in an unpublished form (e.g., a manuscript, a painting, a sculpture, a locally made recording), record nothing in the name of publisher’s sub-element.” This list of examples does help me with my locally made DVDs, but not so much with my photographs. And again, this non-exhaustive list of examples is the closest I could find to a real rule about when to consider an item unpublished.

In the meantime, I’m left to my own devices to determine whether these darn DVDs and photos are published or unpublished. It’s not that I don’t trust my own devices. It’s just that if I’m deciding on my own, and every other cataloger is deciding on his or her own, there’s very little chance of consistency. In fact, in looking through some of the records in my own catalog, I notice that even the materials I personally cataloged haven’t always been treated consistently. Ulp! I clearly need to make a decision and stick to it. Well, I turned to Merriam-Webster for a definition of edit, so why not look there for publish? Here are the complete definitions of the transitive sense of publish:

1 a: to make generally known b: to make public announcement of
2 a: to disseminate to the public b: to produce or release for distribution; specifically: print c: to issue the work of (an author)

It’s definition number 2 that applies to my situation. We can ignore the “print” part, since publishing and printing are distinct activities as far as the cataloging rules are concerned. More specifically, my rule of thumb—now that I have one—for determining publication status is whether an item was disseminated to the public, as in definition 2a.

The status of the law school DVDs is not terribly difficult to determine given this definition. Most of them are not even available outside the law school, much less disseminated to the public. The
few that are for sale or otherwise “disseminated” (DVDs of the law student musical, for example) are treated as published, and everything else as unpublished.

Some, but not all, of the Darrow photographs are similarly easy. For example, we have twelve photos of Ossian Sweet’s Detroit house, taken by an amateur photographer specifically for us. These are clearly unpublished.

But then we also have AP and other news service photographs, with copyright notices on the back. Some of these were probably published in newspapers shortly after being taken, but I have no way of knowing whether a particular photo appeared in one or more newspapers or not. Here’s how I get around this question: even if a copy of the photograph was published, the actual photo—printed on photographic paper—surely was not. Even putting aside the question of format, the photo would have been published, if at all, not in its own right, but as a proportionately insignificant part of a larger work, i.e., the newspaper. Verdict: unpublished.

Of course, there’s another possible twist. We have ordered some of our photographs from other repositories, such as the Chicago Historical Society. In these cases our copy has been printed from the other repository’s negative. Presumably the historical society would make a print for anyone who requested and paid for this service, so the photo is available to the public. But is availability the same as dissemination? I don’t think so. This situation is very similar to my personal photo book question. The photo book is printable on demand, but I do not consider it published. Likewise, I do not consider these photos published.

There. I wish I could say I’ve answered all the questions you never knew you had about published versus unpublished items, but I’m sure I haven’t. I just hope that if you ever face this type of dilemma, I’ve given you some factors to take into consideration.

Sarah Yates is Cataloging Librarian at the University of Minnesota Law Library. This article originally appeared in the Fall 2009 issue of LH&RB.
BOOK REVIEWS

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Beginning with lawyers Vinnie and Sal representing Adam and Eve respectively in the Garden of Eden, *Lawyer: A Brief 5,000 Year History* is a remarkable romp through the evolution of law as an integral part of human society, and the evolution of the profession of law from a scribe recording sales in Sumer to the present. But it is not just funny stories about lawyers in history. This is a profound and elegant investigation of some of the Big Questions in the philosophy of law. It is informed by extensive research, the latest archeology, and the author’s sharp wit.

The author speaks from experience, as well. He is a practicing real estate attorney and a shareholder with the law firm of Woodburn and Wedge in Reno, Nevada. His law degree is from California Western School of Law (1977), and he has been admitted to the practice of law in Utah (1977) and Nevada (1985). For more about Mr. Andrus, see [http://www.woodburnandwedge/attorneys/andrus.html](http://www.woodburnandwedge/attorneys/andrus.html).

Although the text is organized in more or less chronological order (as might be expected in a history), the author uses history to introduce legal concepts that extend throughout human civilization in one form or another. He starts with Genesis as a story on which to hang discussions about why people need advocates, rights arising from reaction to perceived wrongs, ambiguous and conflicting laws, adversarial systems and conflicts of interest, free will versus determinism, utilitarianism, positivism versus natural law, insanity and mens rea, mercy, modes of legal discourse – you have now reached page 17 and have not yet finished the first chapter. Part I goes on to introduce murder, the rationality of self-interest, due process, the role of the witness at trial and cross-examination, and the influence of Jewish law (and lawyers) on modern American law. Part II, “Pagan Times”, introduces the human ability – and apparent need – to find patterns in chaos. Part III, “Ancient Greece”, discusses philosophy, logic, codification, procedure, the influence of politics on law, and rhetoric as both advocacy and organization of legal thought. Part IV, “Ancient Rome”, introduces Roman law and its continuing influence, and the evolution of identifiable professional lawyers. Part V, “Medieval Times”, covers the influence of Christianity and canon law, the origins and institutionalization of the common law and the English profession of law, and the rise of the idea of individual vice group rights.
The rest of the book, Part VI, “Modern Times”, is a bit different. It begins with the Scientific Revolution, followed by a review of the role of lawyers in America from colonial times to the present. The contributions of four famous American lawyers – Jefferson, Webster, Lincoln, and Darrow – show how lawyers altered the flow of our history and culture. This is followed by essays on the training of lawyers through history, women attorneys, why the practice of law should be limited to lawyers, attorney-client privilege, bar associations, the position of lawyers outside the United States, lawyer advertising, fees and pro bono obligations, legalese, and competence.

Some of the best humor and most interesting scholarship is tucked into sidebars scattered through the text, with titles such as “A Horse Walks into a Bar…”, “Bending the Law, BCE-Style”, and “The Secret of the Opulent Waiting Room”.

This is a dense and erudite work. The author sometimes uses legal terms of art without defining them. If you do not have a broad legal and general vocabulary, I suggest reading it with legal and regular dictionaries close at hand.

There are some minor problems with LAWYER that better editing would have avoided. There are a few “cupertinos” – incorrect words – probably from relying too much on software spell checkers. However, in each case the context makes it clear what the intended word was. It’s not really a problem, just a minor distraction.

I wish LAWYER had footnotes or endnotes in addition to its extensive bibliography. It is almost an academic treatise on the human nature of the law. Yes, notes would scare away casual readers, but I suspect many readers would enjoy pursuing some of the author’s discussions in more detail. I corresponded with the author about this, and he confirmed that he wanted to make the book a more casual read. There are additional references in the text and a thorough index.

I found one, and only one, minor statement of fact with which I disagreed. On page 80, the author says that the distinctive dress of the Roman Catholic priest was “based on remnants of the imperial Roman toga”. The better analysis is that it descends from the long tunic of the upper classes of the late Roman and Byzantine empires. If this possible glitch bothers you, gentle reader, you need to examine your priorities.
If you look at the back of the title page, you can see the “Cataloging In Publication” information – what the book’s card in a card catalog would look like if we still had card catalogs in libraries – you see the subject headings assigned by the publisher: Lawyers—Humor, Law—Humor, Law—History. While there is plenty of humor – some pretty pointed – in this book, I submit LAWYER is better described as a treatise on jurisprudence disguised as legal history and humor. The author uses a historical framework to discuss the role of lawyers in society, the purpose of law in society, law as a human process, and the relationships of law to the important belief systems in human society. I am reminded of J. Stanley McQuade’s JURISFICTION, although LAWYER pays less attention to scholars and “airy-fairy theory” than does Dr. McQuade.

If you are a lawyer and have time to read nothing else in this book, read the last chapter, “Competency and the Legal Warrior”.

[I]n the area of legal practice, propositional and prescriptive knowledge are closely tied together; the “unit” (i.e., lawyer) that applies the technique should know something about its epistemic base. I believe that much of the epistemic base, grounded in cognitive theory, comes from other disciplines such as economics, politics, history, morality, linguistics, mathematics, philosophy, logic, psychology, and sociology. (Page 372.)

The author looks back at his text and describes six traits of the good lawyer and five traits of the great lawyer, using historic lawyers as exemplars. The good lawyer “is ethical”; “should be able to heighten ... the client’s legal consciousness”; “has insight and savvy with regard to problems, clients, and issues”; “is in tune with the sound, smell, taste, and feel of words”; “can prepare and present a position”; and “is able to properly organized and analyze facts”. The great lawyer “always sees both sides of a dispute”; “is able to critique his or her own position”; “possesses deep and extensive knowledge based on personal experience and learning”; “has a refined sense of justice”; and “embraces meaningful evaluation of his or her abilities and faults”. I submit this is a more useful and understandable list than Chapter Five of the MacCrate Report.

For librarians adding this to their collections, I suggest cataloging it with its table of contents rather than just the CIP information. This will permit patrons to find the juicy stuff inside, material
that will provide useful guidance and lively quotations for more conventional scholarly works.

While I appreciate the publication of this book by the American Bar Association, and see that it is available on Amazon.com, it is too bad it is not yet being promoted through conventional book-seller channels. Soon, one hopes. LAWYER: A BRIEF 5,000 YEAR HISTORY is much more than a book for lawyers. It is a labor of love that any intelligent person can enjoy and from which all intelligent people can learn.

I wonder whether Mr. Andrus would like to join our faculty as Professor of Legal Philosophy?

Edward M. McClure
Public Services Librarian
Phoenix School of Law Library

References:
J. STANLEY McQUADE, JURISDICTION (The Harrison Company 1982).

As you might hope from a book about television shows, this book is a good read. Actors James Woods and Sam Waterston discuss their respective characters, Sebastian Stark in *Shark* and Jack McCoy in *Law & Order*, in the forewords. The introduction provides a nice historical overview of lawyers on television. The book’s thirty-four chapters are divided into seven parts by the editor. The first part discusses the general genre of dramatic lawyer series. Parts two to five cover the foundations of “Law on Television,” the “American Criminal Justice System,” “Criminal Justice-British Shows,” and the “Civil Justice System” by devoting individual chapters to specific shows. “Daytime Television Judges” are the focus of part six with “Lawyers on Non-Law TV Shows” as the topic of part seven.

The particular television lawyer shows included cover not only the staples that no self-respecting book on the subject would avoid, but a few American and foreign shows that American viewers might have missed. In addition to classic and popular series (*Perry Mason, The Defenders, Matlock, L.A. Law, Law & Order, JAG, Judging Amy, Boston Legal*, etc.), some less successful series are discussed for their unique approaches (*Murder One, Shark, girls club*). Not all of the shows included were television series. One chapter discusses the Hallmark Hall of Fame presentation of *Gideon’s Trumpet*. The lawyers appearing in non-lawyer shows are a quirky lot ranging from Oliver Douglas in *Green Acres* and Judge Bone in *Picket Fences* to Lionel Hutz in the *Simpsons*. There is a whole play-by-play on the lawyers in *Seinfeld* and the house full of lawyers in *The West Wing* is reviewed.

Then there is the *Judge Judy* phenomena. Two essays examine the risks inherent in having the public perception of judges and the justice system depend on the images of judges presented on these daytime court television shows. The essays are remarkably compact given the relative importance of the issues raised. Another essay presents the German version of this television judge phenomena and how it both differs from its American cousins and how reactions to it are similar. The section concludes strangely with a Brazilian reality television show that focused on legal situations, but which seems out of place in this book about lawyers on television. The show does not appear to have been court based. The show’s host was not a judge or lawyer and apparently had little regard for the actual laws of Brazil. Perhaps the
discussion of this show in the essay could have benefitted from more background which would have clarified why the essay was included in this collection.

To me, the best parts of the book dealt with the foreign shows or the foreign perspective on American shows. The British perspective on Ben Matlock’s “down home” character both contains some interesting observations concerning the transatlantic cultural gaps and insights on how a show or its characters could be understood or misunderstood. The chapters discussing British shows includes the well known *Rumpole of the Bailey* and less well known shows like *Blind Justice* and *Judge John Deed*. These chapters provide interesting commentary on the differences between British and American legal practice and ethics. Similarly, the French series *Avocats et Associés*, the Spanish series *Anillos de oro*, and even the discussion of the German court television shows, open intriguing windows into different legal systems and cultures.

With a variety of authors collaborating on a subject, the style and, to a much lesser extent, the quality of the writing and content naturally varies. This does not present any real difficulties for the reader. The biggest difficulty facing the reader is the overall weakness of, and in many instances absence of, supporting citations. The descriptions of storylines and ethical conflicts, explanations of foreign legal systems or foreigners’ views of American lawyers, quotes from shows, and discussions of the social impact of the lawyer as seen on television are fascinating. The vast majority of the authors of the essays are academics; but there is seldom information provided about the supporting sources. Regrettably, when the preface has better support than many of the essays, I am left to assume that the scholarly market was not the main target of this book. Nonetheless, the essays are interesting, sometimes entertaining, and occasionally thought provoking, even without the supporting citations.

Lucinda Harrison-Cox
Associate Law Librarian
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Louis D. Brandeis is a well-known social reformer during the Progressive era and a noted justice of the United States Supreme Court. Brandeis’s role as social reformer gained him the respect of President Woodrow Wilson, who considered him for Attorney-General of the United States, but Brandeis was eventually rejected as too controversial for a cabinet position. Shortly after taking the presidency in 1913, Wilson began to look at Wall Street to reform its operations. Large banks in 1913 supported reform and Wilson created the Federal Reserve system in a 1913 act. Although Brandeis did not hold any positions within the government, Wilson called on him several times to advise him in determining policy. Brandeis responded in part by writing nine articles for *Harper’s Weekly* magazine between November 22, 1913 and January 1914. The articles concentrated on investment bankers and how they used the public’s money through deposits to their banks to purchase and control other business firms. The articles were collected along with one additional article and published by the Frederick A Stokes Company. Norman Hapgood, Brandeis’s friend, wrote the introduction praising Brandeis for his work on the Pinchot-Ballinger Teapot Scandal and reform of the banks and railroads. Brandeis testified before Congress about his ideas expressed in the book, but his ideas were unable to put into legislation. Although not a major publication, Brandeis went on to continue his reform activities and publish other books on business-related subjects, e.g., *Business–A Profession* (1914).

Bridge Publishing Group’s reprinting of this early work by Brandeis shows the reformer’s expression of ideas concerning business during the early years of Wilson’s presidency. Its reprint almost a century later, during a similar time of distrust of Wall Street, reminds people that history has a way of repeating itself. Although the book received mixed reviews and Brandeis eventually wrote the publication “seemed pretty stupid now,” in a letter to his wife (Lewis J. Paper, *Brandeis*.188 (1983)), the work provides a useful addition to the literature on Brandeis as a progressive reformer in the years before becoming a justice.

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Duquesne University Center for Legal Information/Allegheny County Law Library.


In early twentieth century, bar associations across the country attempted to encourage the growth of legal education and stricter admissions policy to the bar with the assistance of the state courts who regulated admission to the state bar. However, the increasing amount of immigrants, women, and general public who desiring to become lawyers through the attendance of night schools or by “reading for the bar” through working in a law office meant that there needed a wide range of legal textbooks available for introduction to the law. In the first decade of the twentieth century, there were 40 evening law schools as well as corresponding law schools. Among the various sets that came into existence at that time is Chadman’s *Home Law School Series* of twelve volumes, the titles of which are given above. As the reader can see, these volumes, each comprising around 200 to 300 pages, were written for a basic introduction to law based on the topics generally given on a state’s bar exam. Chadman, in his introduction to volume 1, states that: “The Home Law School Series aims to perform the same office for the American student as the [Blackstone’s] Commentaries did for the English student of law.” (p.6) Chadman listed three advantages to those who used these books: “first, to be enabled to read the fundamentals of the science understandably; second, to have furnished to him or designated what he should read; and third, to have such a reading collected into reasonable compass.” (p.16). These short volumes contain broad overviews of the law, written in a plain style to easily read and understand, along with footnotes to statutes and caselaw for sources. The *University of Pennsylvania Law Review* (1907) dismissed the work on criminal law in a single paragraph which is understandable from the law school’s perspective, but it is inter-


esting that they even recognized it for a review. Chadman’s work, however, had some success and later reprinted in 1912. Having not seen the work, the *Cyclopedia of Law* (1908) maybe a reprint under a different title or at least is based on the earlier work. It was published by the American Correspondence School of Law (1908). The *Home* series was also included in the 19th Century Legal Treatise Collection in microfiche published by Research Publications and appears in the West’s/Gale’s Making of Modern Law digital collection. He was also the author of a *Concise Dictionary* (1908) for general readership and the *White House Handbook of Oratory*.

Bridge Publishing Group has provided a useful reprint publication in the field of the history legal education and popular treatise works in the United States.

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Over the years, Justice Anthony M. Kennedy has voted with the majority more than any of his colleagues. He has used separate concurring opinions to shape the contours of majority opinions to his liking. His votes, which cannot easily be categorized as liberal or conservative, have profoundly influenced the development of constitutional law. Understanding Kennedy’s efforts to expand the power of the judiciary, while restraining its perceived excesses is crucial to understanding the modern Court.

But many claim that Kennedy’s jurisprudence is inconsistent, or lacks a fully developed philosophical framework. In his recent book *Justice Kennedy’s Jurisprudence: the Full and Necessary Meaning of Liberty*, Frank Colucci argues that these detractors are wrong. Instead, according to Colucci, Kennedy’s jurisprudence is governed by a coherent moral view of the Constitution and the importance of human dignity that is not unlike the legal theories advocated by Ronald Dworkin or former Justice William J. Brennan. Kennedy rejects originalism, and seeks to “remove doubt that liberty is America’s central constitutional value”—an approach that shares similarities with Randy Barnett’s “presumption of liberty.”

To prove his point, Colucci traces Justice Kennedy’s overarching concern for individual liberty through his jurisprudence by analyzing opinions that Kennedy wrote while serving on the Ninth Circuit to today. Based on this comprehensive and thoughtful study, Colucci makes a strong case that liberty interests and individualism drive Kennedy’s jurisprudence. He does not, however, fully resolve contradictions within the jurisprudence, or explain what justifies placing liberty at the heart of constitutional doctrine.

Early in the book, Colucci describes how concern for protecting liberty and neutral individualism drive Kennedy’s jurisprudence making him currently the justice on the Court most likely to strike restrictive state actions, particularly in the area of free speech. To date, Kennedy has voted with the majority on every decision that has found a statute violates free speech. Congruent with his concern for liberty and individual rights, Kennedy argues that free speech expands beyond core, constitutionally-protected political speech to all expressions, stating: “at the heart of the First Amendment is the principle that each person should decide for himself or herself the ideas and beliefs deserving of expres-
sion, consideration and allegiance.” Even commercial speech gets protection under Kennedy’s libertarian approach: “the speaker and the audience, not the government, assess the value of the information presented.”

Similarly, Kennedy has argued that homosexuals must have the liberty “to decide how to conduct their private lives.” Although Kennedy rejects privacy as the basis for his decision, he finds that liberty demands freedom of action and decision within private spheres of life. According to the justice, making homosexual relationships illegal demeans the individuals involved, “just as it would demean a married couple were it to be said marriage is simply about the right to have sexual intercourse.”

Kennedy’s approach to establishment cases lends further support to Colucci’s argument that Kennedy seeks to find and apply “the full and necessary meaning of liberty.” In Allegheny County v. Greater Pittsburgh ACLU, Kennedy voted to allow two religious displays to remain in place when the majority only upheld one. He argued that establishment must be understood within its historical context and that there is no constitutional imperative that the government must ignore all things religious—absent some element of coercion there can be no establishment of religion. Scalia joined Kennedy’s opinion. According to Colucci, however, it is liberty and individual human dignity that guided Kennedy, not originalism.

To support this position, Colucci demonstrates how Kennedy’s coercion test for establishment leads to different results in other cases. In Lee v. Weisman, which involved prayer at a school graduation ceremony, Kennedy moved beyond O’Connor’s endorsement test, and Scalia’s view that coercion must be based in law and punishment in order to constitute establishment. Instead, he took an almost environmental approach, finding that, in Lee, the risk of coercion was heightened because the plaintiff was a student attending a school event that was, to some extent, compulsory. At the event, Kennedy argued, peer pressure made it likely that the student felt compelled to pray although it went against his conscience. Because the school prayer infringed on the student’s conscience and liberty to worship as he pleased, Kennedy found coercion sufficient to support finding an unconstitutional establishment.

As compelling as Colucci’s argument is, it does not fully explain certain inconsistencies in Kennedy’s jurisprudence, although it does begin to define them. These inconsistencies exist both in Kennedy’s approach to individual liberties and to the importance
of structural separation of powers to preserving liberty. In each case, an argument could be made that the inconsistencies reflect tensions between Kennedy's personal values or beliefs and an unbiased application of the law — Colucci points to the influence of Catholic doctrine on the language used by Kennedy in his abortion decisions, and describes Kennedy's difficulty reconciling his personal views with the central holding of *Roe v. Wade*.

In the context of individual liberties, Kennedy argues that it is constitutionally impermissible to classify groups according to immutable traits because to do is to injure those persons’ dignity as individuals—even in instances where the government’s intention is positive. Therefore, in Kennedy's view, remedial legislation is only permissible if necessary as a “last resort.” Racial preferences, for example, must be supported by specific showings of racism, not general allegations. Otherwise, the liberty interests of individuals inside and outside of the classified group are impinged and racial tensions potentially fanned.

In his abortion jurisprudence, however, Kennedy adopts language rooted in traditional, Catholic views of womanhood and motherhood. He rests his opinions on paternalistic generalizations about women, their emotional states, and the need to secure for them guidance so that they will not make a decision they might regret later. He questions whether doctors will really serve the best interests of women seeking abortions. In doing so, Kennedy does not make any specific showing that women need guidance. Instead, in *Hodgeson v. Minnesota* he argues in favor of a two parent notification requirement while admitting that his opinion was based on an ideal, not reality: “the prospect of two parents, perhaps even one parent, sustaining her with support that is compassionate and committed is an illusion.” His concern about doctors is also unsupported by any specific showing—and questionable given his willingness to leave euthanasia under the Controlled Substances Act to doctors, as opposed to government officials.

Colucci carefully crafts a sensitive portrait of Kennedy and his crisis of conscience over abortion. The justice finds abortion personally distasteful. As a result, he has struggled with the issue, and, although he has not sought to overturn the decision, significantly narrowed the scope of *Roe v. Wade*’s holding. Liberty is muted in Kennedy's abortion jurisprudence, and Colucci does not reconcile this discrepancy. Instead, he leaves open the question whether all people have equal liberty interests under Kennedy’s approach.
Similarly, Kennedy appears to find capital punishment repugnant, but is loath to overturn precedent. Instead, he has sought to narrow the application of the law. He argues that to execute a person for a crime committed before that person turns eighteen violates the eighth amendment. In doing so, Kennedy looks to “evolving standards of human decency” and to the undeveloped personality of an adolescent. “[T]he State cannot extinguish [an adolescent criminal’s] life and his potential to attain a mature understanding of his own humanity.” With respect to child molesters, Kennedy again looks to evolving traditions and the necessity of offering a criminal the chance to comprehend the nature of his crime. But he does not argue against capital punishment itself. As with abortion, Kennedy asserts that the situation is exceptional — that taking a life is a unique crime.

Alito criticizes this position, and questions whether all people who have taken a life are truly more reprehensible than all child molesters. It is a valid criticism that cuts two ways—allowing capital punishment for molesters because they may, in some instances, be worse than a murderer or abolishing capital punishment because, in some instances, a criminal who has not murdered may be more abhorrent than one who has. Either way, Kennedy has taken an inconsistent position that discounts the liberty interests of murderers and their victims, and instead reflects the tension between his personal discomfort with executions and respect for precedent.

The last part of Colucci’s book deals with Kennedy’s thinking on separation of powers and federalism. Kennedy is a strong supporter of the federalist system. He is also a staunch advocate of keeping both the executive branch and the legislative branch in their respective corners. Unlike justices who advocate solely for state’s rights, Kennedy favors maintaining the respective strengths of the federal government and the states because maintaining this structure of checks and balances is necessary to preserving a system of government capable of protecting individual liberties.

Ironically, in light of his positions on federalism, Kennedy is willing to expand the powers of the judiciary—most notably in *Bush v. Gore*. The Court did not have to hear *Bush v. Gore*. It lacked a sound bases for asserting that the recount could not be completed on time. Moreover, the Court chose to handle *Bush v. Gore* as an isolated event outside its normal jurisprudence. Arguably, Kennedy helped to stop a recount that would have vindicated each individual voter’s liberty interest in voting and participating in a democratic process. After reading Colucci’s account, one
may still question whether Kennedy believes expanding the judiciary’s power serves liberty, or serves some other purpose.

One can see Kennedy’s willingness to increase the Court’s power in other areas as well. For example, he has argued that the presumption in favor of legislation’s constitutionality should be abandoned because there is no evidence that legislators in fact seek to generate constitutional laws. The congruence between Kennedy’s unwillingness to defer to the people’s democratically elected representatives and desire to protect individual liberties is not immediately apparent. Colucci argues that unlike O’Connor, who played a central role in the Court’s decision making because of her restraint, Kennedy has become the deciding vote, so to speak, “[b]ecause Kennedy’s broad theory of liberty justifies judicial intervention in areas favored by both liberal and conservative justices, his assertive judicial role puts him at the center of a divided Court.” This premise assumes that courts are better than democratic processes at protecting liberty over time. Whether this is true is not finally answered by Colucci.

*Justice Kennedy’s Jurisprudence: the Full and Necessary Meaning of Liberty* is fascinating. It provides the reader with insight into the mind and legal philosophy of a man who is pivotal to the development of U.S. constitutional law. Although Colucci never explores in detail why Kennedy bases his jurisprudence on liberty, and not justice or some other constitutionally supported ideal, his argument that Kennedy’s jurisprudence reflects a unified theory about constitutional law that centers on liberty is convincing. This book allows the reader to appreciate fully Kennedy’s commitment to developing a moral theory of law that respects the individual interests it was designed to protect.

The topic overwhelms the 186 pages dedicated to it, however, and at times the book suffers from the same limitations of a casebook in a first year constitutional law class in its effort to cover all of the relevant territory. If Colucci had expanded some of his discussion points, particularly those on how Kennedy has failed to adhere fully to his own doctrine, it would have made this valuable book a more satisfying read. But one cannot complain too much, Colucci’s analysis is interesting and well written. If it fails to answer all of one’s questions, it does a wonderful job of provoking them. This is a book that is well worth reading.

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The objective of this impressive tome was to chronicle the progress of the legal concept now embedded in the fourth amendment to the Constitution prohibiting unreasonable search and seizure from the very earliest time. This work was originally prepared as a dissertation for the Ph.D. degree and had been available to scholars long before this publication in book form. For this reason, it was known to scholars for nearly two decades before Oxford University Press undertook its publication at the urging of a number of scholars who greatly admired the thorough work of this author. This book has been cited in a number of learned articles on the Fourth Amendment.

This title surveys a broad sweep of history beginning in 602 A.D. and ending in 1791 when the fourth amendment to the United States Constitution was proposed and soon adopted. The research that has gone into this volume is prodigious, as revealed by its exhausted bibliography which reaches into many sources. The chapters are arranged predominately in chronological but towards the end by the geographical location which is its focus. One such chapter focuses on the events in Massachusetts before the Revolution in the opposition to the writs of assistance used by the British Government and the development of the concept of a specific warrant there. The author begins each chapter with a “Thesis-Introductions” in which he offer justification for his conclusions before examining the events recorded in that particular period that the author examined.

The first chapters opens broadly with comments on early English decisions found in the Year Books and the earliest English law codes which prohibited specific types of attacks on the subject’s person. These crimes included are now recognized as assaults which the author argues is the beginning of a trend to protect the person of the individual against unlawful acts from which an individual should be protected. The author finds support for his thesis with the argument that a subject had a limited right to be protected. The author invokes the earliest legal authors including Bracton and other three well known writers on the English law prior to 1580 as support for this thesis.

The earliest known objection based on the concept that a man’s home was his castle was in 1585 the year that Henry VII, the first Tudor came to the throne and it was from these events and those the next century that the concept of unreasonable searches took
shape. The Tudors sought to bring law and order to the Kingdom which was recovering from a century old civil war and strong measures were thought necessary. The Tudors introduced new governmental agencies to promote this objective. The author identifies fifteen tracks of the expansion of searches which began in earnest during this period. Government officials, chiefly, the justices of the peace and other minor officials were required to conduct searches for vagabonds, stolen property, game poaching, dissidents, and their literature. The author gives us titillating tale of a local government that could boast of discovering a school for pickpockets that its search for vagrants brought to light. [p.72] The courts of the period formulated the theory that the man’s home was his castle but not to the exclusion of the king’s interests in discovering crimes.

The upsurge in protests against unreasonable searches reach new heights in the beginning of Seventeenth Century. This may be ascribed in part to the emergence of a stronger role for Parliament in the English government. As this century advanced, petitions were considered against some searches especially those complaining of searches made at night for those violations against the current laws outlawing the practice of the Roman Catholic faith. In these debates, the proper limits on searches began to emerge. Some members of Parliament were the subject of such searches themselves which may explain why such petitions became frequent in the decades prior to 1645 the year that the English civil war began. The author examines the many famous historical events used by the authorities are in this endeavor to seek out subversives group and individuals. This began the constitutional right for the individual to petitioned the legislatures, both in England and America, for redress of his grievances.

The author postulates that actions of other groups during the period of 1485 to 1642 contributed to the development of the concept of an unreasonable search. One such body examined by the author were the practices of the guilds in which tradesmen associated themselves. By the rule of individual Guilds, the members had to submit to searches to insure that they had not slipped into producing goods that was properly within the purview of another guild but more importantly, these searches were justified by the argument that it was necessary to determine if the goods prepared by that member of the guild were of good quality. Protests there were but due to the limited number of members of such guilds, they did not bring brought the protests against searches as those conducted by government officials.
The other thread in this evolution of this concept of unlawful searches in the Eighteenth Century was the specificity required in the warrant under which the authorities conducted a search. In the closing decades of the Seventeen Century, the legality of the General Warrants was recognized but by the Eighteenth Century, the author concludes that by the time of the American Revolution, under English law the specific warrant was the ideal but not a right. The American colonies chose the specific warrant in which the areas to be searched had to be specified. This became a right. The author devotes an entire chapter to the evolution of the specific warrant in Massachusetts and the protests against unreasonable searches carried out under them.

The author examines the use of the general warrants prior to the Revolution, and finds that the specific warrant became the norm in the state constitutions between the opening battles of the Revolution to the adoption of the forth amendment. Historic events that contributed to this hostility to any general warrants are examined in detail, state by state. These events contributed to the adoption of the fourth amendment.

This book has many other interesting features including an extensive and one may say truthfully, exhaustive, bibliography including fugitive sources including newspaper and state documents. The appendices essentially contains reference to sources that are additional to the footnotes but some goes beyond this objective by outlining the contents of legal texts supporting the author’s thesis. Appendices parallel the organization of this text. No review can adequately convey the richness of these appendices. The index is thorough.

This review of the *Fourth Amendment; Origins and Original Meaning 602-1791* hopefully conveys the reviewer high regards for the thoroughness of this work and its enduring contribution to the literature on the Constitution. This a text book well worth reading for those seeking an introduction to English and American legal history. Although librarians may blanch at the price, this reviewer believes that it should be a part of any library’s collection.

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Max M. Edling’s book, *A Revolution in Favor of Government - Origins of the U.S. Constitution and the Making of the American State*, provides a detailed description of the battle of ideas that shaped the Constitution. Edling discusses strong arguments on both sides of the debate between the Federalists and the Anti-Federalists regarding the adoption of the Constitution, which would transfer much of the power to wage war and collect taxes from the states to a national government. The Federalists were in favor of a strong central government, while the Anti-Federalists favored a more decentralized system which would leave more governing power in the hands of the states.

Edling outlines three overlapping audiences for whom he wrote his book: political and intellectual historians or theorists, especially those who study the debate between the Federalists and Anti-Federalists; students of American political development; and those who wish to study state development during the 18th and 19th centuries. Edling points out that many prior studies have considered such state development in European nations but have generally not done so for the United States.

It is commonly known that the Federalists’ position carried the day and the Constitution was adopted, leading to a strong federal government. What is new in Edling’s book is a deeper explanation of the divergent positions of the political thinkers of the day, including their historical bases.

The Federalists boasted some of the great thinkers of the day, including Hamilton and Madison. In the current vernacular, they would be the “intellectual elite.” Focusing on the ability to provide a common defense against external threats and protecting the western border, the Federalists asserted that a strong central government and standing army were necessary for preserving the new union. Further, the Federalists argued that the ability to tax the citizenry would be integral to the nation and its defense. Edling explains the process by which the State was “built” to satisfy the need for security against outside forces without sacrificing the desire for “small d” democracy and a diffuse government where states were largely in charge of decision making.
The Anti-Federalists are portrayed as somewhat less sophisticated in their thinking. They feared that a strong national government would risk a future of oppression and a government in place by the threat of force. The Anti-Federalists also were concerned about the rights and powers of the states being threatened by a large powerful federal government. The Anti-Federalists had plenty of historical support for their concerns. The nation had just broken away from England and its heavy-handed approach to governance. The imposition of unfair and burdensome taxes, payment of which was enforced by the threat of force from the big government power, was seen as a possible outcome of having a strong national government. Also, the Revolution had been a success without the need for a national standing army, another factor that gave the Anti-Federalists pause about change. Standing armies had been used in European nations as much or more against their own citizenry than against outside threats. Given the nation’s geographic isolation from the outside world and the success of the state militias in the past, the Anti-Federalists saw the idea of a national standing army as a threat to popular rule and freedom.

Ultimately, the Constitution was ratified and the national government did take over the military and taxation functions that the states had controlled under the Articles of Confederation. The military presence was minimal, however, in accord with the Federalist’s plan. Troops were stationed on the western border of the country to aid in repelling the Indians and for expansion westward. They were not a visible threat to the citizenry. According to Jefferson, the force was, in fact, so small that “their number is as nothing” and that should any actual conflict arise, the militia would be needed (Edling, page 142). The decision for a strong national government did not turn out as the Anti-Federalists had feared.

Edling’s book is extremely well-researched. He cites several of the major historical works that have analyzed the creation of the Constitution, including *The Documentary History of the Ratification of the Constitution*, edited by Merill Jensen, John P. Kaminski, and Gaspare J. Saladino. Edling has included over eighty pages of notes which provide a wealth of sources for additional research on the subject and for a greater depth of coverage in addition to the information in the book.

I recommend Edling’s book for students of history and for those looking for a broader perspective on the political issues of today. I found the book to be a timely analogy for the current climate of extreme political discord and destructiveness. It is refreshing and
somewhat comforting to see that such disputes are not new to this country and its political processes. Some ideas are so big and so consequential that the passions and beliefs of those who will be affected by them can boil over and/or become so embedded that it becomes difficult to compromise. Also interesting is the seemingly never-ending discussion of “big government” and the fear that it engenders. Ultimately, it seems as though the tension between competing ideologies and strongly held beliefs has, throughout the nation’s history, led to a stronger union. Broader support for the ultimate outcomes of such debates often comes about due to the ability of those with differing views to honestly and contentiously argue their positions. One hopes that Edling’s book can provide a well-needed reminder to be understanding for those with different points of view and that honest debate does lead to optimal solutions.

Patricia Morgan
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The legal institutions of Pennsylvania are among the oldest and most distinguished in the nation. The state’s leading city, Philadelphia, served as the U.S. Supreme Court’s first home and some of America’s earliest legal publishers arose on its streets and alleys. To the west, the rising town of Pittsburgh located near the headwaters of the Ohio River itself played no small role in the nation’s history. Through it and surrounding Allegheny County passed the rule of law and its mortal instruments—lawyers, law books and pamphlet editions of constitutions, laws, and state documents—on their way to the expanding American frontier. This reviewer’s own Kentucky was founded in part by men and women of western Pennsylvania who floated rafts down the Ohio. Some brought law books purchased in Pittsburgh, including copies of the 1790 state constitution that served as a model for Kentucky’s own charter. Even as the west matured, Pittsburgh remained a steady supplier of law books to western lawyers and booksellers.

It is this rich soil of history that Joel Fishman, a regular contributor to this newsletter, has toiled for years. His latest work, *Judges of Allegheny County*, is a biographical directory of the judiciary of this region from 1788 to 2008. The over two hundred judges that have served or currently serve on the Allegheny County Court of Common Pleas are profiled. The first edition of this book was published in 1988 to celebrate the bicentennial of the Court. Fishman has completely re-worked that material, adding detail to the original entries while including entries for the judges who joined the court in the two decades after that publication. The original book was based on biographical files of the Allegheny County Bar Association as well as the *Pennsylvania Manual*, newspapers, and general biographical encyclopedias. In this edition, the earlier entries have been enlarged with “several hundreds of citations to the weekly *Pittsburgh Legal Journal* published between the 1870s to 1963.” Newer biographical sources like the *American National Biography* and histories have also been consulted. In addition, the work has benefitted from access to an in-house database of judicial appointments, inductions and obituaries.

The work is organized in an alphabetical format, making it more useful for research and reference than for casual reading. None-
theless, thumbing through it one is struck by the ethnic diversity of the Allegheny County bench as it evolved over the decades, as well as the varied careers of its inhabitants. There is Jean Baptiste Charles Lucas, who studied and practiced law in France before immigrating to Pittsburgh in the 1790s. After serving on the Allegheny courts, Lucas was elected to the U.S. Congress, and later held federal judgeships in the Louisiana Territory. Also represented is Josiah Cohen, who was born in Plymouth, England but learned law in Pennsylvania before becoming the first Jewish judge appointed (and later elected) to the Allegheny courts. Like many of the judges profiled, Cohen’s charitable work was almost as extensive as his legal activities and he played a leading role in the establishment of many of the institutions that would become staples of Jewish civic life. Notable among modern entries is Dwayne D. Woodruff, a former defensive back for the University of Louisville and the Pittsburgh Steelers football teams. Woodruff worked on his Duquesne law degree while still covering receivers from the Steelers secondary, and recently left a successful law practice to join the Court of Common Pleas.

The work is an excellent contribution to the library of Pennsylvania legal history and will be a boon to researchers of the American bench and bar. Because of the extensive references, each entry not only gives a sketch of the accomplishments of its subject but also is a starting point to further research. Nonetheless, there are a few quibbles. The heading for each name entry could have been set off more distinctly, either with hanging margins or a different font. This problem is somewhat mitigated by the table of entries at the beginning of the book. Also, as I suspect this work will be popular with genealogists and local historians who are less sophisticated about the law than its immediate target audience of lawyers, a brief history of the Pennsylvania court system might have been helpful for the more general reader. Despite these minor issues, Judges of Allegheny County is a useful addition to the reference shelf of Pennsylvania lawyers and historians.

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This is a great, short, inexpensive legal history book. When I co-taught a legal history course at my law school a few years ago, the 1989 first edition of this text was out of print, as was the 1985 second edition of Lawrence M. Friedman’s *A History of American Law*. I wanted to teach the class with a synthesis approach, rather than the pieces-of-primary-source-material approach used in casebooks and documentary history textbooks.¹ So, my fellow instructor and I selected a standard U.S. history text, and emphasized the legal parts of American society, culture, institutions, conflicts and compromises over the past two to four hundred years. Since law shows up in U.S. history so frequently, this was not too difficult a task.

I tell this story in the context of this book review because the authors of *The Magic Mirror* tell the whole of American history in such a way that readers not familiar or even interested in law will come away with an excellent overview and synthesis of so much of our past. This book could be used beneficially as an undergraduate or even a graduate level textbook on U.S. history. It does a fine job of covering business, the economy, social trends, intellectual endeavors, wars, and industrialization. It brings together in a cogent whole the breadth of the colonial era, our country’s nation-building struggle, the Industrial Revolution’s changes, the Civil War’s impact, the world wars, the Great Depression, the Cold War, and other modern issues. Updated and expanded from the prior edition are many portions on women’s issues, slavery, immigration, ethnic and social concerns, and aspects of law and life by America’s non-elites. This legal history truly reflects, like a “magic mirror, … not only our own lives, but the lives of all men

[or women] that have been,” to use Justice Oliver Wendell Holmes, Jr.’s phrase (p. 1).

What I like most about this book is the breadth, synthesis, and fine writing. I would recommend this book over many other legal history articles and texts primarily for the way it is written (as well as its relatively low cost). If every law or history student could learn to write law or history as well as the authors of this book do, more Americans would want to read law and history. For example, in a discussion of the courts being unable to enforce business in the early 1800s, the authors observe “But if the weapons available to jurists had proven to be inadequate to the task, it was not because they had been unwilling to use them.” (p. 119). Later, in talking about the Antebellum nationalization of law, the book explains that “Legislators at all levels ... succeeded ... in building a legal bridge over which the rural and agricultural nation of the era before the Civil War crossed into the urban and industrial twentieth century.” (p. 230). Then, while talking about the expanding government during the New Deal, the book explains that “Felix Frankfurter, a close advisor to Roosevelt, sent a steady stream of his [law] students, known as ‘Happy Hot Dogs’ to Washington, where they were stuffed into the New Deal agencies.” (p. 297).

The Magic Mirror takes less than 400 pages of text to tell its story, followed by endnotes, a glossary, a very useful bibliographical essay (pp. 419-436), a table of cases, and an index. The many strengths of the first edition are retained and improved upon. (The first edition’s author, Kermit L. Hall, passed away in 2006, and this second edition is the final product of Mr. Hall and his co-author’s work from 1999 to 2006.) I’ve found this text to be a useful starting point and summary when researching American laws in earlier decades and centuries. The public and constitutional highlights are here, but do not overshadow the analysis of trends in state, private and local law. The authors are careful not to expand the definition of law so far that it loses any meaning, while giving attention to the many institutions, people and movements impacted by and impacting the law. As the sub-title says, the book covers Law in American History, rather than “American Law in History” or even “American Legal History.” I recommend this book for all U.S. law libraries, and hope that it will be read by as many law librarians, law students and lawyers as possible. It will be one of the most enjoyable required reading assignments ever for most of them.

Galen L. Fletcher
Howard W. Hunter Law Library, Brigham Young University

This is a biography of German lawyer Hans Joachim Albert Litten (19 June 1903 - 5 February 1938). The author, Benjamin Carter Hett, is a former Canadian trial lawyer and currently an Associate Professor of History at Hunter College in New York. His scholarship reflects a clear emphasis on the German criminal system in the early twentieth century. Litten's modern legacy includes an award, the "Hans Litten Prize," that is given every other year to a lawyer by the German and European Democratic Lawyers Association to a lawyer who distinguishes himself in defense of democracy and law. The headquarters of the federal and Berlin bar associations are also located at the Hans Litten Haus.

Litten was a complex, well educated, extremely intelligent son of a Jewish father and a Lutheran mother. The law may not have been his first choice of a profession, but once persuaded by his father, a university law dean, he pursued the profession with vigor. His choice of clients led him in 1931 to the trial in which he placed Adolf Hitler on the witness stand. This trial, combined with his political beliefs and father's religious heritage, determined the path his fate would take in Nazi Germany.

Like most biographies, part of this work describes Litten's birth and early life. His education, the family dynamics, and the stresses of being part of a family with Jewish heritage in Germany are presented. Hett could not avoid the underlying tension that builds in the book even in what should be the gentle background sections. No modern reader is ignorant of the fate of the Jewish population under Hitler. As the author moves into the description of Litten's early career, Hett melds the story of Litten's personal, political and professional lives into a tightly intertwined tale.

It was Litten's tendency toward political cases that placed him as a private prosecutor in the trial of Nazi storm troopers for the death of a worker named Riemenschneider, who was believed to have been a communist. As part of his prosecution in May, 1931, Litten summoned Adolf Hitler as a witness to issues related to the Nazi party's knowledge and approval of the storm trooper's actions. On the stand, Hitler completely lost his composure and was thoroughly humiliated. Litten’s argument at trial was both about the nature of this particular offense and about the general threat posed by the Nazis. In the end, he lost both arguments despite Hitler’s behavior and testimony.
The next phase of the tale is all too expected. As the Nazis gained in power, Litten was removed from his last trial, expelled from the courtroom on charges of “aiding and abetting” the defendants. There is a brief discussion in the book on the German bar’s ineffective reaction to Litten’s treatment. In the early stages, it could still be addressed as a matter of interference with a lawyer’s ability to properly represent a client. The trial dragged on for most of 1932 and by the end of that trial, Litten had lost more than just his appeals in that case. His health was failing and he was facing death threats and the possibility of trumped-up criminal charges. Then on February 27, 1933, the Reichstag burned. Litten was one of many German lawyers who were arrested that night for their “protection.” While some of the lawyers were released in response to public or international pressure, Litten was not. By April 6th, Litten had been moved to his first concentration camp and had begun a life of torture and beatings.

The book continues on in great detail about Litten’s struggle in captivity and about the efforts to free him. Those efforts were fated to fail. Hitler had not forgotten the lawyer who had humiliated him and would not forgive Litten for that experience on the witness stand. After nearly five years in Nazi concentration camps, Hans Litten managed to hang himself. It had not been his first attempt at suicide.

In addition to an exceptionally well told account of Hans Litten’s short life, Hett’s work includes a version of the examination of Hitler which has been compiled based on the transcripts published in various newspaper sources. No actual trial transcript of the examination was ever made. He also provides some information on the others who have written about Litten including Litten’s mother Irmgard, his good friend Max Furst, and one published by Carlheinz von Bruck in the GDR. This version, with the perspective of time and without the clouding effect of close personal attachments or political agendas, may present the most balanced view of Litten. That overall view is of a complicated man and lawyer whose principled choices did not necessarily fit neatly within any of the standard philosophies of the times. In those dangerous times, Litten paid the ultimate price for his principles.

Lucinda Harrison-Cox
Association Law Librarian
Roger Williams University School of Law Library

*Men and Books Famous in the Law* is a classic work of historical legal bibliography. In the short preface, the author, Frederick Hicks, states that his intention in writing the book was to offer “impressionistic sketches of men and books famous in the law, with glimpses here and there of the events and people of the time in which the books were written, published, and read” (pp.7-8). He has chosen seven examples from the history of Anglo-American law to do this:

1. Cowell’s Interpreter  
2. Lord Coke and the Reports  
3. Littleton and Coke Upon Littleton  
4. Blackstone and His Commentaries  
5. James Kent and His Commentaries  
6. Edward Livingston and His System of Penal Law  
7. Henry Wheaton

In the preface, Hicks claims that he has chosen the texts and the men at random, because they are of special interest to him.

However, the preface also concedes that the choice was not so random after all, but was deliberately selected to show the origins and developments of all the significant tools of common-law legal research, or Hicks says “all the great classes of law books”:

> Statute law is represented by Livingston’s Code; law reports by those of Blackstone, Coke, Dyer, Peters, Plowden, and Wheaton; digests by Viner’s Abridgment; dictionaries by Cowell’s Interpreter; institutional works by Coke, Cowell, Blackstone, and Kent; monographs by those of Littleton and Wheaton. (p. 7)

The size of the book negates any lengthy biographical treatment of the authors, or detailed analysis of the books themselves. In part, this is because the content of the individual chapters is “the outgrowth of lectures and seminar work given by the author in the Columbia University Law School, in a course on Legal Bibliography, and lectures to students in Library Economy in several Library Schools” (p. 7)
Frederick Hicks was the Law Librarian at Columbia and Yale for a combined thirty years, a former President of AALL, and a prolific writer on legal bibliography and law librarianship.\(^1\) He is best known for the influential text *Materials and Methods of Legal Research* that went through three editions (1923, 1933, 1942). *Men and Books* is clearly written with the same philosophy in mind, with an aim to instruct and inform about law books as a precondition to law study, research, and practice:

> Legal bibliography proper is not merely a description of books. It is also a study of the record of the jural life of a people. This record shows the evolution of law and the civilization back of it . . . Legal bibliography proper should, therefore, be presented as a historical subject by means of which a background is given to the modern picture. In days when law with difficulty maintains its position as a profession, no better means of instilling respect for it into the minds of students can be found than by teaching the history, scope, and usefulness of its vast literature.\(^2\)

The first chapter of the book, on the “Human Appeal of Law Books,” introduces and explains this philosophy to give a context for chapters that follow.

As the chapters are short, there is an appendix of “Bibliographical Suggestions” which gives an unannotated, select listing of further monographs and journal articles about each author and their works. As this is essentially a reprint of the 1921 edition, the publisher has not updated the bibliography. The title’s listed are standard works, reflective of scholarship up to the date of original publication, and do not reflect subsequent developments in legal bibliographical or interpretive jurisprudence. It would be an interesting project for someone to undertake to update and

\(^1\) Bibliography of Books and Articles by Frederick C. Hicks 37 Law Lib J. 19 (1944). I found it intriguing that Hicks wrote a novelization of a famous sea trial, *Human Jettison: a Sea Tale from the Law* (1927), a bibliography and article on whether or not Shakespeare was a lawyer, and an annotated book about the poetry of Bermuda.

annotate this listing. An interesting, but I’m not sure a worthwhile, bit of scholarship.

I say this because, although I would recommend this book to anyone not familiar with legal history and historical legal bibliography, I’m not sure how useful it would be to the general law librarian reader. Indeed, the first edition was published in 1921, a far cry from today, and I have to ask myself why did the publisher reprint it in 2008? What is the market for the book? Who is the intended audience? Does it have any continuing relevance at all?

I must honestly state that after reviewing the book, I was still not sure. So I looked at the 3rd edition of Hicks’ Materials and Methods of Legal Research (1942) in search of an answer, on the premise that this is really a companion title to Men and Books.

What struck me as the predominant theme in both works is the continuous struggle between legal publishing and law libraries to control the randomness of legal research in a constantly expanding and anarchic system of legal rules and authorities. There seems to be a somewhat cynical view beneath this, as illustrated by a quotation I found apt located in Materials, taken from an issue of the Harvard Law Review:

> Headnotes arranged vertically make a digest. Headnotes arranged horizontally make a textbook. Textbooks arranged alphabetically make an encyclopedia. Every few years some investigator has to disintegrate one of these works into its constituent atoms, add some more headnotes from the recent decisions, stir well, and give us the latest book on the subject. And so law libraries grow.  

Admittedly, Hicks is not as simplistic as the author of this quotation, but where he is similar is in his desire to find a workable, nutshell approach to effective legal research through a study of the historical makers and the making of the law books. In Hicks’ own words, again from Materials:

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The books themselves, breaking all restraint, advancing in ever-widening array, and losing few by the wayside, seem about to overwhelm the legal profession by sheer weight of numbers. The must be subdued to order and put to work to avoid chaos. Each lawyer of judge must make the whole army of books potentially his own. How can this be done? . . . Some of the outstanding books we can know intimately, but for the rest we must be content with a knowledge of the classes to which they belong. These classes we can study in their historical development, by means of concrete examples, never, however, losing touch with the present. And we can become expert in the use of elaborate system of indexes, which are keys to the contents of whole classes of law books.

Hicks concern was to simplify print-based legal research. It is now a given, I believe, that most legal research is electronic or digital. Does the study of Coke, Blackstone, Littleton and company help us understand how to research legal problems on Google? Wikipedia? Only to the extent that in any technological revolution it takes a while for the old forms and tools to be replaced by new, as it took awhile for the print culture to replace the manuscript culture. We are in such a transitional period and the value of Hick's work reminds us that to successfully navigate our way through this period, we need to understand and be mindful of the history, development, and classes of law books that went before.

Neil A. Campbell
Law Librarian
Associate University Librarian
Diana M. Priestly Law Library
University of Victoria

Interim Dean and Professor Frank Houdek is known throughout the American Association of Law Libraries as a former president (1996-97), editor of the *Law Library Journal* (1994-2007), and an historian of the Association through publication of books, pamphlets, articles, and even a CD-ROM. As a professional colleague and friend, and not completely unbiased, this short review is important for our colleagues to know works written on the history of our professional organization receive recognition even if somewhat self-serving.

Houdek understands that the story of the hundred-year old association has not been completely written: “That is, while it highlights, on a year-to-year basis, many of the key moments and individuals that, taken together, comprise AALL’s first century, the story is told in snippets and brief descriptions rather than in an analytical narrative that critically examines the issues and events which played a crucial role in AALL’s development.” (p.xiii)

Beginning with the Spring 1096, A. J. Small of the Iowa State Law Library sent a message out to law librarians to meet at the American Library Association “to consider the advisability of a separate organization of law librarians.” (p.1) The first meeting on July 2, 1906 went the whole day until 1:00 a.m. in creating the organization. Each year has at least three to five entries including association meetings, birth dates and death dates of leaders of the association, dates of the creation of chapters and special interest sections, of new awards and grants, creation of executive directors, commentary on annual conferences, etc. For those of us who have attended conference meetings, pointing out the highlights, e.g., Father Guido Sarducci” at the 1986 meeting, brings fond memories to anyone reading this book.

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1 Frank served as law librarian for twenty- years at SIU Law School and left in 2007 to become Associate Dean for Academic Affairs for two years and has in July 2009 become Interim Dean of the law school. His publications are drawn from his extensive publications listed in his resume at [http://www.law.siu.edu/fac_staff/houdek/pub.asp](http://www.law.siu.edu/fac_staff/houdek/pub.asp) (Last viewed on October 9, 2009).
In presenting each entry, there are 570 footnotes supporting his statements throughout the work. His final entries for 2005 on the executive board's adoption of the "Strategic Directions 2005-2010" and the Education Summit in Chicago reflects the association's continuing emphasis on always looking forward as an organization (pp.139-40).

The book includes thirty-three photographs from a picture of A.J. Small, the first president, down to Morris Cohen as the recipient of the Andrews Bibliographical Award in 1999. Pictures of the various annual meetings and other individuals can also be found in them.

Appendix A lists the annual presidents and the annual meetings (pp.143-151); Appendix B lists the recipients of the Marian Gould Gallagher Distinguished Service Award (1984-2006) and Joseph L. Andrews Bibliographic Award (1967-2006) (pp.153-55). Appendix C contains a selective bibliography on the AALL (pp. 157-62). The index includes the association, members, and other related-topics (pp.163-239).

Houdek's hope that this book “will serve in some small way as a stepping-stone to the analytical narrative which AALL’s rich and fascinating history deserves” (p.xiv), has been met. This work is a critical work on AALL and its people.

Houdek deserves the thanks of all law librarians for his wide ranging activities on behalf of the Association and his work as its historian. As with all of our friends who depart from the profession, we wish him luck in his new position.

Joel Fishman, Ph.D.
Assistant Director for Lawyer Services
Duquesne University Center for Legal Information/Allegheny County Law Library
Montesquieu wrote that “[i]n the largest sense laws are the necessary relations which arise from the nature of things; and, in this sense, all beings have their laws.”¹ Numerous systems of law in various degrees of complexity have arisen and fallen throughout world history. However, while legal history is “one of the oldest fields of scholarly inquiry,”² the origins of modern legal history go back only at far as nineteenth century Germany. The study of American legal history is much more recent, dating back a mere three score.

The Oxford International Encyclopedia of Legal History is designed “to cover most parts of the world and most periods of time,” although the editor-in-chief freely admits that the six large volumes that comprise the set “are not sufficient to provide universal coverage.”³ Nevertheless, it is the most comprehensive such work available to date.

The set examines more than 950 topics, ranging from ancient to modern, focusing on eight areas of law for which extensive scholarly literature exists: ancient Greek law; ancient Roman law; Chinese law; English common law; Islamic law; medieval and post-medieval Roman law; South Asian, African, and Latin American law; and United States law.

Entries, covering diverse topics ranging from “Admiralty” to “Church and State in English Common Law” to “Hindu Law” to “Islamic Schools of Sacred Law” to “Witch Trials,” range from less than a page in length to more than 50 pages. The listing for “Chinese Law, History of,” for example, covers 53 pages and includes 17 subentries beginning with the Shang Dynasty (16th Century B.C.E.) and ending with the People’s Republic of China, Macau, Hong Kong and Taiwan. A bibliography follows each entry.

The first volume includes a list of the articles found in the set, while volume six includes a topical outline, a list of contributors,

¹ Montesquieu, 1 ESPRIT DES LOIS ch. 1.
² 1 THE OXFORD INTERNATIONAL ENCYCLOPEDIA OF LEGAL HISTORY xxi (Stanley N. Katz, ed., 2009).
³ Id. at xxii.
an index of legal cases and a detailed subject index. The set includes approximately 350 illustrations.

The set was prepared by a group of expert scholars under the direction of Professor Stanley N. Katz of Princeton University. This comprehensive work belongs in every academic law library.  

Mark Podvia  
Associate Law Librarian and Archivist  
H. Laddie Montague, Jr. Law Library  
The Dickinson School of Law of the Pennsylvania State University

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4 The reviewer sent several students to the cataloger’s office to use volumes from this set before it had been processed and shelved.

On October 11, 1865, an angry group of approximately 500 black Jamaicans stormed the Morant Bay courthouse, setting fire to it, killing 29 people, and injuring another 34 people. This incident was the culmination of several months of tension between newly-emancipated black Jamaicans and the white ruling class; however, it is not the Morant Bay incident alone that dominates the narrative of R. W. Kostal’s *A Jurisprudence of Power.* Kostal rightly focuses on the Jamaican government’s response to the Morant Bay courthouse riots and the subsequent response in England to the colonial government’s actions. The colonial governor, Edward John Eyre, declared martial law and in the following weeks after Morant Bay, almost 500 black Jamaicans were killed by British troops, with another 600 having been flogged by the soldiers.

Among those killed in retaliation for the Morant Bay violence was George Gordon, a black landowner, member of the Jamaica House of Assembly, and ardent critic of Governor Eyre. Though he was not involved in the Morant Bay violence, Gordon was arrested in an area outside of where martial law had been proclaimed and brought to Morant Bay to face a court martial without the benefit of legal representation, despite having requested a lawyer. Gordon was found guilty and hanged. His final letter to his wife was later publicized in newspapers throughout England and he became a symbol of sorts for the wrongs carried out by the Jamaican colonial government.

The central focus of *A Jurisprudence of Power* is on the reaction of the British Empire to the Jamaican incident, or, as it was referred to during its time, the “Jamaica affair.” While many historians are familiar with the Jamaican incident, Kostal is one of the first authors to retell the incident using a legal focus. The reaction to the incident was overwhelmingly negative and, initially, it was fueled by abolitionist desires for equality. However, as time progressed, the general attitude shifted towards concern regarding the meanings of martial law and British Constitutionalism. That the arguments for and against Governor Eyre's decision to declare martial law and the subsequent actions of the military in Jamaica were framed in legal terms as opposed to moral terms is a point that Kostal drives home effectively through his meticulous use of primary sources and archival materials. Kostal has assembled
and synthesized a thorough collection of sources, both primary and secondary, to recreate the dialogue of the time period and he is further able to show how that dialogue, which was carried out in predominantly legal terms, shaped the response to the Jamaican incident.

Just one example of Kostal’s talent for recreating the time period through use of the primary sources occurs within the first chapter of the book, in which Kostal outlines how those in England first heard about the uprising, their initial reactions and the subsequent change in those reactions. Kostal illustrates this sequence through effective use of newspaper stories of the time. He shows that the very first stories reflected a general fear for white British inhabitants of Jamaica, because the first boat to England carried only news of the Morant Bay courthouse burning. The next newspaper stories were, by and large, favorable to Governor Eyre, as the next boat from Jamaica brought news that the rebellion had been squelched. However, just a few weeks into the aftermath, reports (including the official report made by Governor Eyre) revealed the sheer brutality of the Jamaican government’s retaliation against black Jamaicans. Newspapers that had only a week earlier supported Governor Eyre were now very critical of him and demanded that the British government punish him for his actions. In our modern day of 24-hour news coverage, where a story develops over a matter of hours or days, the reader is immediately hit with the differences between now and the 1860s through Kostal’s merger of great storytelling and mastery of archival sources.

One of the main issues that emerged from the Jamaican incident was a concern over legal standards. Many worried that if the Jamaican government was permitted to use such excessive force to squelch dissent, it was only a matter of time before such force would be used elsewhere in the Empire, including in England. The fear was that any political radical would be in danger of a mock court martial like the one given Gordon. On the other hand, many were uncomfortable with the idea that there should be one legal standard for England and a lesser standard for the rest of the Empire. Similarities can be drawn to our own time, in which concerns regularly arise that various groups are treated unjustly in comparison with other groups within a legal system. The same concerns over race are, regrettably, still prevalent in our own time and Kostal does a fine job showing that purely legal arguments and analysis do not ensure resolution of the issues. Furthermore, the controversy and resulting broader legal debate outlined by Kostal are not at all unfamiliar to modern readers, though imperialism has ceased to exist in its Victorian form. Today, argu-
ments are made in the United States for an executive branch which can yield powers much like those found in the imperial government of Victorian England and the struggle between legality and power continues, even if the terms and players have changed.

Another related issue brought to light by the Jamaican incident was that of the confused and murky nature and role of martial law in England and the Empire. Previous to the Jamaica controversy, there was no handy resource to turn to for definitive law regarding the use of martial law and many of the martial law treaties created after the event were biased one way or the other. Though the debate raged for several years between the liberals who felt that martial law was never justifiable under English law and those who felt that martial law was a legitimate doctrine to overcome the threats of “servile revolt,” there was never a clear consensus on what martial law actually was, when it could be used, and through what power it should originate.

In using the primary sources to prove the legal nature of the arguments on either side of the Jamaican controversy and providing a fascinating look at the Rule of Law within the Victorian imperial era, Kostal also proves that resorting to a legal framework during such a crisis may not be the best method as the results of the Jamaican incident debates and investigations were inconclusive at best. Neither side of the conflict walked away with a satisfying resolution, as the definition and legality of martial law were not clarified and no one was held legally accountable for the violence meted out on the black Jamaicans in the cases that were unsuccessfully brought against Governor Eyre and other actors in Jamaica.

While Kostal uses his source material to paint a vivid picture of the main players in the Jamaican incident and its aftermath, including such notable historic figures as John Stuart Mills and James Fitzjames Stephen, the one character that the reader wishes to understand is the one that remains in the shadows. The reader never fully understands Governor Eyre’s motivations for treating black Jamaicans so ruthlessly. Kostal explains the larger feelings of fear that white colonists felt being outnumbered by blacks in Jamaica, but Eyre’s personal experiences which led him to hold black Jamaicans as inferiors are never clarified, which is a shame because Kostal is able to provide such vivid characterizations of so many other players within the Jamaican incident controversy in the book.
Eyre had successfully fulfilled roles in colonial governments elsewhere, like Australia, but was removed from power after Jamaica and retired to a life of obscurity in the English countryside. Suits were brought against him by the Jamaica Committee, a privately assembled group of influential political and social men of the day, when the government declined to prosecute Eyre. Each suit brought against Eyre failed, and while Kostal provides detailed accounts of the legal gymnastics that each side performed, the reader is still left with questions regarding the man at the center of the suits. Whether this is because Kostal’s focus was purely on the legal nature of the arguments against Eyre, or the fact that Eyre left little information to clarify why he viewed Jamaicans so disparagingly is unclear.

Governor Eyre’s shadowy persona aside, Kostal also errs slightly in his lack of explanation regarding certain legal doctrines and arguments. The legal doctrine of necessity is brought up as a possible justification for martial law as a defense but this subject is not explored more fully. Likewise, while Kostal offers a prolific look at the various contesting views of martial law, he does not offer insight into which views carry more weight. An argument could be made that Kostal is not responsible to do anything other than provide the information and allow his readers to make their own judgments of validity of the arguments presented. However, given the immense amount of time Kostal spent with the materials and his obvious knowledge of the subject, the reader cannot help but wish that he had shared some insight into the validity of the positions and materials relied on by those making the arguments for and against martial law. In the final analysis, though, these are somewhat minor quibbles with a book that has been extremely well researched and written.

From the viewpoint of a comparative legal scholar, Kostal’s book is a rich resource, even for those who are already familiar with common law legal systems. Though Americans share a legal system with England, Kostal’s detailed descriptions of the trials brought against Eyre and other actors within the Jamaican incident show some of the both subtle and striking differences between the two legal systems. For those not living within a common law legal system, this book gives excellent examples of common law jury trials during a certain period in history, highlighting some of the fundamental differences between common and civil law systems, differences which persist to our day. Kostal further demonstrates differences through his rendering of the scandals and legal strategizing behind the scenes of the actual trials, as exemplified in his recounting of the “Coleridge Plot,” in which the defense was able to retain the barrister that the plain-
tiff Jamaica Committee had planned to retain, and in his recount-
ing of the public disagreement between Lord Chief Justice Cock-
burn and Lord Blackburn. Such vignettes are informative to legal
scholars from other legal systems who may initially find it strange
that lawyers would be fought over or that judges would publicly
bicker and they offer unique glimpses into the common law legal
system as it has developed.

*A Jurisprudence of Power* is a book that should find a wide au-
dience because its appeal goes beyond just the legal audience.
Because of Kostal’s striking use of primary source materials to
recreate the time period and players within the conflict, this book
will undoubtedly appeal to historians, both legal and otherwise, of
Victorian England and her colonies. Moreover, the conflict be-
tween using morality to justify one’s stance, versus framing an
argument in legal terms is a conflict that is sure to appeal to soci-
ologists. Kostal writes with an elegance and wit that makes the
book flow despite its heavy reliance on large quotations from the
primary sources. It is much to Kostal’s credit that such a th-
rough and detailed account of the controversy and its legal impli-
cations is nonetheless entertaining and informative to such a
wide variety of readers.

Heather Hamilton
Foreign, Comparative, and International Law Librarian
Louisiana State University Law Center

David M. Oshinsky is a Pulitzer Prize winning historian and author. He has written several additional books that address major historical and legal issues of American society. He is also an essayist in the *New York Times.* This book is a stellar addition to the series Landmark Law Cases and American Society published by the University Press of Kansas.

The death penalty is often a hot button topic for the citizens of America. The book's title suggests that you will be reading about one court case, but in reality you are treated to much more. Throughout history popular opinion has swung from fully supporting executions to being entirely against the death penalty for any crime, mostly landing somewhere in the middle. Oshinsky's *Capital Punishment on Trial* tells the story of these changes, and the actions the Supreme Court has taken that have helped to shape America's views on the issue.

The Supreme Court plays a large role in sensational death penalty cases. Once a case has reached the level where the Supreme Court has a say in the matter, the case has garnered national attention and become infamous. *Capital Punishment* covers these cases in detail and attempts to show the inner thoughts of the Supreme Court on these matters. The death penalty is a concept that has helped shape America and its highest court throughout the entire history of the nation. Oshinsky shows this relationship well and helps the reader understand why today's death row exists in its current incarnation.

*Capital Punishment* delves into the make-up of the Supreme Court and how different justices affect majority opinions. The death penalty is an issue that seems to cause major strife between the Justices. Oshinsky devotes a major portion of the book to how different Justices voted on various aspects of capital punishment issues. The research provided by Oshinsky is admirable in both quantity and quality.

Racial prejudice is also a hotly debated topic that tends to go hand-in-hand with capital punishment. Many of the high profile cases depicted an African American male as the aggressor and a
Caucasian male or female as the victim. Furman v. Georgia\(^1\), the case mentioned on the cover of the book is a prime example of this situation.

This book is a detailed accounting of the history and major cases surrounding the death penalty in America. In addition to a thorough index, Oshinsky has included a detailed timeline of major events and cases as well as a bibliographic essay that covers his methodology of research.

The table of contents for this *Capital Punishment* is not particularly useful because the titles of the chapters are not indicative of the content. The first chapter is entitled “I Didn’t Intend to Kill Nobody.” This style of chapter title does not let the reader know which cases will be discussed, nor does it inform the reader of the time period to be addressed. Instead, chapter titles are attention grabbing and once the chapter has been read, make perfect sense.

The timeline that Oshinsky provides commences in 1608 with America’s first recorded execution in Jamestown. The final entry is in 2005 with the latest Supreme Court ruling stating that the death penalty for minors is unconstitutional because they have deemed it cruel and unusual punishment. The timeline is laid out in an easy to read manner without any frills. This timeline helps the reader keep track of events as they relate to one another and as they relate to the general history of the United States.

A nice feature of this particular series is the bibliographic essay at the end of the book. This is especially useful for young law students interested in researching topics outside of an academic setting. It also allows for a cleaner, easier to read, main text because the citations are in one section following the material instead of interwoven throughout the work.

I recommend *Capital Punishment* for academic and public libraries. Academic library users will find the information very complete and the bibliographic essay extremely useful when completing their own legal research projects. Public library users will find the topic captivating and the timeline essential to a thorough understanding of events. Oshinsky manages to take what on the surface appears to be a simple case, Furman v. Georgia, and uses it to show the reader how America has changed and come full circle on the death penalty numerous times.

\(^1\) Furman v. Georgia, 408 U.S. 238 (1972).
Laura Frost
Reference Librarian
Clark County Law Library

Widely renowned as an authority in his field, law professor Wiktor Osiatyński currently teaches individual and human rights at Central European University in Poland. For decades, he has studied, lectured and written extensively about human rights, and his latest work focuses on theory and the history of individual and human rights with some added concerns regarding the future. Osiatyński dedicates approximately one third of his discussion to a self-described “reinterpretation of the history of human rights” in which he provides the necessary context to provide the reader with a clear understanding of the premises he sets forth throughout the book. He begins by establishing a “working description of the nature of human rights” consisting of six fundamentals that, when combined, lay the groundwork for the reader to venture into a carefully constructed historical review, including the emergence of the notion of human rights in the eighteenth century, and the concept of human rights that exists in the twentieth century.

Osiatyński paints the history of human rights within a frame of unfulfilled promises that were never intended to benefit those to whom they had been pledged. Instead, those strong enough to demand rights reaped the benefits for themselves and, once assured of power, abandoned the notion of sharing rights with those whose backs had served as ladders to positions of authority. Osiatyński describes the oft-repeated unfulfilled promises that occurred throughout history as a series of waves that, although upon crashing produced individual periods of regression, collectively led to gradual change and increased freedoms over the years. Each wave ascended with a claim to rights by a powerful group who was able to convince others of the import of its own needs and interests. When this group’s goals were realized, their interests in furthering rights were terminated, and they ultimately either ignored or turned against their followers – hence the wave’s crash. However, each wave brought with it a small measure of progress. The strength of the wave directly affected the strength and durability the change it precipitated. Thereafter, social movements, public interest organizations in the law, and human rights NGOs were instrumental in combining the successes of each individual wave.

As he proceeds on his path through time, Osiatyński lists the obstacles that hindered the development of human rights, and no country is spared his thorough review. The human rights viola-
tions of England, France, Germany, Russia, Poland, the United States, and many others are frankly exposed to the reader. Osiatyński concludes that the eighteenth century, defined by an emerging market economy brought civil liberties and political rights. The nineteenth century, defined by an industrial society, brought social and economic rights. The twentieth century brought to light issues of sovereignty over land and resources, and the next wave will bring further progress based on the nature of the times.

Carrying his audience with him as he moves forward, Osiatyński identifies several current threats to human rights. One is that globalization is being driven by private companies rather than states. Traditional national legal mechanisms of protecting the vulnerable from the acts of private abusers are inadequate in light of the fact that no international political mechanism is available to regulate the global economy and thereby impose rules of conduct on multinational companies whose activities extend beyond the boundaries of their home states. Another is the development of political interests that favor the supremacy of trade interests over human rights and engage in double standards. Immigration concerns, the war on terror, and general economic turbulence have created a global environment in which Osiatyński sees human rights and personal and civil liberties falling by the wayside.

Osiatyński's apparently optimistic nature is evident in his premature assertion that, “As was expected president Barack Obama and the new legislature in the United States closed the camp in Guantanamo and eliminated other extreme acts of the Bush administration.” In fact, the closing of the detention facilities at the Guantanamo Bay Naval Base has not completely occurred despite the publishing of Osiatyński’s book and its subsequent reading by this reviewer. (President Barack Obama’s Presidential Memorandum ordering the transfer of Guantanamo’s prisoners “in order to facilitate the closure of detention facilities at the Guantanamo Bay Naval Base” was dated December 15, 2009.) Perhaps Osiatyński could have been more careful in his choice of words.

In his final assessment of the current state of human rights, Osiatyński identifies another danger to the future of human rights in the fact that in the war on terror, human rights are an “obstacle,” rather than a “tool.” There is no progress to be made by governments under the guise of human rights as there has been in the past. On a more positive note, Osiatyński identifies domestic and international human rights movements as “a power unto themselves” that will ideally continue to both build and defend rights until a new wave can form.
Osiatyński expresses deep hope that the concept of human rights is “flexible enough to be adapted to changes in today’s society,” and therein lies the overarching premise of his book. In the interest of survival, the concept of human rights must be honed to “distinguish between what human rights are and what they are not.” They are not a “magic key” to “justice and happiness,” but rather one of many principles that must coexist in a democracy. Human rights must be balanced with “the needs of democracy, social security, identity and human dignity.”

Osiatyński begins his analysis of the concept of human rights with a discussion of their place within a democracy. A significant portion of his energy is dedicated to examining the tensions that threaten the delicate balance between democracy and human rights. In so doing, Osiatyński notes that human rights frequently remain an ideal rather than an actuality. Declarations, covenants, and other international agreements are only as strong as the character and social conditions of each political system. A system of checks and balances, together with independent courts that facilitate access to justice, an executive power dedicated to enforcement of the court’s decisions and a legislature that implements constitutional laws is absolutely necessary to the protection of human rights.

Osiatyński examines the theoretical innovation that, just as party systems are necessary to a democracy by providing access to the state, so are NGOs and similar organizations necessary to provide individuals access to justice and the courts. Funds should be designated by governments and international aid organizations specifically for protection of human rights. The tension between democracy and human rights cannot be reconciled without public inquiry and access to justice.

Osiatyński also examines the additional notion that, in addition to limiting democracy by constitutional rights, constitutional rights should in turn be limited by democracy. Individual rights should not limit the deliberation and compromise necessary to political debate. Human rights can further prevent the growth of other important social values, specifically economic growth. While recognizing that the issue is one of great debate, Osiatyński asserts that human rights are not synonymous with democracy, or social equality, or needs. In fact, “They limit the scope of democratic decisions and may be, at times, in conflict with democracy.”
Osiatyński begins his discussion of the relationship between rights and needs with the observation that, “It is at the juncture of rights and needs that the dual character of the very concept of human rights is revealed.” In one regard, rights and needs are aspirations for humankind, and in another they are norms to be enforced by law. Their difference lies in the methods of enforcement. However, according to Osiatyński, it is not appropriate for all human rights to be binding norms, nor should they all receive identical protection. Some have legal protection through constitutions or statutes, some have political protection through public policy, and others have no protection at all. Osiatyński notes that this is true even for the needs that most agree are important enough to qualify as rights. Rights, Osiatyński states, “are not goals in and of themselves but rather means for assuring other goals.”

Osiatyński uses five key points to clarify his needs-based approach to social and economic rights. The points outline the role of the state, one’s constitution, social policy, and their appropriate interactions with one another. He is careful to remind us that individual persons and the existing social conditions also impact the development of rights and their remedies.

Osiatyński next chooses to tackle the issue of universality of human rights. He points out that applying the term universality to the phrase human rights is nearly redundant in that the word human implies everyone, everywhere, at all times. Osiatyński notes that unfortunately, reality does not reflect the image implied by the language. He proposes that the notion of “the universality of human rights and the concept of the universality of the philosophy of human rights” must be disconnected from one another in order to restore meaning to human rights. He explores two possibilities to move universal human rights forward without an “underlying consensus on the philosophy of human rights.” One involves replacing human rights norms with penal laws; another involves retaining the notion of human rights but narrowing their content to “what is truly common to human nature and shared by most cultures.” In his analysis, Osiatyński distinguishes between “hard” universalism and “soft” universalism. Hard universalism is based upon the premise that all social philosophies and cultures are, or should be, compatible with the philosophy of human rights, and if they are not, then they should change. Soft universalism is based upon the premise that although human rights are at the core of common values, different cultures may demonstrate their beliefs in different ways; however, genocide, torture, tyrannies, honor killings, genital mutilation, nor public or private political, religious or cultural oppression
should ever be tolerated by either universality. “Human rights must always set the limits on human behavior.”

As an American librarian, it was interesting to read Osiatyński’s brief perspective on the right to the pursuit of happiness referenced in the Declaration of Independence in his last chapter. The book as a whole provided a new perspective not only on the history of individual and human rights, but also on the potential dangers lurking in the future that threaten the very existence of these rights. Heavily footnoted and further supplemented with a bibliography, the facts and premises set forth in the book are well supported with authority. Osiatyński refers readily and regularly to the writings of other philosophers and historians. His personal touch is evident in his gentle but urgent tone, and in his choice to end the book with a letter that he regularly sent with graded exams to his students signed “Your grateful teacher, Wiktor Osiatyński.” It was a pleasure to read this author’s sage analysis of a topic whose historical importance we struggle to comprehend.

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Frank Pommersheim is one of the leading scholars in Indian tribal law. He teaches Indian law at the University of South Dakota School of Law and currently serves as Chief Justice for the Cheyenne River Sioux Tribal Court of Appeals and the Rosebud Sioux Supreme Court.

Pommersheim describes Broken Landscape as a natural companion to his *Braid of Feathers* (Berkeley: UC Press, 1995). Like *Braid of Feathers*, Broken Landscape is a highly readable text providing information, cultural perspective, and insight. While the focus of *Braid of Feathers* is on tribal courts and reservations, Broken Landscape “strives to demonstrate how so much has gone wrong within the field of Indian law at the national level because of Congress and the Supreme Court’s continuing failure to identify a satisfactory constitutional basis from which to proceed.” (p.6)

*Broken Landscape* is divided into three parts: The Early Encounter, Individual Indians and the Constitution, and The Modern Encounter. The book also contains a notes section that includes interesting historical and cultural observations and clarifications of terms. The index covers personal and geographic names, subjects, cases, acts, and treaties.

In part one, Pommersheim examines the history of Indian tribal sovereignty, beginning with contacts during the colonial period. He analyzes these early encounters through four primary themes: commerce and land acquisition, diplomacy and war, cultural difference, and physical separation. I found Pommersheim’s narrative to be powerful, bringing history to life. For example, his descriptions of trade --with its resulting economic, political, ecological, and cultural changes, and differing views of land use and land ownership, increased my understanding of these complex issues.

At the heart of Pommersheim’s work is the relationship of the Constitution and tribal sovereignty. Pommersheim notes that the original structure of the Constitution has proven inadequate to support tribal sovereignty in the modern era. Neither of the two primary provisions – the Indian Commerce Clause and treaty-making – resulted in creating any boundary to limit federal authority in Indian affairs. Tribes have been absorbed and incorpo-
rated into the republic without their consent and without constitutional adjustment and recognition.  (p.84)

Cases from the foundational Marshall trilogy and the development of the plenary power doctrine in *Lone Wolf v. Hitchcock*, to the decisions of the Supreme Court in the modern era, are analyzed, demonstrating how legal analysis and practice have interpreted and misinterpreted tribal sovereignty since the nation’s founding. Pommersheim shows that Congress and the executive branch enacted a regime of law relative to trade and settlement that governed relationships between the federal government and the tribes, affecting relations between states and tribes. Further, the Supreme Court approved actions that were not constitutionally authorized, extending federal power in Indian affairs and impairing tribal sovereignty. Pommersheim writes, “Indian tribes had a more secure constitutional status at the time the Constitution was adopted than they do today. ... They are the only group within the United States to be treated with less, rather than more, constitutional dignity with the passage of time.” (p.257)

Part two looks at the impact of legal practice on the relationship between individual Indians and the Constitution. From the 1789 Constitution that makes no textual reference to Indians, to the Indian Citizenship Act of 1924 that required a citizenship ritual and oath, Pommersheim demonstrates the shifting policy and inconsistency in the various federal approaches to citizenship. Pommersheim also examines cases involving religious freedom and First Amendment rights including peyote use, sacred sites, and incarceration. He concludes that all were decided without the necessary empathy and understanding of Native American religious practices.

In part three, Pommersheim analyzes Indian law jurisprudence in the modern era where the focus has been on three major concerns: regulating state authority, regulating tribal authority over non-Indians or nonmember Indians, and interpreting federal statutes that set benchmarks for tribal or state activity in Indian country. He looks at disputes resulting from the passage of major acts, such as the Indian Civil Rights Act of 1968, Indian Child Welfare Act of 1978, and the Indian Gaming Regulatory Act of 1988. His analysis of several cases and judicial opinions demonstrates paradoxes in Indian law and court rulings which never rely on the Constitution or federal statutes, but rather seek to balance tribal, state, and federal spheres of interest.

Pommersheim looks to international law for new models of indigenous nation sovereignty. International law has focused on cul-
tural integrity, land and resource protection, nondiscrimination, social welfare and development, and self-government. Three common-law nations -- Canada, New Zealand and Australia -- are compared. In each country there has been acknowledgment of errors in the past and mutually beneficial approaches for moving forward.

_Broken Landscape_ concludes with a call for constitutional reform to fortify tribal sovereignty, stating that history must be confronted and held accountable. Pommersheim’s presentation of the complexities and paradoxes of Indian law are insightful and well written, providing the reader both legal and historical understanding.

This book will be of interest to readers of many disciplines, and especially to Indian law and constitutional law scholars. I recommend it for tribal, academic, law, and public libraries.

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Kathryn Turner Preyer (1925–2005) lived a distinguished career as a teacher, a devoted friend, a nurturer of younger scholars, and a sophisticated historian of early American law. Despite her eminence, she was relatively unknown beyond the legal history community, largely, one suspects, because she wrote articles rather than books. Books as the gauge of an historian’s renown is applied all too casually, and so it becomes a measure of reputation that bans scholars of her stripe to the margins of fame. Preyer understood that reality, and she looked forward to producing a monograph of her own, but death overtook her before she made good on her intention. Now four of her friends have collaborated in bringing forth this anthology of her essays both as a tribute to her memory and to introduce her to a broader readership.

For readers of this journal who are unfamiliar with Preyer and her work, let me quickly summarize both. Preyer earned a BA from Goucher College before enrolling at the University of Wisconsin, where she received her PhD in history. A student of Merle Curti and Merrill Jensen, two of the prominent mid-twentieth century American historians, she wrote her dissertation on the Judiciary Act of 1801, a study that remains the definitive treatment of one of the foundation stones of the federal judiciary. She taught for a year at Rockford College before accepting an appointment in the history department in Wellesley College. She would remain at Wellesley for the duration of her career, though the Harvard Law School became a home away from home after a stint as a Carnegie Fellow there. Thus, she devoted much of her time to instructing undergraduates, which she very much loved to do, but the time she gave to them and to her departmental responsibilities was time away from her scholarship. Nevertheless, she managed a steady output of articles and book reviews. Her essays focused on the role of law in creating the American republic, and she emphasized how that law was an integral part of the society of which it was part. The book reviews, which appeared in nearly all of the major scholarly journals, dealt with most of the important volumes on early American legal history published over a fifty-year span. They yet bear re-reading because they are models of astute criticism, sharp without being hurtful and graced with beautiful prose.
As for *Blackstone in America*, its title is one that Preyer intended for her own book. It consists of nine of Preyer’s essays, which are arrayed in three parts, and a general introduction. Stanley N. Katz composed the general introduction. In it he briefly recounts the facts of Preyer’s career. He relates how he first encountered Preyer when both were fellows of the Charles Warren Center at Harvard. At the time he was just beginning his own life-long engagement with American legal history. Preyer took him in hand. Thus began a friendship that abided for upwards of half a century, and the warmth of that friendship is palpable. So is his respect for and the praiseworthiness of her scholarship. He concludes his brief but trenchant assessment this way.

Preyer was among the leading legal historians of the last half century. Her gem-like essays will always be monuments to her unique amalgam of intelligence, originality, breadth of vision, historical sensitivity, and deeply humane vision. That her scholarship on the early nineteenth century remains so germane to today’s conflicts of law and politics is a testament to the enduring worth of what she wrote (p. 4).

Part I—Law and Politics in the Early Republic contains four essays: “Federalist Policy and the Judiciary Act of 1801,” “The Appointment of Chief Justice Marshall,” “The Midnight Judges,” and *United States v. Callender: Judge and Jury in a Republican Society.*” The first two appeared in the *William and Mary Quarterly* in 1965 and 1960, respectively, whereas the third was published in the *University of Pennsylvania Law Review* in 1961, and the fourth was a chapter in a book that Maeva Marcus edited and Oxford University Press published in 1992. Marcus, who introduces Part I, remarks that it contains three of Preyer’s earliest publications, all of which derived from Preyer’s dissertation. She makes the point that those pieces evince Preyer’s commitment to the “one big thing” that drove all of Preyer’s research and writing, and that plays out again in the final essay, Preyer’s last, in this section of the book.

He draws notice to the thematic relationship between the three essays and their shared systematic organization. As well he alerts readers to the working assumptions that informed Preyer’s synthesis. And he highlights what to him was “perhaps the central theme of Preyer’s entire corpus of scholarship: the effort by the founding generation to modify English law to fit the needs of the new republic” (p.116).

Preyer published “Cesare Beccaria and the Founding Fathers” and “Two Enlightened Reformers of the Criminal Law: Thomas Jefferson of Virginia and Peter Leopold, Grand Duke of Tuscany” as book chapters in 1989, and they make up the final portion of the book. Entitled “The History of the Book and the Trans-Atlantic Connection, that section is introduced by Mary Sarah Bilder. Bilder informs the reader of Preyer’s engagement with the history of the book and the possible application of that body of literature to early American legal history. She suggests that Preyer’s interest derived from a curiosity about the physical means of transmitting legal ideas across the Atlantic and her rising fascination with book collecting. Ultimately, both interests led Preyer to compose these two essays. Bilder also points out that Pryor had plans to craft a piece on legal self-help manuals such as Giles Jacob’s Every Man His Own Lawyer (London, 1736 and later), but she did not live to write the article.

The sole objection one might raise about the book has nothing to do with Preyer. It goes to the editor’s decision to use name the book as they did. True, the editors used the title Preyer intended for the monograph she never wrote, wherein she might have linked that title to Blackstone. This volume makes no such connection, and thus its title seems misplaced at best or misleading at worst. But that is a minor flaw that mars the book but slightly.

All of the essays have been reset to conform to a common copy style, although Preyer’s prose, her citation format, and her typing conventions remain unchanged. The dust jacket, cover, type, and paper all combine to make an attractive, readable volume. Cambridge University Press is to be congratulated for packaging everything in so pleasing a guise. Moreover, the fulfills the editors’ desire to make Preyer’s work more readily available and therefore more accessible to a wide reading audience. That readership will include an array of advanced undergraduate students, graduate students, legal historians, and just about anyone who is curious about aspects of early American legal history.

Those of us who know Preyer’s work will rejoice at having the best of her essays in a convenient gathering that we can turn to at
will. We can savor anew our favorite articles and be reminded once more of our own indebtedness to a wonderful scholar and colleague. I, for one, especially enjoyed re-reading the last two pieces because of their connection to my own writing about the importance of books to the making of early American law. And we both shared a passion for book collecting. And now, every time I reach for my copy of the 1778 Philadelphia edition of Cesare Beccaria’s *An Essay on Crimes and Punishments*, I will think of her.

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This book is truly “a Reassessment” of the works that considered marriage practices in England throughout the “long Eighteenth Century”. The author examines the conclusions of previous scholars and states her disagreement based upon her own research. The sources for such a study are many ranging from fiction writers to such sources as parish registers and other local records.

What might be confusing to the reader is the period of history covered by the author who defines the long Eighteen Century as the period from the Marriage Duty Act 1695 to the Marriage Act of 1753. In the Introduction, the author lays out her disagreements with other scholars about the impact of the Marriage Act of 1753. The author’s thesis is this act and similar pieces of major legislation are not major breaks with the past but rather incorporates earlier experience prior to this enactment. The author’s review of the historical methods and pitfalls of some of their interpretations will be the most controversial. For example, the author feels [as this reviewer does] that historians often base their understanding of the past by projecting their own experiences and understanding in their interpretation of historical events. The author reviews the sources used to establish marriage practices and their validity.

The organization of this book, so the reader is informed, is both thematic and broadly chronological. In the Introduction, the author explains the alternatives in selection of a date to begin her study so she opts to review the cases before the Marriage Act to determined what elements were necessary to give validity to the marriage. The results of a man and woman exchanging intentions to live together as man and wife required a declaration of both parties. To find the marriage valid, the courts had to find evidence of this declaration of intent, or the marriage was invalid. All the while, the parish register was the official record of a marriage, for it was in earlier times the duty of the parish to keep records of marriages and deaths but this required the formal marriage ceremony in the Church so that secret marriages went unrecorded. The American states - as is noted in this text - solved this living together by recognizing what was known in some jurisdictions as a “common law marriage”. Under this doctrine, to qualify as a valid marriage, the parties had to lived together openly as man and
wife for a given period of time. English law did not recognize such marriages as legal without the finding of some evidence to the contrary. It may surprise the American readers that in England and Wales, governmental functions were vested in the parishes of the Church of England, organized in recognized geographical areas.

Any attempts to tackle the problem what is a legitimate marriage, is fraught with many problems, for individuals in society choose to follow their own inclinations in marrying. The reader is familiar with ritual of boy meets girl, boy proposes and after a period of time, marry in a Church with pomp and ceremony, or in the word of the author, a “modern extraganrinza”. But behind this ceremony lies legal consequences.

In the century covered by this book, complications arose. Marriage by a Roman Catholic priest, certainly in the Sixteenth Century was considered as a clandestine marriage and frowned upon but for many legal reasons, a marriage in the Church of England was desirable which was discouraged by priests in that Church. In trying to determine whether a church marriage was common, scholars have examined parish records, as well as settlement records kept by the local governments in determining whether the person was settled in that parish and would be a charge to the local parish under the Poor Laws of England. The conclusion was that a large percentage of couples were married in some Church ceremony, either by a formal ceremony before an Anglican priest which required the publication of the couple banns on three consecutive Sundays followed by a Church ceremony performed by the Anglican priest in the parish where the couple resided.

The organization of the parishes as small geographical units contributed to the difficulties where parties later were trying to prove a valid marriage. The author observes, the parish clerk was required by law to maintained a record of such marriages, but often failed to do so which undermines these records as a reliable source. Occasionally the clerk failed to enter in the records the marriage and often, entered incorrect spelling of the names of the parties.

Another factor contributing to this difficulty for those seeking to prove a marriage ceremony had been uncertainty of which parish the parties were married. The courts usually found that a marriage had taken place if there was other evidence to support this assumption such as having lived together as man and wife. How often individuals took up living together and died in that uncertain state can never be known.
The marriage laws did not apply to some groups including those marriage in the Jewish or Quaker faiths, for such marriages were regulated closely by these groups. The Royal family was exempt from these laws.

The reasons for the enactment of the Act of 1753 are explored and here, “the seedy side of clandestine marriages” are scrutinize. One of the practices which demanded the attention of the legislators were the Fleet Street marriages. These were marriages conducted in the chapel in this famous prison, Fleet Street, by unscrupulous priests often for nefarious reasons other than to join a happy couple in marriage. In the passage of this statute, the thesis is proposed that the legislators were not trying to override past practices but were attempting to address the difficulties posed by clandestine marriage. The author examines the various sections of the act and seek to show that very little of existing law was changed. One area which appears to be clarified were marriages of individuals who was underage. Now and then as is true today, parents were not consulted by their underage children who still under this statute, could go to another parish at some distance from home to publish their banns which was a public announcement of their proposed wedding. A licence was now required but such formality was not new to English law for the bishops had been issuing such marriage license for centuries as required by the canons of the Church. The penalties for enforcing the provisions prohibiting the performance of a clandestine marriage had many loop poles and the author concludes were ineffective. No attempt is given of the numbers of priests transported to America for fourteen years, if, indeed, any were for performing such marriages.

One of the many unanticipated consequences of the statute was the expansion of the common law courts into this matrimonial field for no longer questions of the validity of a marriage had be referred to the Ecclesiastical Courts.

The reading of this book which is an exegesis of the marriage laws was revealing as to the difficulties of attempting to regulate a social activity such as marriage and finding no uniformity in practices. The author has admirably investigate the many contradictions in what the law required and actual practices. Many other scholars have attempted this task of reconciling these questions but the validity of their conclusions as noted earlier are challenged, by the author's own scholarship.

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Justice Albie Sachs published this reflection on his contributions to the development of the modern South African legal system. The book is a mix of very personal reflections as well as edited judgments written by the court. The most moving and effective passages in the book are the descriptions of painful episodes in Sachs’ life and how they affected his career and judicial philosophy. Sachs includes his own thoughts about the influences and reasoning behind his opinions. Sachs describes the challenge of writing judgments for the court that will be read closely by the public as well as the legal community. He takes care to remind the reader that the internal deliberations of the Constitutional Court are confidential. The book was published after he retired from the court so it reflects a review of his entire career as Justice.

Sachs was an attorney for the African National Congress (ANC) and provided counsel regarding revolutionary activities as well as drafting the proposed legal framework for South Africa post-apartheid. As an active member of the group planning for the eventual overthrow of the South African government, Sachs was labeled a terrorist by the United States government and denied entry to the U.S. when he attempted to travel to a Yale conference. He reflects about his personal experiences undergoing sleep deprivation in South African cells. This torture experience is used as justification for his recommendations that the ANC and the post Apartheid government avoid harsh interrogation techniques. He discusses the impact resulting from labeling an individual or group as a “terrorist” or “counterrevolutionary.”

The most moving portion of the book, describing personal and national reconciliation, is the chapter “A Man Called Henri: Truth, Reconciliation, and Justice.” While Sachs was in Mozambique working with the ANC, he was personally the target of a car bombing carried out by an employee of the South African government. He survived the attack but lost his right arm and sight in one eye. Sachs recalls waking up in the hospital and cracking jokes with fellow ANC leader and current President of South Africa, Jacob Zuma. Henri, the agent who planned the bombing, later made a personal visit to Sachs’ office in the Constitutional Court prior to asking for amnesty from the Truth and Reconciliation Commission. Sachs refused to shake his hand but left open the possibility that he might reconsider. Henri testifies before the
Commission and several years later they have an emotional encounter at a social event: both men are changed after Sachs shakes his hand. Sachs thinks that the openness and the public searching for truth worked for the South African experiment with the Truth and Reconciliation process.

Sachs was a leader in planning for the new Constitutional Court building. The courthouse was built on the site of a notorious prison that once held both Nelson Mandela and MK Gandhi. Gandhi refused to take salt with his meals in prison because African prisoners were not offered salt. Some of the bricks from the old prison were used to create the new courthouse. In addition to the importance of locating the courthouse on the site of the prison, Sachs encouraged the placement of public art reflecting the legal turmoil that led to the formation of the post apartheid government.

The cover illustration of the book is a simple blue dress floating in the wind. The dress is the central image of *The Man who Sang and the Woman who Kept Silent* (Judith Mason, 1998 Triptych). Sachs describes how Mason was inspired by reports she heard from Truth and Reconciliation hearings about the deaths of Heroald Sefola and Phila Ndwande. Sefola asked the execution squad for permission to sing the *Nkosi Sikelel’ iAfrica*, a traditional South African hymn of the oppressed, prior to his execution. Ndwande was tortured and left naked in her cell. She stitched together flimsy plastic grocery bags into undergarments to keep her dignity. She was assassinated after ten days by South African guards. When her body was taken from the shallow grave for a proper burial she was still wearing the plastic. Mason created a full dress out of plastic bags and painted a written tribute to her courage in white lettering on the dress. Justice Sachs provided comments and encouragement to Mason as she developed the paintings. The artwork is now a prominent feature in the Constitutional Court. Sachs wanted court visitors to be inspired by the courage of two freedom fighters who kept their dignity while undergoing interrogation. Photos of the images and additional information about the artwork is available on the artist’s website: http://www.judithmason.com/assemblage/5_text.html

Sachs discusses a number of important social issues addressed by the South African Constitutional court. HIV and AIDS issues were addressed in the context of providing antiviral medication to pregnant women to prevent the transmission of the virus to their unborn children. The court ruled that an airline attendant was discriminated against because he was HIV positive. Sachs also includes a discussion of the painful balancing necessary to ration dialysis equipment for the poor. Sachs' personal upbrin...
non-observant Jew is used as background information for his strongly held belief in respecting the religious beliefs of those outside mainstream religions including Rastafarianism.

The chapter on same sex marriage starts with Sachs’ recollection of his hesitancy to participate in a gay pride march soon after he returns to South Africa from exile. The South African constitution prohibits discrimination on the basis of sexual orientation but didn’t resolve the marriage question. Sachs discusses the importance of understanding both the religious arguments against same sex marriage and the demand for full equality and full marriage rights for all South Africans. He discusses the history of marriage discrimination in South Africa including the denial of marriage rights to certain Islamic marriages because they could be polygamous. He ends his chapter with a description of a joyous same sex marriage ceremony celebrated by the son of a very conservative member of South African society.

The book includes many edited judgments, most written by Justice Sachs. Although this book is not intended as a casebook on South African law, it could be used as a supplement in a law school class on the development of South African legal concepts. Sachs introduces each topic with a chapter about how he was influenced by the issues raised by the case(s) and then follows the background information with the actual text of the opinion. Researchers in the development of the law will find the background information useful. The edited judgments are published without footnotes or citations although there is a comprehensive list of citations in the appendix. The index is useful for both topics and names.

The Strange Alchemy of Life and Law would be an appropriate addition to law libraries collecting materials on the development of South African constitutional law, same sex marriage, judicial scholarship, the Truth and Reconciliation Commission, and terrorism.

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*The Law of Nations* “(Le Droit de Gens), written by the Swiss legal scholar and diplomat Emer de Vattel and published in 1758, was “the most important book on the law of nations in the eighteenth century,” and was “a major source of contemporary wisdom on questions of international law in the American Revolution...,” according to the Introduction to the present edition. The book was “[t]ranslated immediately into English” and “was unrivaled among such treatises in its influence on the American founders.” Vattel’s principles also influenced the decisions of the early U.S. Supreme Court: “[b]efore 1865, the Court cited him at least thirty times....” Paul Finkelman, *Foreign Law and American Constitutional Interpretation: A Long and Venerable Tradition,* 63 N.Y.U. Ann. Survey Am. L. 29, 45 (2007-2008). *The Law of Nations* is remarkable for its clarity and simplicity of expression, and so anticipates America’s fundamental concepts of the rights of people and of sovereign nations that it sounds familiar when read today.

Vattel’s theories strongly influenced the development of the U.S. Constitution. Benjamin Franklin, in a December, 1775, letter to Charles W.F. Dumas, thanking him for a gift of Vattel’s book, wrote “...the circumstances of a rising state make it necessary frequently to consult the Law of Nations...[my copy] has been continually in the hands of the members of our congress....” Similarly, the rights to life, liberty and the pursuit of happiness, which Thomas Jefferson incorporated in the Declaration of Independence, had been asserted by Vattel:

> The end or object of civil society is to procure for the citizens whatever they stand in need of, for the necessaries, the conveniences, the accommodation of life, and, in general, whatever constitutes happiness, with the peaceful possession of property, a method of obtaining justice with security, and, finally, a mutual defense against all external violence.

- *Book I: Nations in Themselves*, Section 15-

Vattel believed that certain rights originated from a natural law that applied equally to all nations, as well as to all individuals:

> Since men are naturally equal, and a perfect equality prevails in their rights and obligations, as equally
proceeding from nature, nations composed of men, and considered as so many free persons living together in the state of nature, are naturally equal, and inherit from nature the same obligations and rights. Power or weakness does not in this respect produce any difference. A dwarf is as much a man as a giant; a small republic is no less a sovereign state than the more powerful kingdom.

-Preliminaries, Section XVIII -

Issues of concern today, such as international conflicts, immigration and citizenship, and the enforcement of treaties, to name just a few, were also of concern to Vattel. He distinguished between lawful and unlawful warfare, explaining that a lawful war had to be conducted “on both sides by the sovereign authority, accompanied by certain formalities, including a declaration of war,” whereas “illegitimate and informal wars” were those “undertaken, either without lawful authority, or without apparent cause, as likewise without the usual formalities.” Even the concept of terrorism can be found in The Law of Nations: Vattel distinguished a public enemy, who “only seeks to maintain his rights,” from a private enemy, “one who seeks to hurt us, and takes pleasure in the evil that befalls us ...[who] is never innocent; he fosters rancour and hatred in his heart.” (See Philip Hamburger, Beyond Protection, 109 Colum. L. Rev. 1823 (2009)).

The present paperback edition is based on the 1797 London translation of Vattel’s original text, and includes “many valuable Notes never before translated into English,” that had been made by Vattel for a second edition he did not live to complete (see Introduction). A detailed Table of Contents that was created for the 1797 edition is also included. It refers to page numbers from the original edition, rather than from this edition; although the original page numbers are incorporated in the present text in brackets, but they are hard to see, all of which makes it confusing to find the page you want from the Table of Contents. New editorial material in this edition includes Biographical Sketches of Authors referred to by Vattel, a Bibliography of Works Referred to by Vattel, and an Index. The editors have also included three essays by Vattel: Essay on the Foundation of Natural Law, Can Natural Law Bring Society to Perfection Without the Assistance of Political Laws?, and Dialogue Between the Prince of **** and His Confidant, which appear here translated into English for the first time.

The editors, Messrs. Kapossy and Whatmore, have written an Introduction that makes a forceful argument for the work’s continuing relevancy, both to the history of the U.S. Constitution and
constititutional law, and to current international law. It contains a brief biography of Vattel and an explanation of his theory of "Natural Law as Applied to the Law of Nations." The editors conclude that "[t]he importance of The Law of Nations...resides both in its systematic derivation of international law from natural law and in its compelling synthesis of the modern discourse of natural jurisprudence with the even newer language of political economy."

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Pavel Gavrilovich Vinogradoff (1854-1925) began his career as an historian in Russia but left that country in 1901 in protest over the government’s refusal to implement any of his ideas for reforming and expanding education in Russia. In 1903 he was elected to the Corpus Chair of Jurisprudence at Oxford University. His fame today rests primarily upon his acclaimed trilogy, Villainage in England, The Growth of the Manor, and English Society in the Eleventh Century. All three share a great depth of historical research and an appreciation of the organic connection between the legal relationships in Norman society with those passed down from the Anglo-Saxon period. This view of law as an evolving social force flowing not solely from the state, but from other sources of accepted authority as well, is evident in this collection. There are two portion to this book, the first is a look forward to the formation of the proposed League of Nations and the latter is a set of observations on the forms of international law in several historical periods.

The first portion of the book contains thoughts and reflections on the formation of a League of Nations. The Legal and Political Aspects of the League of Nations, was published on November 1, 1918. Vinogradoff, writing two years before the first General Assembly of the League of Nations, addresses several functions of a League that need to be considered distinctly. There will need to be judicial, legislative, and executive mechanisms for determining and enforcing dispute resolutions between nations arising out of existing conventions, compacts, treaties and recognized international laws. Giving effect to these established covenants will be the first duty of a League. He sees no reason why an aggrieved individual or corporation should barred from seeking a remedy at the League Court from a member state, such as a bank suing a country for debt repayment. The last legal aspect he entertains is the notion that this League Court should have the power to hear suits based not solely on existing law and convention but also upon the power to make logical extensions of those legal principles or on the basis of equity as would a common law court. The political aspect of a League will be most difficult to address when various states and groups within states are in conflict. Here, Vinogradoff alludes to the ethnic conflicts nationalist struggles that erupted during the First World War and his hope is that
mediation, pressure and censure from the League will be sufficient. His last hope is that where armed intervention is called for, the great democratic powers will prove worthy of the trust imposed on them and can be called upon to do the right thing. Vinogradoff was understandably anticipating that the great conflagration through which the world had just passed would concentrate the attention of even the most lackadaisical statesman upon maintaining international peace. The modern reader may be left smirking at this hoped for deus ex machina which relied upon Warren Harding and Calvin Coolidge for muscular internationalism.

The next item in the collection is an unpublished typescript from late 1918 or early 1919 which draws heavily upon the themes in the first essay. *The Realities of a League of Nations*, reiterates many of same propositions, such as the obligation of that generation to use the great opportunity presented by the upheaval of the Great War to give a broader social foundation to international law. He sees four great ideas let loose by the war. They are: 1) self-determination for nationalities, 2) historical states feeling keener pride in their past and greater hope for their future, 3) the claim of labor to an adequate recognition in politics and society, and 4) the ideal of international justice. Vinogradoff recognizes that while these goals can supplement one another they can also conflict. A brief coda to the first part of the volume is, *The Covenant of the League: Great and Small Powers*, a letter to the Times published on March 28, 1919. Here, Vinogradoff voices overall support for the initial draft of the League Covenant. He notes while the mechanisms of representation and international courts need to be refined that the major goal of the League is to band the great nations together in systems for resolving international disputes. “The real advantage to be derived from the League will consist in the statesmanlike treatment of such disputes, and in the common resolve to prevent a recurrence of the terrible catastrophes like the present one.”

The second portion of the book is composed of public lectures delivered at the University of Leiden in 1921 under the title, *Historical Types of International Law*. The emphasis here is on teasing out major ideas in the law of nations over several historical periods from the Greeks to the early twentieth century.

In the first section, Vinogradoff faults both Aristotle and Montesquieu for starting with the organization of the state and the looking at law as promulgated by state organizations. His view of law is much more as a type of social endeavor. The classification he advances begins with tribes, cities, churches, contractual asso-
ciations, and collectivist associations. Tribes are derived from either mystical memberships or extended family ties, and manifest themselves in notions of kingship. The city is a privileged club in which citizens devise laws to govern themselves, as did the Greek and Italian city states. Churches are an extension of the city, except that instead of being bound by geography, the citizens are distinguished by common belief. Since their direction is from heaven, law is expressed in forms such as Jewish, canon, and sharia legal systems. The fourth form is the contractual association. These associations are bound by common trade, opinion, or other interests and are common in modern democracies; however, they were also prevalent in Roman society. Vinogradoff attempts to explain this apparent gap in liberty between modern democracy and imperial Rome’s penchant for these associations by positing that Roman society was so atomized by voluntary groupings that deference to complete imperial power was needed to keep the concept of a universal Roman civilization moving forward. The final form is collectivist associations. These organizations aim to create enduring changes to the social and economic order with little regard for the individual. Changes to law are frequent and major and should be evaluated only on the basis of whether they achieve the desired social changes.

These various forms of law have a relationship to the forms international law pursued across history. While the Greek city formulated its own law, each city was in no way self-sufficient. Vinogradoff finds this intermunicipality a key concept in understanding Greek international law. In addition to much common culture and religion, the cities, concluded treaties, confederations, and had mechanisms for enforcing customary law between the city states. In Roman law, Vinogradoff finds the contractual association principles being introduced into a kind of common Roman law from which modern concepts of “good faith”, agent and principal” have their origins. Medieval relations relied heavily upon the guidance of the Church in matters of faith. This system did not envision the Church as a universal government but as a force to which temporal powers needed to go and seek a resolution of their disputes. The dual development of the nation state and the concept of natural law weakened the Church’s role over time and lead to the development of notions such as individual conscience and individual right. Vinogradoff ended the lecture series by noting, “Modern society succeeded in suppressing civil strife and ensuring freedom of contract by the agency of sovereign territorial states but success in this direction was coupled with orgies of external wars which threaten the existence of civilisation.”
The volume concludes with a fifty-seven page bibliography of Sir Paul Vinogradoff’s works. This is a daunting chore since his works regularly appeared in both western language and Cyrillic forms. He continued to publish in Russian journals until the chaos of war and revolution made it impossible in 1916.

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*Documents of Native American Political Development 1500s to 1933*, is an anthology of eighty-six pre-1934 documents, compiled by David E. Wilkins, citizen of the Lumbee tribe of North Carolina and Professor of American Indian Studies at the University of Minnesota. Wilkins has authored numerous articles and books on indigenous politics and governance, including *American Indian Politics and the American Political System* (2007) and *Uneven Ground: American Indian Sovereignty and Federal Law* (2001).

Wilkins writes in his preface to *Documents of Native American Political Development* of his interest in understanding how tribal peoples “governed themselves before John Collier, Felix Cohen, and Nathan Margold – the Indian New Deal triumvirate – arrived on the scene in 1933 and, through the Indian Reorganization Act (IRA) of 1934, fashioned a law that encouraged native peoples to adopt written constitutional governments.” (vii)

Wilkins wanted to know what kinds of political and institutional adaptations Indian nations had made once they had sustained contact with foreign political entities that had intruded upon their lands and established a permanent presence.

Further, Wilkins was interested in learning why little had been written about the historical evolution of indigenous governance. In his introduction, Wilkins cites Felix Cohen, author of *Handbook of Federal Indian Law* (1972) “Between the time of the adoption of the Constitution of the Five Nations and the adoption of more than a hundred Indian tribes of written constitutions pursuant to the Act of June 18, 1934 [the IRA] there is a fascinating history of political development that has never been pieced together.” (1)

While a graduate student, Wilkins began collecting documents of all types – treaties, tribal laws, tribal constitutions, business councils, intertribal arrangements, superintendent reports, congressional discourse, and traditional accounts - that evidenced self-governance.

Wilkins selection of documents, arranged chronologically, demonstrate tribal nationals utilized an assortment of government approaches – constitutional, traditional or organic, and transitional
arrangements - in an effort to adjust politically, economically, and culturally.

The book reviewed was an attractive and solidly bound hardback. Its features include a List of Native Peoples, List of Documents by Subject, Table of Contents, and Index – providing easy access to the documents.

The List of Documents by Subject categorizes the documents into eight categories: indigenous and Western-inspired constitutions; indigenous and Western-influenced laws, charters, legal codes, ordinances, and rules and regulations; U.S. Indian Agents, Commissions of Indian Affairs, and other federal officials' descriptions of native governance; U.S. Congressional acknowledgment of Native Governance; International confederacies, alliances, organizations, and responses; and Indigenous narratives on politics and governance.

An introduction, front notes to each document, and ending bibliographic essay places the documents in historical and cultural context and provides annotated citations to additional works. Also, included is an appendix with selected internet sites.

This book is of value to Indian law and constitutional legal scholars, lawyers, historians, and political scientists. In this single volume, Wilkins begins to fill the historical gap noted by Cohen and demonstrates the diversity of native governance. I recommend it for both undergraduate and research-level academic libraries.

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