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Abstract: This essay describes the Vichy regime’s establishment of political courts, called Special Sections, in German-occupied Paris during the Second World War. While it is still often assumed that the Nazis forced the French to create the notorious courts after the assassination of a German naval cadet, archival documents confirm that French authorities had independently initiated the legislative process to establish anti-Communist courts before any German intervention. In exploring how jurists trained in a liberal legal system created courts that violated long-established legal norms, this essay aims to show the frightening ease with which the tools of the law were adapted to carry out gross abuses of justice.

Introduction

At the end of the summer of 1941, one year into the German occupation of Paris, an outburst of Communist resistance, and the ensuing crackdown by the German and Vichy authorities, had begun to suffocate Paris. “The air”, wrote Jean Guéhenno in his diary on Thursday, the twenty-first of August, “is increasingly heavy, unbreathable…the police have sealed off the roads...The Jews are arrested, the Communists shot.”1 These measures were being carried out in response to the shooting of a young German naval cadet in a Paris subway station that morning. It was the first assassination of a German soldier in France since the armistice, and the Occupation authorities immediately took action to repress the growing Communist resistance. The Vichy government quickly set up new courts, called Special Sections, which blatantly violated legal norms by operating ex-post facto and eliminating the right to appeal. Eight French magistrates immediately agreed to serve on the Paris Special Section, which on its first day sentenced three people to death by guillotine, solely for alleged involvement with the Communist Party.

This gross abuse of justice of August 27, 1941 would characterize the Occupation period in France, which was marked by the widespread use of law and legal tools to confer legitimacy on mass discrimination, persecution, and murder. Even when it had most emphatically departed from the legal norms and mores

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of a constitutional democracy, the Vichy regime worked to maintain a veneer of legality to cloak its criminality. This marked “legalized persecution” of the Vichy period was even more startling in that it involved not only legal tools but also the active participation of France’s jurists, lawyers, and judges. It was, as Anatole de Monzie called it at the time, an “era of judges.”

When that era came to a close with the Liberation of 1944, it was difficult for the French to accept the ease with which their liberal republic had been transformed into an authoritarian regime. General Charles de Gaulle went so far as to deny the collapse of the Third Republic altogether, refusing to announce its restoration upon his arrival in liberated Paris. In refuting the legality of the Vichy regime, de Gaulle’s provisional government aimed to buttress its own authority and emphasize the democratic, republican identity of a nation that had been bruised by military defeat, foreign occupation, and civil war. The Gaullist myth of a nation of resisters was quickly embraced, and the horrors of the war years were blamed entirely on the occupying Nazi forces. The myth, which emphasized courageous resistance and repressed humiliating memories of defeat and collaboration, proved to be an important factor in enabling the country to rebuild its national self-esteem and reconstruct the moral, legal, and social fabric of its newly established democracy.

6 In an important study on the post-war construction of memory in Western Europe, Pieter Lagrou observed that societies traumatized by defeat, occupation, and collaboration had formed war memories that emphasized heroism, resistance, and patriotism.
quently, the post-war historiography celebrated the role of the Resistance and downplayed the significance of the Vichy government, which was widely regarded as a mere puppet regime compelled to comply with the German authorities. But in the 1970s, as the French archives began to open and painful memories came to the fore, the myth of a nation of resisters slowly gave way to the more complex reality of a country at war not only with Germany, but with itself as well. Collaboration, complicity, and compromise emerged as themes within the scholarship, particularly following the groundbreaking publication of Robert Paxton’s *Vichy France*, which demonstrated that the Vichy regime had actively sought collaboration with the Germans and that it had independently created its own authoritarian domestic policies. The “Paxtonian Revolution”, as Jean-Pierre Azéma has termed it, has since spawned a new generation of literature, devoted to the study of the Vichy regime as an independent historical agent that emerged not as an aberration, but rather within a continuum of French history.

It is my goal to contribute to this literature by describing the independent role played by the Vichy regime in creating the notorious Special Section courts. The history of these courts has not received the attention it merits, with only one published book devoted to the Special Sections, written almost four decades ago without access to the records of the Vichy regime in the French

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As much as the Second World War had been a foreign war, it had also been a real civil war whose effects continued to shake the country in the years after the Liberation. The renowned Vichy scholar Henry Rousso has cogently contended that those divisions “grew even deeper as the Liberation receded into the past.” Henry Rousso, *The Vichy Syndrome: History and Memory in France Since 1944*, trans. Arthur Goldhammer (Cambridge: Harvard University Press, 1991), 21.


An examination of these archives, along with many other primary and secondary source materials in libraries in both the United States and France, has allowed me to establish a clear record of the creation of the Special Section courts, highlighting the Vichy regime’s evolving conception of law and authority. While it is still often assumed that the Nazis forced the French to create the Special Sections after the assassination of a German marine, I will confirm that French polit-

11 In 1972, the French Ministry of Justice denied Lamarre (who published under the pseudonym Villeré) access to the war-era records on the Special Sections. But he successfully relied on other sources, notably German military records from the German Federal Archives in Freiburg, to dramatize the story of the creation of the Special Sections. Hervé Villeré, L’Affaire de la Section Spéciale (Paris: Librairie Arthème Fayard, 1973). While this book remains, to my knowledge, the only published full-length study of the Paris Special Section, an annex to Barthélemy’s memoirs contains important information on the creation of the Special Sections. And studies of several regional Special Sections have appeared within the growing literature on law during the Vichy period. See Jean Barthélemy and Arnaud Teyssier, eds., Ministre de la Justice Vichy 1941-1943: Mémoires Joseph Barthélemy (Paris: Editions Pygmalion/Gérard Watelet, 1989), 574-603; Catherine Fillon, “La section lyonnaise du tribunal d’État et la section spéciale près la cour d’appel de Lyon: l’exemplarité à l’épreuve des faits” and Jean-Louis Halpérin, “La section spéciale de Dijon,” in La Justice des Années Sombres 1940-1944 (Paris: La Documentation Française, 2001); Yves Lecouturier, “La section spéciale de Caen (1941-1944),” Vingtième Siècle. Revue d’histoire 28 (Oct.-Dec., 1990): 107-113.

12 In the literature on the Vichy regime, the creation of the Special Sections is usually mentioned in the context of Vichy’s response to resistance attacks, specifically the Moser assassination. For example, after describing the assassination of August 21, 1941, Gildea writes, “The Germans demanded the execution of six hostages by way of reprisal, and to keep control of the situation the Vichy government agreed to set up a special court, which duly condemned six communist leaders to death.” Robert Gildea, Marianne in Chains: Daily Life in the Heart of France During the German Occupation (New York: Metropolitan Books, 2002), 232. See also, Yves Beigbeder, Judging War Crimes and Torture: French Justice and International Criminal Tribunals and Commissions 1940-2005 (Leiden: Martius Nijhoff Publishers, 2006), 163; Dominique Rémy, Les Lois de Vichy (Paris: Éditions
cians and jurists had already independently initiated the legislative process before the assassination. In examining how a liberal legal system created courts that violated long-established norms of equality and legality, this essay also aims to explore the frightening ease with which the tools of the law were used to warp the very meaning of justice.

The “Creation of an Exceptional Jurisdiction”

The Vichy government officially developed the idea for special anti-Communist courts in June, 1941—a full two months before the assassination of Alfonso Moser and the subsequent establishment of the Special Sections. The decisive date was not the August 21 assassination, but rather Germany’s June 22 invasion of the Soviet Union, which fundamentally changed the “balance of forces” in Vichy France. In definitively breaking the German-Soviet Pact of 1939, the invasion of the Soviet Union mobilized French Communists to action against the occupying German army, and also incited the Germans to total war against the local Communist and Jewish populations. Hoping to curb Communist reaction to the invasion, the German and Vichy forces immediately undertook new repressive measures, arresting over six hundred people in the Paris region alone in the first week following the invasion.

Archival records reveal that it was on June 25, only three days after the invasion of the Soviet Union, and weeks before the appearance of any armed resistance attacks, that Vichy officials began to plan for special anti-Communist courts. On June 25, 

13 I aim to build on the works of Villeré, Barthélemy and Teyssier, who accurately described the French planning for the courts that preceded the Moser assassination. Villeré, 139-145; Barthélemy, 574-576.
14 Gildea, Marianne in Chains, 17.
15 Ibid. See also Paxton, Vichy France, 223.
17 The rupture of the Hitler-Stalin Pact did not result in any immediate increase in resistance activity in the month of June. Following the Comintern’s call to action in July, the first act of sabotage was the derailing of a train on July 18, followed by the first armed attack—the Moser assassination—on August 21.
1941, Jean-François Darlan—who at the time held unprecedented powers as Vice President of the Council of Ministers, and served at the head of the Navy, Interior, Information, Defense, and Foreign Ministries—summoned Henri Chavin, the secretary general of police, to his office at the Hotel du Parc to entrust him with an important matter. Darlan told Chavin that the military courts were backlogged and unable to deal with the new spate of railway sabotages that had erupted since the outbreak of war with the Soviet Union. Darlan asked Chavin to preside over the drafting of a new law against “communists and anarchists”, who were the “perpetrators of the sabotages”, which would increase the number of military tribunals, accelerate their procedure, and broaden the scope of sentencing to include the death penalty.\(^\text{18}\)

Chavin later claimed that he protested, telling Darlan that he was not qualified to draft such serious legislation.\(^\text{19}\) But Darlan insisted and issued Chavin written orders to prepare the new anti-Communist measures. These orders, a copy of which is preserved in the French National Archives, call for the “creation of an exceptional jurisdiction” with a “severe” increase in sentencing options, including the “death penalty.”\(^\text{20}\)

The following day, Chavin gathered the representatives of the government ministries for a meeting in his office, explaining Darlan’s order and recommending that a commission be established to draft the text. A commission was duly established, and records indicate that a meeting was held with the representatives of the various ministries on the morning of July 19, 1941.\(^\text{21}\) Vichy’s Justice Minister Joseph Barthélémy, a respected scholar of constitutional law, sent a representative to the meeting with instructions to oppose the creation of any exceptional jurisdiction.\(^\text{22}\) At the meeting, however, these officials were told that the

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\(^\text{18}\) Deposition of Henri Chavin, June 4, 1945, Archives Nationales (hereafter cited as AN) 3W 144.

\(^\text{19}\) Ibid.

\(^\text{20}\) Vice Présidence du Conseil to M. Chavin, June 25, 1941, AN 3W 144.

\(^\text{21}\) Note, Direction of Criminal Affairs, The Justice Ministry, AN 3W 144.

\(^\text{22}\) Depositions of Henry Corvisy and Georges Dayras, March 14, 1946, AN 3W 35.
commission would proceed under the orders of Admiral Darlan, regardless of the opposition of the Justice Minister. A preliminary text was then drafted by the commission, edited by Darlan, and transferred to the Justice Ministry for approval.\textsuperscript{23}

Barthélemy would later recall his dismay in learning that “essential principles of criminal procedure” were being violated by the government “outside of” and “against” his authority. He vigorously denied any involvement in the Special Section legislation, claiming that once the text had been drafted by the Interior Ministry “there was nothing left to do but execute it.”\textsuperscript{24} But there is archival evidence that he held a meeting in his cabinet on August 11, 1941, attended by the Justice Ministry’s secretary general Georges Dayras, its director of criminal affairs Henri Corvisy, and by the Minister of State, Henri Moisset, among others. A note from the Justice Ministry’s Direction of Criminal Affairs indicates that Barthélemy himself drafted several articles of the new law during the meeting.\textsuperscript{25} Barthélemy denied that the meeting had ever taken place, and it has been suggested that no trace of this meeting exists in the archives.\textsuperscript{26} However, in addition to the aforementioned note, an examination of the post-war purge trials reveals important testimony by two Justice Department officials—Dayras and Corvisy—who had personally attended the August 11 meeting.\textsuperscript{27} It is also important to highlight that these legislative meetings were initiated and attended by French government officials and jurists. Having attended both meetings, Dayras recalled that he never heard anyone say that the “law had been requested by the German authorities.”\textsuperscript{28}

The key issue under discussion during the August meeting was jurisdiction: specifically, which courts would be charged with applying the new anti-Communist legislation. The Justice De-

\textsuperscript{23} Deposition of Henri Chavin, June 4, 1945, AN 3W 144.
\textsuperscript{24} Interrogation of Barthélemy, February 13, 1945, AN 3W 144.
\textsuperscript{25} Note, Direction of Criminal Affairs, The Justice Ministry, n.d., AN 3W 144.
\textsuperscript{26} Arnaud Teyssier and Jean Barthélemy write that besides the above-mentioned anonymous note from the Direction of Criminal Affairs, “there exists no trace of this strange symposium.” (my translation) Jean Barthélemy and Arnaud Teyssier, eds., Ministre de la Justice Vichy 1941-1943: Mémoires Joseph Barthélemy (Paris: Editions Pygmalion/Gérard Watelet, 1989), 575.
\textsuperscript{27} Depositions of Corvisy and Dayras AN 3W 35.
\textsuperscript{28} Deposition of Dayras, AN 3W 35.
partment officials, from Barthélemy on down, all argued in favor of granting jurisdiction to military courts. Therefore, in drafting the first article of the new law, these jurists stipulated that the Special Sections would be attached to military tribunals and that jurisdiction would be “transferred” to civil appellate courts only in areas without military tribunals.29 This legislative framework becomes particularly noteworthy when one recalls that military tribunals were not functioning in over half the country at the time—and later in the entire country—due to the armistice agreement, which banned an active military in the occupied zone.30 One must ask why the drafters of the anti-Communist legislation were deliberately granting default jurisdiction to a military justice system that was not operative in the large occupied zone, most notably in Paris, the locus of the Communist resistance.

Justice Minister Barthélemy articulated the answer to this question in a letter of August 11, 1941, in which he wrote that the Special Sections had to be under military jurisdiction in order to conform to “a French tradition extending back a century and a half”.31 This tradition was the state’s recurrent use of exceptional jurisdictions, particularly military tribunals, to combat social and political unrest in modern France.

While many countries have resorted to ad-hoc emergency measures during national crises, writes Rossiter, the French have always legally regulated emergency military control over the government and the legal system.32 In fact, the “foremost emergency institution of modern times”—the state of siege—emerged in France after the Revolution as a way to transfer political and

legal power to the military during wartime.\textsuperscript{33} The state of siege was constitutionalized by the Second Republic in 1848, and took its modern form in the Law of August 9, 1849, as revised by the Law of April 3, 1878, which allowed the legislature to declare a state of siege in the case of “imminent peril”, giving military courts jurisdiction over matters relating to public security. \textsuperscript{34} Napoleon III made extensive use of the law, but eventually deemed military courts too restrictive to combat the massive rural insurrection against his coup d’état in 1851.\textsuperscript{35} He therefore created “mixed commission” courts—composed of prefects, prosecutors, and military generals—which heard over twenty-six thousand cases in eighty-two departments, deporting ten thousand people and subjecting another ten thousand to police surveillance.\textsuperscript{36} Military courts were again instituted in 1871 to punish the Communal uprising following the country’s humiliating defeat in the Franco-Prussian war. After killing seven thousand insurgents in a single bloody week in which Zola described Paris

\textsuperscript{33} Rossiter, 77. One of the first laws passed by the Constituent Assembly in 1791 was the provision for a “state of siege”—a military assumption of power—in military posts and fortifications ("places de guerre") in the event of an attack. A later law of August 27, 1797 allowed open cities to be included with the “places de guerre” in a state of siege. Loi no. 1791-07-10 du 10 juillet 1791 concernant la conservation et le classement des places de guerre et postes militaires, la police des fortifications et autres objets y relatifs; Max Radin, “Martial Law and the State of Siege,” California Law Review 30:6 (1942), 638; Rossiter, 81.

\textsuperscript{34} Loi du 9 août 1849 sur l’état de siège, art. 1, 8, Bulletin des Lois 186 (1849), 146; Rossiter, 81. The Law of April 3, 1878, which put tighter controls on the use of the state of siege, emerged after the Franco-Prussian War and in the aftermath of Macmahon’s failed power grab. The law stipulated that the state of siege could only be declared by a law, and only for a specified amount of time, after which it would automatically expire. Giorgio Agamben, State of Exception, trans. Kevin Attell (Chicago: University of Chicago Press, 2003, 2005), 12. Loi du 3 avril 1878 relative à l’état de siège, Bulletin des Lois 384 (1878): 338.


as a “vast cemetery”, the government arrested an additional thirty-six thousand people, trying thirteen thousand of them in twenty-six military courts, which deported over four thousand prisoners and sentenced six thousand others to terms of imprisonment and hard labor. The liberal Third Republic continued to rely heavily on military courts, particularly during the First World War when France was governed by a state of siege for five years, granting de facto military jurisdiction over the entire country. The republic declared another state of siege on September 1, 1939, which the Vichy regime simply extended when it assumed power, making military courts a natural choice for its political prosecutions. Thus, in establishing the theoretical primacy of military jurisdiction for its new anti-Communist courts, the Vichy regime was adhering to a long tradition of the use of military tribunals in modern France. This strategic reliance on precedent was expressed in a contemporaneous note from Vichy’s Direction of Criminal Affairs, which stated that the Special Sections would adhere to the “principle” of military jurisdiction in order to avoid any objection to their creation.

39 The state of siege ran from August 2, 1914—before hostilities broke out—to October 12, 1919. For five years, the entire country was thus under the “jurisdictional authority of the military courts”, which had unprecedented authority over thousands of offenses related to public order and security. Peter Judson Richards, Extraordinary Justice: Military Tribunals in Historical and International Context (New York: New York University Press, 2007), 76-77; Rossiter, 92.
The Third Republic largely avoided the use of exceptional civil jurisdictions in reaction against Napoleon’s notorious mixed commissions. Bancaud, Exception Ordinaire, 87.
40 Bancaud, Exception Ordinaire, 87.
41 Cited in Bancaud, Exception Ordinaire, 87.
The post-war Gaullist creed was that Vichy—if not an outright puppet regime—was at least a mere aberration in the progressively liberal and democratic history of modern France.\footnote{Gérard Noiriel, Les Origines Républicaines de Vichy (Paris: Hachette, 1999), 42. François Bédarida, “Vichy et la crise de la conscience française” in Vichy et les Français, eds. Jean-Pierre Azéma and François Bédarida (Paris: Librairie Arthème Fayard, 1992), 87. And the related concept that twentieth century European history was marked by the inevitable march of liberal progressivism and democracy was recently disputed by the historian Mark Mazower in his compelling book, Dark Continent: Europe’s Twentieth Century (New York: Alfred A. Knopf, 1999).} While the authoritarian regime certainly marked a decisive political rupture with the liberal Third Republic that preceded it, a socio-historical perspective of the “longue durée” allows us to recognize that regime changes do not instantly disrupt well-established socio-economic structures, political and legal institutions, or cultural identifications.\footnote{Noiriel, 43. For the classic appeal to prioritize long-term historical structures over event-oriented political history, see Fernand Braudel, “Histoire et Sciences Sociales: La Longue Durée,” Annales. Histoire, Sciences Sociales 13:4 (1958): 725-753.} Robert Paxton and Michael Marrus have shown that Vichy’s anti-Semitic policies, leading to the deportation of 75,000 of France’s Jews, were rooted in a home-grown anti-Semitism, and Gérard Noiriel has powerfully traced the origins of Vichy’s racist policies to exclusionary constructs of national identity developed during the Third Republic.\footnote{Marrus and Paxton, Vichy France and the Jews; Noiriel, Les Origines Républicaines de Vichy.} Alain Bancaud has further demonstrated that Vichy’s politicization of the legal system was extraordinary in its strength and scope, but ordinary insofar as it was simply building upon a model of state-controlled justice that dated back to the beginnings of the modern French state.\footnote{Bancaud, Exception Ordinaire, 15-16.} So too, the regime’s decision to rely on republican precedents to legitimate its new political courts serves to highlight that even the worst legal abuses of the regime must be seen within a broader historical context. Not only did French authorities develop the idea for special anti-Communist courts before the Moser assassination and the ensuing German demands, but in doing so, they were drawing upon a long history of the use of exceptional and political jurisdictions.
Evil Winds and a New Legal Order

While the Special Section legislation was being drafted in August 1941, resistance attacks were on the rise, definitively shattering the relative calm that had prevailed during the first year of the Occupation, which had lulled Parisians into a comforting sense of continuity, and soothed the German army into a sense of security that spared France from the atrocities that German forces had immediately inflicted on other occupied countries. In July, the Comintern had instructed the French Communist Party to take up armed revolt, and the Party responded, awakening from what the German authorities had described as “apathy and shock”, to launch a series of sabotages, beginning with the derailing of a train on July 17 at Épinay-sur-Seine. This surge of armed resistance attacks unleashed a severe counter-terror by the German authorities, who began shooting French hostages, and by the Vichy regime, which struggled to assert control over the increasing violence. Public opinion towards the Vichy re-

46 Richard Cobb has noted that life under German occupation initially felt like nothing had changed to many Parisians, as children started the school year on time, the same postmen delivered the same pre-war newspapers, and theaters and cinemas quickly reopened. Richard Cobb, French and Germans, Germans and French: A Personal Interpretation of France under Two Occupations, 1914-1918/1940-1944 (Hanover: Published for Brandeis University Press by University Press of New England, 1983), 149-151.


50 The shooting of French hostages—471 were killed between September 1941 and May 1942—put intense pressure on the Vichy regime to crack down on the “terrorists”. Jackson, France, 182; Paxton, Vichy France, 224.
gime plummeted, and by August, surveys carried out by the postal censorship showed, for the first time, “a noticeable fall in support for the policy of collaboration.”51 On August 12, Vichy’s head of state Philippe Pétain spoke to the nation of an “evil wind” sweeping through the country, and announced twelve new repressive measures, including the suspension of political parties, the doubling of police powers, and the requirement that all public officials, including magistrates, swear an oath of loyalty to him.52

Pétain’s famous “evil wind” radio address of August 12, 1941 has been recognized as “an admission that the National Revolution was not proving popular” and is often viewed as evidence of the increasing disillusionment pervading France.53 But Pétain’s speech can also be seen as marking a shift in the conception of law, both the sources of its authority and the extent of its power. After attributing France’s troubles to its slowness in imposing the New Order that he had promised at the armistice, Pétain then emphasized the legal foundations of his new authoritarian order.54 He declared that authority “no longer comes from below”, but would instead reside solely with him or with those to whom he delegated power. He added that it was no longer enough to “legislate”, but that it was time to simply “govern.”55 Breaking the link between democratic representation and indi-


52 “Le Maréchal Pétain a pris douze décisions,” Paris-Soir, August 14, 1941; Acte constitutionnel no. 9 du 14 août 1941 sur le serment dans la magistrature, Journal Officiel de l’État française (August 16, 1941), 3438.


54 See “A New Order for France: The Vichy Substitute for Democracy; Old Watchwords Abolished,” The_Times, August 14, 1941.

55 “Le Maréchal Pétain a pris douze décisions,” Paris-Soir, August 14, 1941; “Gouverner!” La Dépêche, August 14, 1941.
individual freedom, Pétain claimed that although France’s parliamentary democracy was dead, its “instinct of liberty” was still alive and well.\textsuperscript{56}

The implementation of Pétain’s anti-parliamentarian vision of the state, with a strengthened and centralized executive power, was already well underway by the summer of 1941. The French Parliament had already ceded authority the previous year to Pétain, who immediately endowed himself with full executive and legislative powers.\textsuperscript{57} Following the dissolution of the national legislature, the Vichy regime had proceeded to abolish democratic institutions at the local level, replacing elected departmental councils with administrative councils in October, 1940.\textsuperscript{58} But, one year into the Occupation, socio-political realities were pushing the regime into an increasingly repressive stance, as evidenced by Pétain’s speech, in which he emphasized the authoritarian nature of state power and announced the enactment of new police powers.\textsuperscript{59}

\textsuperscript{56} Reporting on Pétain’s address, the London \textit{Times} observed that “liberty is now interpreted as the concrete, legitimate rights inherent in membership of a community or corporation, while abstract liberty, as embodied in the ‘rights of man’, is declared to be vain and illusory.” “A New Order for France: The Vichy Substitute for Democracy; Old Watchwords Abolished,” \textit{The Times}, August 14, 1941.

\textsuperscript{57} Loi constitutionnelle du 10 juillet 1940, \textit{Journal officiel de la République française} (July 11 1940): 4513.


\textsuperscript{59} Paxton observed that the rise of resistance terrorism in August, 1941 led to a shift in Vichy’s priorities from the National Revolution to the imposition of order. And Peschanski writes generally of the summer of 1941 as a critical turning point for the Vichy regime. Paxton, \textit{Vichy France}, 224; Denis Peschanski, “Exclusion, persécution, répression” in \textit{Vichy et les Français}, eds. Jean-Pierre Azéma and François Bédarida (Paris: Librairie Arthème Fayard, 1992), 216.
This evolution was further accelerated by Pierre Pucheu’s ascen-
dion to the head of the Interior Ministry on August 11, 1940. A
militant anti-Communist, Pucheu immediately informed the
German authorities of the preparation and imminent promulga-
tion of a new law that would severely punish all Communist ac-
tivity, which was rapidly intensifying. On August 13, 1941,
German troops opened fire on a group of anti-German protesters
near the metro Strasbourg Saint-Denis, arresting six people, in-
cluding two young resisters, Henri Gautherot and Samuel
Tzyelman. Two days later, as the Communist newspaper
l’Humanité published an official call to armed struggle, the
German general Otto von Stülpnagel, head of the German mili-
tary administration, issued a warning, posted around Paris,
banning all Communist activity in France, and mandating the
death penalty, to be pronounced by German court-martials, for
any infraction of the law. General Stülpnagel then met with
Vichy’s Secretary of State, Fernand de Brinon, on the morning of
August 19, 1941, to emphasize that the Germans expected full
coopera-trion from the French authorities in the crackdown on the
increasing Communist attacks.

60 Paxton, 226; Villeré, 144.
61 Ouzoulias, 100-101; Guyénot Krivopissko, La Vie à en mourir: Lettres de fusillés (Paris: Tallandier, 2003), 39-41; Jean-Marc Berlière and Franck Liaigre, Le sang des communistes: les batai-
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Albert: les otages de Nantes, Châteaubriant, et Bordeaux (Paris: Le Temps des Cerises, 1997), 62; Courtois, 221. For a personal
62 “Francs-Tireurs de 1941, debout pour chasser l’ennemi du sol
sacré de la Patrie. C’est le moment car nos frères de l’Armée
Rouge retiennent en URSS l’essentiel des forces hitlériennes.
Aux armes citoyens.’ L’Humanité clandestine 1939-1944, ed.
Jacques Duclos (Paris: Éditions Sociales, 1975), 462 cited in
Regina M. Delacor, Attentate und Repressionen, (Stuttgart: Jan
Thorbecke Verlag, 1999), 19. See also, Renée Poznanski, “On
Jews, Frenchmen, Communists, and the Second World War”,
63 Proclamation du Général von Stülpnagel, August 15, 1941, AN 3W 144. “L’Action Anticommmuniste en zone occupée,” La Dé-
pêche, August 16, 1941. See also Barthélemy, 574-575.
64 Fernand de Brinon to Pétain. August 19, 1941, AN 3W 144.
That same day, the members of the Council of State, France’s highest judicial body and supreme court for administrative justice, swore an oath of loyalty to Pétain, as prescribed by the constitutional decree of August 14, 1941. Pétain, along with Justice Minister Barthélemy, attended the ceremony, which marked the first time that a head of state had attended a general assembly of the Council of State since Napoléon. Barthélemy addressed the magistrates during the ceremony, emphasizing the importance of the rule of law, which Pétain then proceeded to define as a powerful regulator of order. Liberty would be achieved not through the protection of individual freedoms, but rather through the protection of the nation’s collective interests. Pétain firmly stated that the “primary need” of a people is order and that there could be no liberty without order. Pétain’s definition of a truly free people was one where “everyone is subject to the law and where the law is more powerful than anyone.” Following his speech, all of the magistrates, except one, swore their loyalty to Pétain and promised to dutifully fulfill their functions.

That evening, Jean-Pierre Ingrand, Vichy’s representative in the occupied zone, sent the German liaison officer Major Walter Beumelberg, the draft of the new anti-Communist legislation creating the Special Sections, who passed it along to General Stülpnagel the following day, August 20. Beumelberg commented on the new anti-Communist “special courts” in a memo dated August 22, 1941, which is preserved in the German military archives in Freiburg. In the memo, Beumelberg observed that the new French law was a remarkable step not only in Vichy’s

65 Acte constitutionnel no. 9 du 14 août 1941 sur le serment dans la magistrature, Journal Officiel de l’État français (August 16, 1941): 3438.
66 Barthélemy, 576.
69 Aktennotiz, Ausnahmegesetz gegen die Kommunisten, BA-MA, RW 35/339, Bl. 33-34, reproduced in Delacor, 94-95.
fight against Communism, but also in the “entirety of French legal thought.” He marveled over Pucheu’s willingness to “throw overboard” legal concepts that had previously been “sacred” to the French.\textsuperscript{70} Beumelberg’s report provides additional evidence that Vichy officials had independently drafted the legislation creating the Special Section courts and that the legislation was drawn up before the Moser assassination and the ensuing anti-Communist crackdown.\textsuperscript{71} The German report also highlights the revolutionary nature of the new courts, which marked a definitively break with French legal and constitutional norms.

\textit{The Assassination}

On the night of August 19, Samuel Tyszelman and Henri Gautherot, arrested at the anti-German rally the previous week, were tied to a tree in a forest south of Paris and shot.\textsuperscript{72} They had been convicted and sentenced to death by a German court-martial simply for having “participated in a Communist rally against the German occupation troops.”\textsuperscript{73} The shooting of Gautherot and Tyszelman galvanized the fledgling Communist resistance in Paris, which had begun to organize out of the Party’s immigrant organization, Main d’Oeuvre Immigré, and its youth organization, the Jeunesses Communistes, particularly within the working class districts in the eastern half of the city.\textsuperscript{74} Jeunesses quickly printed a pamphlet stating that in accordance with the decrees of “popular justice”, twenty German officers would be killed that week to avenge the deaths of their comrades.\textsuperscript{75} And the clandestine Communist radio, Radio-Liberté, ominously

\textsuperscript{70} Ibid.
\textsuperscript{71} See Villeré, pièce no. 5.
\textsuperscript{72} They were shot in the Vallée-aux-Loups forest in Châteney-Malabry. Ouzoulia, 100; Krivopissko, 40.
\textsuperscript{75} Oury, 64.
warned that each time “one of ours is killed, one of theirs will fall.” On August 20, after several days of debate, hesitation, and failed attacks, Pierre Georges, a militant Communist better known as the resistance hero Colonel Fabien, declared that he would “show how it’s done”. The next morning, in the underground Paris metro station Barbès-Rochechouart, Fabien would shoot a young German naval cadet, officially igniting the armed Resistance movement and emboldening its supporters by demonstrating the “psychological impact” of the public killing of just one soldier on the Vichy and German authorities, as well as on the French people.

While Fabien and his accomplices escaped, the German and Vichy authorities immediately undertook aggressive responses to the attack. By mid-morning, the French police had already begun to round up Communists and Jews. That evening, a special meeting of Vichy’s Council of Ministers met to discuss the government’s position on the enactment of harsh reprisals for the assassination. The following day, Beumelberg met with de Brignon and Ingrand to coordinate responses to the attack, telling them that the German Kriegsmarine demanded the execution of six hostages. Ingrand then gave Beumelberg a memo from the Vichy government, stating that the regime would do everything

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76 Barthélemy, 574.
77 Oury, 64. Pierre Durand, *Qui a tué Fabien* (Paris: Éditions Messidor/Temps Actuels, 1985), 109. Fabien would continue to lead the armed resistance movement, escaping imprisonment, until he was killed in Alsace on December 27, 1944.
79 Villeré, 176.
80 Villeré, 194.
in its power to capture the Communist perpetrators. The French memo announced the enactment of anti-Communist measures, including the creation of the special court as soon as the German authorities approved the draft legislation they had received on August 20. The memo also promised the immediate appearance of six Communist leaders before the new court.

According to Beumelberg, who summarized the meeting in another report dated August 22, Ingrand verbally specified that the anti-Communist law would have retroactive effect and asked that the Germans consent to this retroactivity. He also noted that it was Ingrand and de Brinon who suggested that the executions take place by guillotine in a public place in Paris. Beumelberg’s memo thus indicates that two of the most revolutionary aspects of the Special Section—its retroactivity and the use of the guillotine—were initiated by French authorities. Beumelberg concluded his memo by again emphasizing that the Special Section courts would violate legal and constitutional principles dating to the French Revolution. In particular, the willingness of the French authorities to violate the “sacred” legality principle of nulla poena sine lege by bestowing retroactive powers on the anti-Communist legislation clearly signaled to the Germans that the Vichy regime had chosen a new direction in its conception and construction of the French state.

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81 Dossier Moser, Bundesarchiv DZ 75353, reproduced in Villeré, pièce no. 2; Villeré, 196.
82 Ibid.
83 Dossier Moser, Bundesarchiv DZ 75353, reproduced in Villeré, pièce no. 4. BA-MA, RW 35/539, also reproduced in Delacor, 95-97.
84 Ibid.
85 Ibid. The French officials, however, depicted the meeting in a different light. Ingrand, for example, recalled being told that the Germans would take one hundred Frenchmen as hostages, fifty of whom would be shot, unless the Vichy authorities took immediate measures, including the execution of twelve people. When Ingrand protested, he was met with a “violent diatribe” by the German officer. Deposition of Ingrand, March 14, 1946, AN 3W 35.
In the meantime, the hostage crisis that would terrorize Paris during the summer and fall of 1941 had officially begun. The Germans issued an official warning on August 23, which was posted throughout Paris, and stated that all Frenchmen arrested or already in custody would be considered hostages and would be shot to death in the case of any future attacks. Over the next two months, the Germans took over six hundred French hostages, one hundred of whom were shot, in retaliation for so-called “terrorist” attacks on German troops. Pétain was under enormous pressure to end the hostage crisis and the resistance attacks that were provoking it.

The Law of August 14, 1941

On the evening of August 22, the commander of the German military forces in France notified Fernand de Brinon that the Special Section legislation was officially approved and asked that the sentencing of the “six people” to appear before the “extraordinary tribunal” be executed no later than August 28, one week after the initial attack. Showing more restraint than the Vichy authorities, the Germans added that the executions should not take place in a public place. The next day, Ingrand held a meeting to finalize the approved legislation, which was attended by the Prefect of Police, Admiral Bard, as well as by the highest-ranking available members of the Justice Ministry and French magistrature. According to those present at the meeting, Ingrand stated that the Germans had decided to shoot fifty hostages in retaliation for the Moser assassination unless a French

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86 In response to attacks, the Germans would gather hostages, and shoot them as various deadlines passed without the capture of the perpetrators. Paxton, *Vichy France*, 224.
87 AVIS, L’Oeuvre, August 23, 1941. The writer Jean Galtier-Boissière wrote in his journal on August 24 that the walls of Paris were papered with this German warning. Jean Galtier-Boissière, *Mon Journal pendant l’Occupation* (Garas: La Jeune Parque, 1945), 70-71.
88 Pétain even suggested offering himself as a hostage at the Demarcation Line on October 25, 1941. Paxton, *Vichy France*, 224.
89 Fernand de Brinon, August 22, 1941, AN 3W 144.
court sentenced six Communists to death within the week.\textsuperscript{91} Ingrand showed the magistrates the legislation and asked them to draft an additional clause that would make the law retroactively applicable to acts that took place before its promulgation. The jurists, all trained and appointed under the liberal Third Republic, were initially reluctant to draft a clause that would violate the well-established legality principle, which had been enshrined in the Declaration of Rights of Man of 1789 and was codified as French law at the beginning of the nineteenth century.\textsuperscript{92} But Maurice Gabolde—Vichy’s future Justice Minister—eventually agreed to write up the text, which became the infamous tenth article of the new law.\textsuperscript{93} The article stated that the Special Sections would have jurisdiction over acts even if they were committed “before the promulgation of the present law.”\textsuperscript{94} Ingrand transmitted the full text by phone to Vichy, and the law was published that same day, August 23, in the Journal Officiel, the government’s official statutory compilation. Interestingly, the law was antedated to August 14, in order to legitimate arrests that had already been made in connection with the Moser assassination.\textsuperscript{95}

The Law of August 14, 1941 established Special Sections to be attached to military tribunals in the occupied zone, and to appellate courts in the unoccupied zone, including Paris, where the French military had been outlawed in the armistice agreement.\textsuperscript{96} It should not be taken for granted that the law was published in

\textsuperscript{91} Deposition of Rousseau, January 17, 1945, Note, Werquin, November 6, 1944, Note, Dupuich, n.d., Deposition of Ingrand, June 2, 1945, AN 3W 144.

\textsuperscript{92} René Garraud, \textit{Traité théorique et pratique du droit pénal français} (Paris: L. Larose et Forcel, 1888), 178-180. The second article of the Civil Code of 1803 stated that laws cannot have “retroactive effect.”


\textsuperscript{93} Note, Werquin, November 6, 1944, AN 3W 144.


\textsuperscript{95} Deposition of Ingrand, June 2, 1945, AN 3W 144; Weisberg, \textit{Vichy Law}, 376.

\textsuperscript{96} Loi du 14 août 1941, art. 1, \textit{Journal officiel} (August 23, 1941): 3550.
the *Journal Officiel*, or even that a law was drafted at all. The Vichy regime could have arrested, interned, or shot alleged Communists without going through the trouble of having magistrates draft a special law creating exceptional courts. This law, thus, is a paradigmatic attempt to mask injustice through the very apparatus of justice. The law itself embodied the ultimate paradox of the Special Section courts: their unusual combination of legal protections with extraordinary breaches of those protections. The law broadly punished any acts committed with Communist or anarchist “intent” (article 1), prescribed the finality and immediate execution of all judgments without possibility for appeals (article 7), mandated mandatory minimum sentencing guidelines (article 8), prescribed the possibility of the death penalty for political acts (article 8), stripped other courts of their jurisdiction over ongoing cases (article 10), and violated the principle of *nulla poena sine lege* by criminalizing acts that took place before the official promulgation of the law (article 10). But the Special Section legislation also included certain important protections, including that standard criminal procedure be observed, that professional judges preside over the courts in the Occupied Zone (article 2), and that defendants be provided with court-appointed defense lawyers (article 3). Finally, in a further attempt to legitimate the court, defendants before the court would not be charged with violation of a new law, but rather with violation of the pre-Vichy decree of September 26, 1939 banning the existence of the Communist party.

The provisions of the new anti-Communist legislation were shared with the press the day after the law’s official publication. Pucheu told the gathered journalists that the Vichy regime was fully prepared to crack down on “terrorism” and to “ruthlessly crush any attack on its authority.” After stating that the Spe-

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98 Ibid. The head of the Paris Bar wrote that while court-appointed defense work was typically given to novice lawyers, many experienced lawyers volunteered their services to defendants in Vichy’s exceptional jurisdictions. Jacques Charpentier, *Au Service de la Liberté* (Paris: Librairie Arthème Fayard, 1949), 169-170.


100 “M. Pucheu affirme sa volonté de briser les agitations communistes,” *L’Œuvre*, August 24-25, 1941.
cial Section courts would have the authority to sentence defendants to death, Pucheu declared, “More than ever, in the days to come, public welfare must be the supreme law.” Quoting Pétain’s address to the magistrates of the Council of State, Pucheu added that maintaining public order was the “necessary condition” to achieving justice in a new classless French society. Pucheu’s definition of justice did not draw from enlightenment ideals of equality and legality, but was rather about a kind of social justice constructed out of an ordered, corporative collective.

Conclusion

As the first cases were being prepared for the Special Section, a deep sense of disorder and unrest maintained a grip on the Parisian population, fueled by the Vichy regime’s attempt to portray its political opponents as lawless terrorists. While the state had begun to blur the traditional distinction between political and common law crimes in its repression of the Commune in 1871, the Vichy regime erased the distinction altogether, characterizing political offenses as the most serious of felonies subject to the harshest possible sentences.

In a press conference the day before the court was set to open, de Brinon announced that the government would respond “mercilessly” to the recent attacks on the railway system, which résistants undertook to disrupt German transport and communication lines, but which de Brinon said were putting the lives of thousands of innocent workers at risk. The collaborationist newspapers, which applauded the regime’s ruthless political repression, were filled with demands for “justice” and calls for an end to the “terrorism” that was plaguing France. An article appearing on the front page of Le Journal that day declared that only by abandoning mercy would the Vichy regime achieve the

101 Ibid.
103 “Une déclaration de M. de Brinon: En quinze jours cinq actes de sabotage découverts sur la voie ferrée; M. Pucheu a prescrit les répressions nécessaires,” Paris-Soir, August 27, 1941.
kind of “justice” that was welcomed by the “true” French. It was thus amidst these competing claims to represent the nation and embody justice—by both the fledgling Resistance movement and by the Vichy regime and its supporters—that the first defendants would appear before the Special Section of the Paris Court of Appeals.

Justice Minister Joseph Barthélemy sent out a memo on August 24 informing chief magistrates and prosecutors throughout the country that the Vichy regime expected full collaboration from the judiciary on its new anti-Communist legislation. And the judiciary certainly complied. Eight well-respected French magistrates agreed to serve on the first Special Section, which immediately sentenced three people to death for non-violent political activity. These judges would be forever plagued by their actions, and the Paris Special Section would never again sentence anyone to death. But they, and their colleagues, continued to serve on the court, allowing it to remain fully operational throughout the war, hearing over six hundred cases that involved more than sixteen hundred people. In his masterful study of Vichy law, Richard Weisberg writes that despite the courts’ “startling” procedural and substantive violations, the Special Sections were “turned into an almost everyday phenomenon” as they were “integrated into French legal discourse, subject to polite debate as to their jurisdiction, their procedures, and

104 “Merci, Monsieur le Maréchal!” Le Journal, August 26, 1941. For more on the French right’s essentialist vision of a true, authentic France, which dominated cultural discourse from 1900-1945, see Herman Lebovics, True France: the Wars over Cultural Identity, 1940-1945 (Ithaca: Cornell University Press, 1992).
106 André Brechet, Abraham Trzebrucki, and Émile Bastard were executed by guillotine in the courtyard of the Santé prison at dawn on August 28, 1941.
107 Cour d’appel de Paris, AN BB 18 7055. As the tides of the war turned, however, magistrates became increasingly reluctant to serve on the court and by the fall of 1943, all of the original magistrates of the Paris Special Section had requested to be removed and were transferred to other judicial positions. AN 19770067; Bancaud, 433-434.
the substance of their work.”

Indeed, Special Section courts were established throughout the country to combat the growing Communist resistance. In total, these Special Sections judged 8,398 political defendants, sentencing forty-two to death, and over five thousand others to harsh terms of prison and forced labor. When France was liberated in the summer of 1944, one of the first acts of the provisional government was an ordinance re-establishing “republican legality”, which nullified all legislation passed by the Vichy regime. The Special Section courts were immediately shut down and their files locked away, as the country struggled to reconcile its recent collaborationist past with its liberal republican identity.

The Special Sections provide a frightening example of the injustices that can be committed using the very tools of justice. Just as it was the Parliament of the Third Republic that was responsible for legislating itself out of existence, it was France’s legal community which was primarily responsible for the establishment and enactment of the injustices that violated its own norms and ideals. The legal scholar Robert Cover has observed that all legal acts are steeped in violence, that “judges deal pain and death.”

The case of the Special Sections provide a paradigmatic example of what happens when the structures and principles of justice are ruptured, unleashing the violence inher-

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108 Weisberg, 376-378.
109 Bancaud, Exception Ordinaire, 326.
ent in them. Perhaps through the study of such cases, we can acknowledge the fragility of the apparatus of justice, which we must continuously seek to strengthen and safeguard.

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There is apparently no conceivable event in human affairs that could be so cataclysmic, so destructive to life and society, that would not leave some legal questions that need to be settled.

Take, for instance, the Rapture.

The Rapture is an event that some Christians believe will cause a certain chosen number of them to ascend to heaven, leaving behind the sinners and non-believers. At some point after that (just how long is a matter of theological debate) the second coming of Jesus will occur which will result in the end of the world. In the interim period (commonly known as the “end times” or “the Tribulation”) the people left behind will have to deal with earthquakes, famine, pestilence, war, disease, and lots of unclaimed property.

When Harold Camping predicted that the Rapture would come in May 2011, I was reminded of an exchange of letters we have in our collection of Louis D. Brandeis letters here at the University of Louisville.

As a native of Louisville, Supreme Court justice Brandeis took an interest in the University of Louisville and particularly its law school. Wary of Harvard’s growing size, Brandeis envisioned a day when each state would have its own Harvard. Determined to make his idea a reality, Brandeis devoted time, energy and money toward making the University of Louisville a premiere institution of learning. Being a major advocate of research, Brandeis was particularly interested in bulking up the collection of the law school’s library. In addition to acquiring subscriptions to titles like the U.S. Reports and the Federal Reporter, he also donated hundreds of volumes from his personal library, as well as ar-
ranging to have copies of all of the briefs filed in the Supreme Court sent to the library. But perhaps most importantly, he had most of his papers sent to the library.

The collection, which comprises over 250,000 items, covers every aspect of Brandeis’ public life, with the exception of the papers relating to the cases he heard on the court. (Somehow Felix Frankfurter, who apparently did not share Brandeis’ enthusiasm for the University of Louisville, got those papers diverted to Harvard.) Approximately one sixth of the collection is devoted to what was Brandeis’ biggest public service passion: Zionism. And it was Zionism that led to this exchange of letters.

Zionism was a movement dedicated to the idea of providing a homeland for the Jews. This movement, of course, culminated in the formation of Israel. When Brandeis became involved in the movement in 1913 that outcome was far from certain and Zionism was practically non-existent in America. Brandeis’ first task in assuming leadership of the American Zionist movement was raising money, and lots of it, for the cause. Naturally most of the money came from Jews, but there were Christians who were interested in the cause as well, including one William E. Blackstone.

Blackstone is now largely forgotten, but in the late 19th and early 20th centuries he was one of the leading evangelicals in America. Appalled by the pogroms occurring in Europe, he took a special interest in the Jews. He upon the idea of creating a homeland for the Jews in 1890, a good four or five years before the idea was articulated by Theodor Herzl, the man generally credited with being the founder of Zionism. Once Zionism began gaining in popularity in America due to Brandeis’ leadership, Blackstone’s interest in the movement increased. At one time he even sent Brandeis a check for five thousand dollars—a considerable sum in those days.

But Blackstone’s interest in the Jews was not relegated solely to their physical well being. An important requisite for the second coming is the restoration of Israel for the Jews. And, as the letter to Brandeis indicates, Blackstone was convinced that the momentum achieved by the Zionist movement meant that the Rapture was close at hand. And that meant it was time for Blackstone to wrap up his worldly affairs.
Blackstone was the trustee of the Milton Stewart Evangelistic Funds Foundation, which was created to (among other causes) ease the suffering of the Jews. Even though the period between the Rapture and the second coming would presumably be a short one, Blackstone clearly did not see that as an excuse for the Foundation to discontinue its work. And presumably the Jews would be of more need of comfort during the tribulation than before. But who would distribute the Foundation’s money, if its entire board had ascended to heaven? It would have to be someone of high moral integrity but yet someone still stuck on Earth. Someone who was closely connected to the Jews and Palestine. Someone with a legal background who could deal with all the legal niceties of spending money belonging to people who had disappeared but were perhaps not yet legally dead.

Given their association, it was probably inevitable that Blackstone turned to Brandeis:

Mar. 19, 1917
My dear Mr. Brandeis:

Your night letter of the 18th was received this morning and I thank you for the privilege of writing you in this confidential manner.

Referring to my letter of January 29th, I would emphasize again my conviction that the mightiest proof of the truth and reliability of Scripture prophecy is immediately impending, and that is in the personal return to the earth of Jesus, according to His promise in John 14:3.

The whole foundation of the New Testament prophecies falls to the ground if He does not literally fulfill this great promise. I believe He will. And after years of patient study and faithful service, I believe I have through the teaching of the Holy Spirit, a true conviction that His coming is right at hand, and may occur within the next few months. If so, professing Christians who are ready, are caught away, it must have a convincing effect, at least in the minds of many conscientious believers in the Word of God, who may not be in the true attitude of mind and heart to participate in the glorious Rap-
ture of being caught up to meet Him in the air, as described in 1 Thess. 4:13-18.

May I ask you, dear Mr. Brandeis, that if such an event shall occur, will it not be convincing to you that I am holding a right understanding of Scripture prophecy?

Now, what I wish to ask is, if the Rapture does come, and you are not among those who participate in it, can there be any arrangement made with you, by which one’s earthly substance can be assured to be used for the benefit of those who may be by the Rapture, convinced, and who will thereby be led to hold to believe the Word, and work for Israel’s welfare in the awful troublous times which are to follow?

There are apparently no human laws which provide for any such event as this. If I understand correctly, absence for seven years constitutes a legal presumption of a person’s death, but that is altogether too tardy to have the desired effect concerning the earthly affairs of those who will participate in the Rapture. Can you suggest any method by which one may provide for the legal disposition of property under these circumstances?

I say in the strictest confidence that in God’s providence, during the past year, several million dollars of marketable stock have been put in my hands for evangelistic work. I have been able to use only a few hundred thousand dollars thus far.

Both Mr. Stewart and I will be glad of any suggestion which you can make as to how this could be put into your hands in case the Rapture does occur. Please write me whether you will be willing to consider some such arrangement; make suggestions so that I may write you more fully by immediate mail.

Assuring you that this is prompted by an intense and overwhelming love for Israel, God’s chosen people, who “though they have lain among the
sheepcotes, are yet to be as the wings of a dove, covered with silver and her feathers of yellow gold,"

Psalms 68:14, I am

Very sincerely yours,  
William E. Blackstone

Brandeis’ response was short and to the point:

March 26, 1917
My Dear Dr. Blackstone:

I appreciate the high trust suggested in yours of the 19th, but my office of Justice of the Supreme Court prevents my assuming it or advising in relation to it. The trust might conceivably become a subject of litigation, and questions concerning it be submitted to our Court for decision. This precludes my giving the subject consideration.

With great regard.  
Most cordially,  
LDB

Brandeis’ position was a delicate one. No one wants to insult an important donor by ignoring their letter or by telling them they are crazy. By claiming a potential conflict of interest, Brandeis could pretend to take the situation seriously enough to plausibly sidestep the issue. (Although with the Four Horsemen of the Apocalypse and the Anti-Christ running around, and the armies of Gog and Magog fighting it out, it is hard to imagine the Supreme Court getting any business done at all. But I guess Brandeis would be a better judge of that than I.)

The collection does not have a copy of the letter that was actually sent to Blackstone. (That is presumably with the collection of Blackstone’s papers at Wheaton College.) What we have instead is the first draft. You can tell from all the crossed out words the care Brandeis took not to offend Blackstone. Brandeis may not have agreed with Blackstone’s ideas, but he certainly did not object to his money.
As far as the Brandeis collection goes, this is a fairly insignificant example. But it is indicative of the many trivial, and sometimes out and out crazy, letters that a public figure like Brandeis had to contend with. Our collection is filled with them and when I stumble on one of them, I cannot help but wonder what was going on in the head of the writer. Like the guy who sent Brandeis a picture of Mary Pickford dressed as a drum majorette—but that is another story.

Peter Scott Campbell is curator of the Louis D. Brandeis and John Marshall Harlan collections at the University of Louisville Law Library, and is the writer of the Brandeis and Harlan Watch blog (http://brandeiswatch.wordpress.com/).

This interview was originally published in the Spring/Summer 2011 issue of LH&RB.
March 26, 17

My dear Mr. Blackstone:

I appreciate the high mark suggested in your dig., but my office of Judge in the U.S. Supreme Court has led me to feel uneasiness in undertaking the relative to the question arising from the such a trial might conceivably involve. Questions concerning the issue of litigation; and of another's

With great regard,

Mortimer

1793
The Pennsylvania Law Record (1879-1880)

Joel Fishman, Ph.D.

The Pennsylvania Law Record is another short-lived legal periodical/newspaper published in Philadelphia for slightly over a year between June 3, 1879 and June 29, 1880.

Volume one was published weekly from June 3 to November 25, 1879; volume two from December 2, 1879 to June 1, 1880; and volume three from issue no. 1 (June 8, 1880) to issue no. 4 (June 29, 1880). Each issue contained eight pages published in quarto size.

The newspaper was issued every Tuesday by the Pennsylvania Law Record Company with offices at the Corner of Fourth and Walnut Streets (Commercial Bank Building). In issue five (July 1, 1879), the editor lists the location at 418 Walnut Street, followed by 21 North Seventh Street (September 30, 1879), and then 19 South Ninth Street (March 30, 1880).

The newspaper was $2.00 in advance per year, $2.50 if not paid in advance. The editor removed the advance payment on October 7, 1879 and with volume two, issue 15 (March 16, 1880), the cost of subscription rose to $3.00 per year. Beginning with volume 2, issue 5 (January 6, 1880), under the masthead title was the phrase “The Only Complete and Current Transfer Record Published in Philadelphia.”

The editor was William Allen Mitchener, Esq. I have not been able to find anything about him. He is not listed in Twentieth Century Bench and Bar (1903), a biographical directory of judges and lawyers in nineteenth-century Pennsylvania, nor in Martin’s Bench and Bar that lists all lawyers admitted to the bar in Philadelphia from colonial period down to the 1880s, nor Biography.com. Neither Westlaw nor Lexis identifies him at all in an AllCases database; nor does he appear in the Law Journal Li-

1 1 Id. 148
2 2 Id. 116.
3 2 Id. 33.
brary database of HeinOnline. Worldcat shows Mitchener coauthored one book, *The National Law Record*... in 1875.\(^4\)

In his “salutatory” Mitchener stated that “We today present to the legal profession of Pennsylvania, to the business community, and to the public generally, the first issue of the “Pennsylvania Law Record.” It offered full-text of the Pennsylvania Supreme Court opinions, abstracts of U. S. Supreme Court, circuit courts, and occasionally English cases, “and interesting legal notes and news.” It will also contain “a complete record of the proceedings of the various Courts of Philadelphia, including Judgments rendered, Letters Testamentary and of Administration granted. Mechanics liens filed, etc. together with all transfers of property, including Deeds, Mortgages, Assignments, Leases, Releases, etc.’’\(^5\)

On the first page of the weekly issue, there was a table of contents for the issue. The contents included Supreme Court Decisions; Recent Important Decisions; Current Topics; Building Permits; Wills; Letters of Administration; Mechanic’s Liens; Transfer Record; Mortgages; and Judgments.

On page four of each issue was the publisher’s masthead. Infrequently, he provided editorial commentary. Many issues usually began with a report of at least one Pennsylvania Supreme Court case, though later issues have abstracts of Supreme Court decisions (up to six on a page), or a minority of issues starting with Transfers.

There are more than fifty full-text cases reported from the Pennsylvania Supreme Court as well as abstracts of cases. In some instances, there is the phrase “Reported expressly for the Penn-


\(^5\) 1 Pa. L. Rec. 4 (June 3, 1879).
sylvania Law Record” above the title of the case. It does not refer to only being reported in the newspaper/periodical. There are a number of per curiam cases reported. These opinions were usually published in the Legal Intelligencer and reprinted in the Weekly Notes of Cases (W.N.C.). The former was the weekly Philadelphia newspaper that reported full-text opinions at that time that were later reprinted in W.N.C. Such opinions published in the Weekly Notes might appear only in that publication and not the official Pennsylvania State Reports or the Miscellaneous State Reports.

Pennsylvania cases also appeared in the two additional categories of Recent Important Decisions and Current Topics. Recent Important Decisions provided two to five cases summarized usually in a couple of paragraphs. These cases come from courts including United States Supreme Court, U. S. Circuit and District Courts, and many of the states supreme court, e.g., Connecticut, Kansas, Kentucky, Maine, Missouri, Massachusetts, Nebraska, Nevada, New Jersey, New York, Ohio, Rhode Island, Tennessee, Texas, Virginia, and Wisconsin. Current Topics included summaries of cases by the editor from the similar courts. In addition, cases also were included from England usually reported from the Law Times. It is interesting to note that one case, Redman v. Hartford Fire Insurance Co., 1 N.W. 257 (Wis. 1879) is one of the first reports of the West’s National Reporter System. One Queen’s Bench case, Taylor v. Goodwin, interestingly approved the word “bicycle” within the definition of “any sort of carriage,” was wide enough to include a bicycle, although that machine had not been invented at the time that the act [5 and 6 Wm. 4, C.50] was passed.

Besides the court cases, there were several articles or short editorials found in the newspaper. The longest article was “The Law of Protest,” dealing with notes or bills on payment.

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6 North Pa. Railroad Co. v. Kirk, 1 Id. 1 (June 3, 1879).
7 The Miscellaneous State Reports were five sets of court reports that picked up cases not reported in the official reports: Grant’s Reports, Walker’s Reports, Pennypacker’s Reports, Sadler’s Reports, and Monaghan’s Reports.
8 1 Id. 51 (July 15, 1879).
9 40 L. T. R. N.S. 458, 1 Id. 91 (August 19, 1879).
10 1 Id. 161-63, 170-71, 177-78 (Oct. 21-Nov. 4, 1879).
Trials,“¹¹ Mitchener complained about the jury room where a couple of jurors could influence the others; a unanimous vote was “almost an anomaly,” jurors should vote individually without leaving the jury box, and a unanimous vote never expected. In another sidebar, the word “intent” has to be shown to be effectual in law cases.¹² “What a Deed Includes”¹³ dealt with the contents of a deed of a farm and everything on it. Another editorial, “The Grasp of the Federal Judiciary,” concerned the role of the courts in deciding the right of one state to sue another state over the defaulting interest on bonds. This United States Supreme Court case was not settled for another three years.¹⁴

On November 25, 1879, the editor began to place fingers with a little note next to it, similar to a headnote: “Real Estate is a more healthy condition, than it has been for the last seven years. A special count upon a contract is bad on its face, if it omits an essential part of it. An old judge told a young lawyer, that he would do well to pick some of the feathers from the wing of his imagination and stick them into the tail of his judgment.”¹⁵

After the second issue, there began advertising on the last page of each issue. The first pages of ads were four listings under plumbers and gas fitters, one for a roofer, and one law firm, Ginger and Walker on Walnut Street.¹⁶ Additional advertisers continued over the year. Shortly thereafter, a second lawyer, Wm. H Hearne of West Virginia added his card on July 8, 1879, (p.48), and an Adam Hoy of Bellefonte, PA with a specialty of collection of claims added on July 22, 1879 (p.64). Later, advertising took more than a page with lawyers ads listed by state: Pennsylvania Maryland, Virginia, West Virginia, New York North Carolina,

¹¹ 1 Id. 183 (November 4, 1879).
¹² Id.
¹³ 2 Id. 68 (February 3, 1880).
¹⁴ The case is State of New Hampshire v. State of Louisiana, 108 U.S. 76 was not decided until 1883. 2 Id. 76 (February 10, 1880).
¹⁵ 2 Id. 12 (December 9, 1879).
¹⁶ 1 Id. 24 (June 17, 1879).
Washington DC, and Ohio.\(^{17}\) As the paper continued to be published, more attorneys added their cards on the last page.

Mitchener listed his advertising rates as follows:\(^{18}\)

<table>
<thead>
<tr>
<th>Space</th>
<th>1 W.</th>
<th>2 W.</th>
<th>3 W.</th>
<th>4 W.</th>
<th>6 M.</th>
<th>1 YR</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 square</td>
<td>$1.00</td>
<td>$1.75</td>
<td>$2.50</td>
<td>$3.25</td>
<td>$8.00</td>
<td>$15.00</td>
</tr>
<tr>
<td>2 squares</td>
<td>2.00</td>
<td>3.50</td>
<td>4.75</td>
<td>6.00</td>
<td>15.75</td>
<td>30.00</td>
</tr>
<tr>
<td>3 squares</td>
<td>2.80</td>
<td>5.00</td>
<td>6.50</td>
<td>8.00</td>
<td>23.00</td>
<td>44.00</td>
</tr>
<tr>
<td>1/4 column</td>
<td>4.68</td>
<td>8.75</td>
<td>12.87</td>
<td>15.00</td>
<td>37.50</td>
<td>73.75</td>
</tr>
<tr>
<td>1/2 column</td>
<td>8.75</td>
<td>14.37</td>
<td>21.51</td>
<td>27.50</td>
<td>72.50</td>
<td>135.00</td>
</tr>
<tr>
<td>1 column</td>
<td>15.00</td>
<td>27.50</td>
<td>38.75</td>
<td>52.50</td>
<td>135.00</td>
<td>262.50</td>
</tr>
</tbody>
</table>

There were several miscellaneous items found in the newspaper. First, there is only one book review in the newspaper on Henry Mason Baum, *Rights and Duties of Rectors, Churchwardens and Vestrymen* that had a “timely appearance, as there is no work in print so well adapted to the subject matter of which it treats.”\(^{19}\) Why there is no other book review throughout the issues in unknown. Second, Mitchener recommended two local businesses to his readership, B. M. Shoemaker, window maker, and Empire Slate Works, a roofing slate company.\(^{20}\) Third, on March 9, 1880, the editor placed a small notice under the weekly notice that George Delp, “the manager of a small sheet issued in this city” claimed the *Record* was copying his material. Mitchener “positively den[jed]” and offered to show the certificate from his conveyancer of where he obtained his information.\(^{21}\)

The last issues of the newspaper have no mention that it would end as it did. As a little known paper/periodical, there are not many complete collections of this work. As John Hill Martin commented “It is doubtful whether a complete set of this paper

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\(^{17}\) 1 Id. 24 (June 17, 1879). The first advertising appeared on the last page of the third issue; by the end of the periodical the advertising took up the complete back page and more than one column on the next-to-last page. 3 Id. 31-32 (June 29, 1880).  
\(^{18}\) Rates of Advertising, 3 Id. 31 (June 29, 1880).  
\(^{19}\) New Publications, 1 Id. 12 (June 10, 1879).  
\(^{20}\) 2 Id. 180 (May 11, 1880).  
\(^{21}\) 2 Id. 107 (March 9, 1880).
exists; but the Law Library and Judge Mitchell have sets near complete.”

Joel Fishman, Ph.D., University of Wisconsin-Madison; Assistant Director for Lawyer Services, Duquesne University Center for Legal Information/Allegheny County Law Library, Pittsburgh, PA.

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22 John Hill Martin, MARTIN’S BENCH AND BAR OF PHILADELPHIA (Philadelphia: Rees Welsh & Co., 1883) 200. The Law Library of Philadelphia is now Jenkins Memorial Law Library; Judge Mitchell was James Tyndale Mitchell, a judge of the District Court (1871-1875), transferred to Philadelphia Court of Common Pleas No. 2 (1875-1888), and later Associate, then Chief Justice, of the Pennsylvania Supreme Court (1888-1909). Cyrus M. Dixon, Pennsylvania Side Reports, 12 LAW LIBR. J. 89, 95 (1920). Luther E. Hewitt has an article on Some Additional Remarks on the Pennsylvania Side Reports, 12 Id. 81 (1920) which identifies the list of side reports as Dixon’s.
Celebrating 600 Volumes of the Pennsylvania State Reports: The Official Reports of the Supreme Court of Pennsylvania (1845-2009)

Joel Fishman, Ph.D.

During the first week of November 2009, Volume 600 of the Pennsylvania State Reports was published, 165 years following the publication of the first volume in 1845.

The distribution of each hundredth volume based on the year on its spine label was as follows: Volume 1 (1845), Volume 100 (1882), Volume 200 (1901), Volume 300 (1930), Volume 400 (1960), Volume 500 (1982-1983), and Volume 600 (2009).

The Supreme Court of Pennsylvania is the oldest state supreme court in the country. It dates back to the creation of the Provincial Court by William Penn in 1684 (see http://www.aopc.org/Links/Public/CourtHistory.htm). The first designation of a supreme court was in legislation in 1712; a 1722 act established the court system for the remaining decades of the colony until the Revolution. (For legislation, see the Pennsylvania Legislative Reference Bureau website at http://www.pairb.us.)

The publication of court cases began with Alexander James Dallas, who in 1790 published only the second set of state court reports in the country after Edward Kirby’s Connecticut Reports. This first state report had the title of Reports of Cases Before the Revolution and contained both Supreme Court and Philadelphia county court cases from 1754 to 1788. Dallas continued to publish three more volumes of reports, which from 1789 onwards had a new title that included the cases from the United State Supreme Court and circuit court cases as well as the state appellate and county cases: Reports of Cases Ruled and Adjudged in the Several Courts of the United States and of Pennsylvania, Held at the Seat of the Federal Government (1798). These four volumes became the first four volumes of the United States Reports and are usually cited as 1 U.S. page (Dall.) (Year).

From 1790 to 1845, there were sixty volumes of Pennsylvania Supreme Court cases, known as nominative reports for the names of the reporters: Alexander Dallas, 1754-1806, Jasper
Yeates, 1791-1808, Horace Binney, 1808-1814, Thomas Sergeant and William Rawle, Jr., 1814-1828, Rawle, 1828-1836, Charles Penrose and Francis Watts, 1829-1832, Thomas I. Wharton, 1835-1841, and Frederick Watts and Henry J. Sergeant, 1841-1845. Some of these reports were reprinted during the nineteenth century in later editions with additional notes, such as 1 Dallas updated in four editions down to 1882.

Because the reports appeared to some to decline in content and prestige, the General Assembly passed the act of April 11, 1845 P.L. 374-75, which introduced an official court reporter and an official set of court reports, Pennsylvania State Reports. It is from this act that our 600 volumes come. The act made provisions for a reporter to receive opinions from the justices in order to prepare the synopsis for each report, and for the only two volumes to be published each year with a limit on the number of pages in each volume (and to be published in calf binding).

Because of the volume limitation on the publication of the court’s cases, five additional sets of nominative reports were later published, known as Grant’s Reports, Walker’s Reports, Pennypacker’s Reports, Sadler’s Reports, and Monaghan’s Reports.

The official reports have had eighteen reporters since 1845. Most have served only one five-year term, but several—Persifor Smith, William Schaffer, C. Brewster Rhoads, and Laurence Eldredge—have served more. Eldredge published 86 volumes, while Joseph Pringle just published two in completing the work of the first reporter Robert Barr, who died before the volumes were completed. Boyd Crumrine and James Monaghan had a suit against each other over the publication of reports, while Laurence Eldredge is the only court reporter sued by a Supreme Court Justice (Michael Musmanno) over the failure to publish an opinion in the official reports.

Here is the full list of reporters by volumes and years:

<table>
<thead>
<tr>
<th>Volumes</th>
<th>Years</th>
<th>Reporter</th>
</tr>
</thead>
<tbody>
<tr>
<td>1-10</td>
<td>1845-1849</td>
<td>Robert Barr</td>
</tr>
<tr>
<td>11-12</td>
<td>1849-1850</td>
<td>J. Pringle Jones</td>
</tr>
<tr>
<td>13-24</td>
<td>1849-1855</td>
<td>George W. Harris</td>
</tr>
<tr>
<td>25-36</td>
<td>1855-1860</td>
<td>Joseph Casey</td>
</tr>
<tr>
<td>37-50</td>
<td>1860-1865</td>
<td>Robert Emmet Wright</td>
</tr>
<tr>
<td>51-81*</td>
<td>1865-1875</td>
<td>Persifor Frazer Smith</td>
</tr>
<tr>
<td>82-96</td>
<td>1876-1880</td>
<td>Alexander Wilson Norris</td>
</tr>
<tr>
<td>97-110</td>
<td>1881-1885</td>
<td>Albert Albouy Outerbridge</td>
</tr>
</tbody>
</table>
In 1976, West Publishing Company took over the publication of the appellate court reports for the Supreme and Superior Courts. Beginning with Volume 459 of the *State Reports* the books contain the West Key Number System and Key Digest System additions typical of the regional reporters and so contain no differences between the official and unofficial versions. The practice of placing the name of the court reporter on the spine of the book ended in 1974. Thereafter, a member of the central office of the courts served as a liaison with the West Publishing to monitor the cases between the cases.

In performing a Westlaw search from 1845 to present, there were 114,687 cases reported in full text or by allocatur denied, broken down by periods as follows:

<table>
<thead>
<tr>
<th>Period</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>1845-1899</td>
<td>21,726</td>
</tr>
<tr>
<td>1900-1949</td>
<td>19,003</td>
</tr>
<tr>
<td>1950-1999</td>
<td>48,576</td>
</tr>
<tr>
<td>2000-2009</td>
<td>25,382</td>
</tr>
<tr>
<td>TOTALS</td>
<td>114,687</td>
</tr>
</tbody>
</table>

The increase of allocatur cases denied is the reason for the increasing number of cases heard by the court in the past decades. Allocatur cases denied are reported in tables at the end of the reported cases. This number may not be exact, since the Westlaw database does not include some unofficial reports that may have cases (e.g., *Brightly’s Nisi Prius Reports*) and I have found references to per curiam opinions from the late 19th century published only in the local Philadelphia legal newspaper, *The Legal Intelligencer*.

There are similarities and differences in the publication of reports. The pre-West court reports begin each book with the copyright date on the verso of the title page, followed by a list of the...
justices and judges of the courts below, the table of court reports, and sometimes the table of statutes or cases cited. The court reporter added headnotes and syllabuses for all cases and provided indexes that were fairly detailed, though the 19th century reports appear to have even more detailed indexes than the later reports. The reporters acknowledged special events such as the induction of new justices and memorials for deceased justices.

The order of publication is still the same in the post-1976 West publications, though the amount of additional material has increased over time as the court-ruling function of the court has increased. The Keyword Digest at the end of the current volumes replaces the individual index that had been prepared by the court reporter. It would be interesting to see if a cumulative index to the reports would enhance research capability of lawyers using the reports rather than just relying on the digest topics. As an aside, most people reading this article are probably not aware of digests such as Pepper & Lewis's Digest or Ruby Vale's Digest published in the early 20th century that predates Vale Pennsylvania Digest and its successor, West's Pennsylvania Digest 2d series.

The reports contain various events in the court's history, mostly the inductions, memorials, and portrait presentations of the justices of the court. These begin in the early nominative reports and carry through to most recent (Volume 600 containing the installation of Chief Justice Ronald D. Castille). Additionally, included are events such as the celebration of the 200th and 250th anniversaries of the court (Volumes 273 and 448), the reports of seven of the eight judicial conferences that met in the late 1920s and early 1930s (Volumes 292-383) or the adoption of the Model Rules of Professional Responsibility (Volume 438) and later the Model Code of Professional Conduct (Volume 515).

The early reports intermittently published Supreme Court rules as promulgated. The publication of current state court procedural rules began in the late 1930s with the Pennsylvania Rules of Civil Procedure (Volume 331), Rules of Criminal Procedure (Volume 412), Appellate Procedure (Volume 461), and Evidence (Volume 550). The publication of court rules has only increased since 1968 when, under Article V, Section 10, of the Pennsylvania Constitution, the Supreme Court increased its administrative control over the unified court system to include its regulation of attorneys through its rules for admission to the bar, rules for
disciplinary enforcement (Volume 446), and Continuing Education Board (Volume 527) as well as the appointees to all Supreme Court committees. There has been a constant change in court rules resulting in almost every volume containing new rules, with sometimes between 200 to 300 pages of documents preceding the first page of the court cases.

In conclusion, the Supreme Court is to be congratulated for its long and distinguished history as a court, for the quality of its reports and for its production of approximately 400,000 pages of court reports since these reports began in 1845. In this electronic age, it is hoped that the high court will continue to treasure the publication of its cases through an official court report and not cancel this publication in the future.

Joel Fishman, Ph.D., University of Wisconsin-Madison; Assistant Director for Lawyer Services, Duquesne University Center for Legal Information/Allegheny County Law Library, Pittsburgh, PA. He wishes to thank Don Sarver of the Pennsylvania Lawyer for permission to reprint this article from volume 32, no. 6 (Nov./Dec. 2010), pp. 46-48.

Much of this paper is drawn from three of his works: Joel Fishman, The Reports of the Supreme Court of Pennsylvania, 87 LAW LIBR. J. 643-693 (1995), Id, The Court Reporters of the Supreme Court of Pennsylvania. Part III: The Official Reporters (1845 to 1978), 15 no. 2 LH&RB 12-17 (Summer 2009); and Id. BIBLIOGRAPHY OF STATE COURT REPORTS: PENNSYLVANIA, in preparation, a book that is a bibliography of each volume of the Pennsylvania Supreme Court reports, Superior, and Commonwealth Court reports.

This article was originally published in the Fall 2010 issue of LH&RB.
Ghostly Tales of Law and Justice: Courthouse Hauntings

Kurt Metzmeier, with Nancy Vinsel and Roberto Campos

Nothing is more irresistible than a good ghost story. It is hard to find a historic building or residence without at least one spectral gray lady on the stairway or a mysterious poltergeist that opens and closes doors in the dead of the night. In my home town of Louisville, Kentucky, a local author has written three books alone on the ghosts who haunt our sprawling Victorian district. While Georgian mansions and turreted Queen Anne’s houses get most of the attention, public buildings associated with the law—courthouses and jails—hold their own in the ghastly real estate market. As places where lawyers re-enact human tragedies during the daylight hours, it is perhaps not unusual that the folk imagination carries that drama into the twilight hours.

This paper is a modest first effort at collecting and characterizing some of the representative specimens of the genre. Drawn from about thirty collections of ghost stories from my personal library, the stories may be somewhat biased toward the South and Appalachian region (a prime area ghost-rich for Scotch-Irish folklore) but they show most of the motifs that would be found in a more extensive study. With research assistants Nancy Vinsel and Roberto Campos, I have searched these collections for any ghost story that reflected on the law or legal processes. The theme of “justice” is widespread in ghost-lore but too broad as many such stories involve extra-legal retribution. When that justice involved the law, it would be included in our survey. For example, the story of the ghost who returns to reveal his or her murderer is very common. If that revelation led to a trial or legal punishment, that would meet our criteria. If it led instead to a suicide or some kind

* © 2010


of magical retribution, it would not. Courthouse and jail-house hauntings were the most common theme, and are thus the subject of this paper. The other themes will be developed in a future article in this publication.

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The ghost story could be defined as any folktale or popular account that involves a manifestation of the dead, usually in disembodied form, to the living. Such stories serve many functions in a culture. They may provide cautionary tales, explain natural phenomena, or reinforce traditional viewpoints. The telling of these tales traditionally has provided a means for knitting together bonds across generations and, more recently, ghost stories often are used to help engender interest and respect for historic buildings and districts. However, among the more serious functions of such tales is as a means of transmitting cultural norms and showing that these norms will be punished—if not in this world, then in another spectral sphere. Indeed, it is surprising that we don’t see more ghost stories that explicitly reference legal procedures, which are, after all, the earthly—and frailly human—mechanism for enforcing societal norms. Perhaps it is because the procedures of courts don’t easily translate into the mythic idiom of the folk-lore. Or maybe it is that the Scots-Irish wellspring of American ghost-lore was itself a legal frontier.

Nonetheless, many ghost tales do involve legal themes. These tales can be placed into two broad categories: (1) stories where the undead return to deal with unfinished legal business and (2) tales where the places associated with the legal processes—courthouses, jails, prisons and even law schools—are haunted because of known or unspecified acts that occurred there.

While this survey is mainly concerned with the latter category, I’d like to describe a few stories of unfinished business of ghostly parties as exemplars of this type of ghost tale. In his still-influential Motif-Index of Folk-Literature, Stith Thompson divided ghost stories into two categories, “malevolent return from the dead” (E200-E299 in Thompson’s number scheme) and “friendly return from the dead” (E300-E399). However, the same themes come up whether or not the ghost is angry or friendly (and often

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3 No major historic district in America is without a popular ghost-tour company, and they are usually promoted by tourism authorities, area hotels and often local history societies.
the mood of the spirit may be ambivalent), so there is some overlap. In a common “angry” ghost motif, a victim returns to avenge his or her death (E231), either revealing the name of the murderer (E231.1, E231.2), or by causing him to confess (E234.5). In one Georgia tale, a ghost appears and reveals a man as his murderer. The man is arrested and tried, but his lawyer convinces the jury that “ghost evidence” cannot be accepted in a court of law. In the story of Jim Shuck Peeler, conveyed in ghost story and folk-song, the murdered Kentuckian taps out the name of the man who killed him.

Another class of story involves a ghost who returns to see that his will is respected (E236)—the proverbial “dead hand control” of the testator made literal. In one case cited by Thompson, a presumably “angry” ghost appears and foils a crooked lawyer who is forging a will for the decedent. In another story from Georgia, a Savannah lawyer who is representing a family in a probate matter is visited one night by “Mrs. Jane,” the ghost whose estate he hopes to settle the next day. The grey lady looks sadly upon him at his desk, with papers from the file all around him and disappears, apparently satisfied that “her” attorney is hard at work. The lawyer assumed her presence was benign, and thus she might be classed among the friendly ghosts that Thompson calls “the grateful dead” (E341), although no guitar solos were reported.

Courthouse Hauntings

By far the most common law-related ghost story involves the hauntings of courthouses, with most of these stories falling under general motif that Thompson calls “ghost haunts place of great accident or misfortune” (E275 or E334). However, many of these haunting stories also touch on other themes, including the above mentioned “ghost returns to reveal murder” (E231) and the “ghost re-enacts scene from his own lifetime” (E337) motifs.

Often these stories involve a courthouse that is generally believed to be haunted, but where there may be more than one ghost doing the haunting. A good example is the haunting of the Decatur

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5 Montell, *Ghosts along the Cumberland*, p. 139.
6 Thompson, *Motif-Index*, notes to E236.
County Courthouse in Greensburg, Indiana. Depending on accounts, the specter is either a janitor who was found at the bottom of the steps with a broken neck, or, in a common story in courthouse haunting, a man acquitted of murder who was lynched by an angry mob at a tree in front of the courthouse. A similar haunting involves the Lander County Courthouse in Austin, Nevada. There the ghost is either a Rufus B. Anderson, a man hanged there who it took three times to kill, or else Richard Jennings, an alleged murderer lynched on the courthouse balcony. Also from Nevada, the former Genoa courthouse and jail complex (now a museum) is thought to be haunted by the ghosts of both an elderly man, perhaps a former inhabitant of the jail, and a laughing child.

The lynched man motif is common in these stories. In addition to the above-mentioned stories from Greensburg, Indiana, and Austin, Nevada, the Pickens County Courthouse in Carrollton, Alabama, is also said to be haunted by a lynched man. The building has an eerie image on the window of the garret that is thought to be that of Henry Wells, an African American man who was lynched for setting a fire in the building. He loudly proclaimed his innocence as he was hung and cursed his accusers—a curse that is presumed to be fixed upon the courthouse.

However, legally hanged men also haunt courthouses. In Ely, Nevada, the courthouse is thought to be haunted by the ghost of Hank Parish, a disreputable gunman who was tried in short order for the last of his many rumored killings. The Navajo County Courthouse in Arizona is similarly haunted an executed murderer. A more interesting story is that of Joseph Rover, who is thought to haunt the Washoe County Courthouse in Reno, Nevada. Rover was hanged in 1878 outside the building for a murder he denied committing. A celebrated spiritualist, Eilley Bowers, spoke to Rover in a séance performed sometime after the execution, and he again proclaimed his innocence. Although Bowers was ridiculed she claimed some vindication in 1895 when Rover’s

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9 Willis, More Haunted Hoosier Trails, pp. 150-51.
10 Oberding, Haunted Nevada, p. 102-03.
11 Ibid, p.36.
13 Oberding, Haunted Nevada, p. 104.
14 Garcez, Arizona Ghost Stories, pp. 73-74.
business partner made a death bed confession admitting his guilt in the murder and exonerating Rover.\textsuperscript{15}

Former courthouse employees are often so reliable that they are thought to refuse to retire—even when they happen to be dead. The ghostly janitor in Greensburg, Indiana, has a counterpart at the Yuma County Courthouse in Arizona in Adolph Teichman, a former bailiff and elderly caretaker who lived and died at the courthouse. Employees report seeing his shadowy phantom, bent with age, shuffling down the corridors. Another member of the union of spectral government employees is Dr. Willis Butler, the long-serving coroner of Caddo Parish, Louisiana, who died at 103 in Shreveport. Dr. Butler’s kindly figure is seen in various offices in the parish courthouse and its annexes.\textsuperscript{16} Occasionally, a courthouse is believed haunted but there is no specific suspected ghost; in these cases speculation often centers on an unknown former employee. Such is the case at the Reeves County Courthouse in Pecos, Texas. Several employees have heard ghostly footsteps on several occurrences and attribute it to someone who regularly walked the same halls.\textsuperscript{17}

\textit{Imprisoned Phantoms}

Another closely related class of haunting story involves the gloomy building where the legal-process often ends: the jail or the prison. These places resonate as places of “great misfortune” and hardship,\textsuperscript{18} especially when they are also places of execution.\textsuperscript{19} Prison architecture also may play a part as these grim buildings often resemble the castles of Europe that have long inhabited the Gothic imagination.\textsuperscript{20} In some of the stories from the American West, prisons may attract ghost-lore for another reason; they, along with courthouses, are often the oldest buildings to survive the boom-bust-rebuild history of the area.

\begin{itemize}
\item \textsuperscript{15} Oberding, \textit{Haunted Nevada}, pp. 70-71, 73-77.
\item \textsuperscript{16} Joiner, \textit{Historic Haunts of Shreveport}, pp. 54-60.
\item \textsuperscript{17} Williams, \textit{Best Tales of Texas Ghosts}, pp. 364-66.
\item \textsuperscript{18} Thompson, \textit{Motif-Index}, E275, E334.
\item \textsuperscript{19} See, especially Thompson, \textit{Motif-Index}, E274, “ghost haunts gallows.”
\item \textsuperscript{20} See, \textit{ibid}, E338.1, “non-malevolent ghost haunts house or castle.”
\end{itemize}
A regular characteristic of most ghost stories about jails and prisoners is that the ghosts are rarely identified with a particular individual and often are thought to involve multiple unfortunates. Typical is the story of the Old City Jail in Louisville, Kentucky. The ominous building now houses a law library and other city offices. Security guards and others report odd noises, eerie sounds and phantom footsteps, but blame these occurrences vaguely on “former prisoners”.21 Similarly in Brandenburg, Kentucky, the employees at the Jailhouse Pizza restaurant housed in the old city jail believe that the building is haunted by ghostly prisoners who touch customers on the back of the neck, whisper names and set off alarms.22 Ghost hunters in the Caddo Parish prison farm property outside Shreveport also report vague sightings of ghostly former inhabitants, although skeptics point out the striped-uniforms reported to be worn by these shades have never been used in Louisiana.23

The old State Prison in Milledgeville, Georgia, has long attracted ghost stories, but like those discussed above, they are of the vague kind. Even the auditorium at Georgia College, built on the site of the burned antebellum prison, is said to be haunted.24 The replacement prison, built in 1924, is also thought to be haunted. The prison was home to many celebrated tenants, including Leo Frank, a Jewish factory owner who was later lynched for the murder of a young girl, but there are no stories of specifically named ghosts. The crumbling building does have one spooky occurrence: a mural painted along a wall is completely deteriorated except for a pristine section depicting the crucifixion of Jesus (an odd theme for a state penal institution that administered executions and housed the state’s first electric chair).25

We did find one prison story with a named ghost. The Yuma Territorial Prison is now a state historical park, but over 3,000 prisoners spent time there between 1876 and 1909 when it was an active prison. People in the local town have reported seeing oil lanterns moving through the unoccupied former prison at night. Park rangers willingly acknowledge the presence of a playful ghost who pushes coins out of the cash register who they named

21 Parker, *Haunted Louisville*, 82-87.
“Johnny.” Others report hearing voices and seeing a dimly visible man in prisoners garb in Cell 14. Investigators have discovered that a John Ryan was imprisoned at the Yuma prison in 1900 for “crimes against nature,” which at the time included rape and other sex crimes. Ryan had hanged himself with his blankets while held in solitary confinement—in Cell 14.26

Law School Spooks

Our research turned up one type of ghost story that perhaps deserves its own motif, “ghost haunts law school,”27 although many law students would likely argue that it fits well in the existing category for “places of misfortune.” While at the Louis D. Brandeis School of Law we have been disappointed that the late justice has been content to sleep in his crypt in the school building’s foundation, the law students of Mercer have a number of ghost stories. Most involve the Woodruff House, a Greek-Revival mansion built in 1836 for a Macon, Georgia, banker, and later donated to Mercer University. It is located adjacent to the current law school, but was once used for law classes and is still used for formal events. In addition to a poltergeist that sets off alarms, a lady in a long black dress is often seen in the building.28 Another local building is connected to the school through its association with a law student who died in 1873 from meningitis that he contracted while studying at the Mercer Law School. The ghost of the boy’s father is seen wandering throughout the house, still anxious over the fate of his son.29

While only one school has a ghost story represented in the thirty odd collections surveyed, I know informally of stories of other law school hauntings. Reportedly former dean Walter Harrison Hitchler haunts Trickett Hall at the Penn State Dickinson School of Law in Carlisle, pacing the halls and occasionally appearing in his

26 Garcez, Arizona Ghost Stories, 166-75.
27 I’ve had several tales of law school ghosts described to me over the years, but have found only the few discussed here in print collections. The collections do document many stories associated with undergraduate institutions (see, for example, McCormick & Wyatt, Ghosts of the Bluegrass, pp. 131-50); perhaps most law students are too busy to notice the ghost hovering by the Decennial Digests.
28 Duffey, Banshees, Bugles, and Belles, pp. 72-76.
old office. Moreover, the University of Kentucky’s first law dean, William Lafferty, is said to haunt the anthropology department building that first housed the law school. This topic is definitely one ripe for further research.

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There are likely many more law-related ghost stories out there, some in printed collections that I did not consult, and many that have evaded capture between two books covers. After all, ghosts and lawyers have much in common, so it is not surprising that they occasionally meet professionally. They both are often found at scenes of misfortune and spend their most visible hours re-enacting traumas before audiences of the unwilling. When deaths occur, they are there to worry over the intentions of the departed and to impress the wishes of the dead upon the living. And, they both haunt courthouses, jails, and occasionally law schools. The only difference is that ghosts don’t huddle in the cold outside of them taking a smoke-break.

**Bibliography of Works Consulted**


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30 From conversations with Mark Podvia, who has conducted ghost tours in Carlisle to benefit the Law School’s Public Interest Law Fund. See also the brief mention “South Central PA Ghosts,” <http://www.squidoo.com/haunted-southcentral-pa>, last accessed October 22, 2010.


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The “Japanese Memorial Law Library”

Mark W. Podvia

During the Spring of 2010, the Dickinson School of Law of the Pennsylvania State University vacated a building that had been used for the off-site storage of library materials. Many books, primarily periodicals and reporters, were either disposed of or sent to offsite storage elsewhere.

Among the books found among the library’s collection was volume three of *Reports of Cases Determined in the Court of Chancery of the State of New Jersey 2d* (1877). A bookplate identified this volume as having been “presented to the Dickinson School of Law by the Japanese Carnival held April 22 and 23, 1892, organized by Mr. Issa Tanimura, of Tokyo, Japan; member of the class of 1892.” So far as is known it is the sole surviving book from the “Japanese Memorial Law Library.”

Issa Tanimura, the first foreign student to earn a law degree from the Dickinson School of Law, was born in Hagi, Japan, on May 1, 1866.1 His father supported the Meiji Restoration in 1868, and

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1 Except where otherwise indicated, biographical information on Issa Tanimura is taken from a series of unpublished sketches on his life, available in the Dickinson School of Law of the Pennsylvania State University Archives, RG 12/2, FF30a. A copy is also on file with the author. This material was obtained in 1990 by Dickinson School of Law Professor Geoffrey R.
was rewarded by the Emperor with an appointment as an officer of the Imperial household. Thus, it was only natural that Issa Tanimura would devote his life in service to his country and his Emperor.

Tanimura attended primary school in Tokyo, with specialized studies of old Chinese classics under Professor Saysai Sawatari. In 1886 he left Japan for the United States, entering the scientific course at Centenary Collegiate Institute in Hackettstown, New Jersey. He graduated in 1888, completing a six-year course in two years and earning first prize in geometry.

While attending the Centenary Institute, Tanimura met the Rev. Dr. George E. Reed, who was soon to become President of both Dickinson College and the Dickinson School of Law. Tanimura later said that following this meeting he “decided to devote his whole life toward the promotion of Japanese-American relationship.” It would seem very probable that it was this chance meeting that later brought Tanimura to the Dickinson School of Law.

In the Fall of 1888, Tanimura entered the Sheffield Scientific School at Yale University. There he played football, Yale then fielding the nation’s premier college team under Coach Walter Camp, “the Father of American Football.” Tanimura graduated from Yale with excellence in 1891, having been elected vice-president of his class. His Senior thesis was written on the French Copper Syndicate.

It was while he was at Yale that Tanimura developed his life-long love for salt mackerel, which he ate daily for breakfast. In 1917 he described his favorite breakfast to a reporter from the San Francisco Call in these words:

You eat too many eggs. They are not good for you. In Japan eggs are only from 1 to 3 cents apiece. Not because we have so many hens, but because people don't like them.

Scott from the Yale University Alumni Records Office which, to the best knowledge of the author, still holds the originals.
But a salt mackerel, ah. The salt, the spice, the tang, the energy it puts into you! Start your day with a salt mackerel and it will be a good day.\textsuperscript{2}

We do not know exactly when Tanimura arrived in Carlisle or how well he performed in his law school classes. However, he must have made a favorable impression on his fellow students, his classmates electing him treasurer of the Class of 1892.\textsuperscript{3}

While a student, Tanimura “conceived the idea of holding a fair and entertainment, after the manner of those given in the Empire of Japan” with the proceeds “to be devoted to making an addition to the law library of the [law] school.”\textsuperscript{4}

Many of the ladies of Carlisle “kindly consented to lend him aid in making the affair a success.” The \textit{Herald} reported that “[t]he ladies participating will be clad in Japanese costumes. The articles sold will be of Japanese manufacture. All visitors will be presented with a Japanese cup and saucer.”

The fair was held on Friday and Saturday, April 22 and 23, 1892, at Carlisle’s Armory building. “A bewildering series of attractions” were offered on Friday evening, including “[f]ruits and flower stands, tea and cake pagodas, [and] China and Japanese bric-a-brac booths.”\textsuperscript{5} The festivities on Saturday evening included a Japanese dance “shown by 23 fair and charming yum yums” as well as an illustrated lecture on Japan by Issa Tanimura.\textsuperscript{6}

The fair was “well patroned, and was a complete success financially.”\textsuperscript{7} On June 6, 1892, President George Reed offered the following report to the Law School’s Board of Incorporators:

\begin{itemize}
\item \textsuperscript{2} \textit{Mackerel is His Diet; Jap Envoy Got Yale Habit; Comes to Buy Sheep}, \textit{San Francisco Call & Post}, Dec. __, 1917, at __.
\item \textsuperscript{3} \textit{Senior Class Officers}, 1893 Microcosm 52 (1892).
\item \textsuperscript{4} \textit{For the Law School Library}, \textit{Carlisle Weekly Herald}, Apr. 7, 1892, at 3.
\item \textsuperscript{5} \textit{The Japanese Bazaar, AM. Volunteer} (Carlisle, Pa.), Apr. 20, 1892, at 3.
\item \textsuperscript{6} \textit{Program, FOR THE LIBRARY OF THE DICKINSON LAW SCHOOL, JAPANESE ENTERTAINMENTS}.
\item \textsuperscript{7} \textit{The Japanese Bazaar, AM. Volunteer} (Carlisle, Pa.), Apr. 27, 1892, at 3.
\end{itemize}
We are glad, also, to report large additions to the Law Library, which now numbers between seven and eight hundred volumes, carefully selected, and well adapted for the purposes of a School of Law. To this collection we hope to add largely during the ensuing years.

In this connection it is becoming to mention the interest manifested by the students in the developing of the Law Library, and particularly the generous labor of Mr. Issa Tanimura, of the Graduating Class, a native of Japan, who, in conjunction with the eminent ladies of the town, has donated during the year the sum of $475 for the enlargement of the Library of the School. The volumes, appropriately inscribed, now constitute the Japanese Memorial Law Library.  

In his report to the Board, Law School Dean William Trickett noted that the donation had allow the purchase of “all the Reports of Massachusetts and of New Jersey, 25 volumes of the Weekly Notes of Cases, 4 volumes of Pennsylvania Reports of the Decisions of the Supreme Court of Pennsylvania, [and] 10 volumes of Pennsylvania County Court Reports.”

In 1892, Issa Tanimura graduated from the Dickinson School of Law. Following graduation he was admitted to the practice of law by the Cumberland County Court of Common Pleas before returning to Japan where he entered into a double career of “Shohosha,” or international open diplomacy, and “Soyoho,” or sheep husbandry.

In 1893, Tanimura was appointed as a Commissioner of Commerce and he returned to the United States at part of the Japanese delegation to the Columbian Exposition in Chicago. There he negotiated a lease for the ground upon which the Japanese building, the Ho-o-den, was to be constructed, a “misunderstanding” having developed between the two nations relating to this matter. The issue was of considerable importance as several

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8 Minutes of the Board of Incorporators, June 18, 1890 - June 4, 1894, (on file with the Dickinson School of Law of the Pennsylvania State University Archives, RG 1/2, FF1).
9 Id.
months were required for the construction of the traditional Japanese building by native carpenters. Tanimura carried out his assignment in a manner that was “very satisfactory” to both nations.

In 1894, Issa Tanimura traveled to Europe to oversee the Japanese exhibits at international expositions in Antwerp, Belgium, and Lyon, France. While in Belgium he had dinner with the King and Queen, the first of many meetings that he was to have with various royal houses of Europe. In 1895 the attended the International Exposition in Amsterdam, winning a gold medal for two silk tapestries that he had designed. He later presented the tapestries to the Queen of the Netherlands. In 1905 Dickinson College recognized Tanimura for his work at these International Expositions by presenting him with the degree of Doctor of Civil Law, honoris causa.

These activities all fell under the purview of Shohosha. However, the real home of Shohosha was Box 1, Tokyo Central Post Office, Japan. There Tanimura received “inquiries coming from other countries for anything related to Japan.” His responses to the letters received over his many years of service helped to introduce numerous individuals to Japan and to the Japanese culture. At the same time, he worked to introduce American culture to Japan. He ultimately made ten extended trips abroad.

When a major earthquake hit Japan in 1923, Tanimura worked with representatives of the American Red Cross to help distribute food and supplies to those in need. He also served as a contact person for foreign reporters.

At some point Issa Tanimura became interested in raising and breeding sheep. In 1955, at the age of 89, he recalled that he first learned about sheep as a young boy from the 23rd Psalm, “the Lord is my Shepherd.” In 1908 Tanimura, convinced that Japan needed to greatly increase its domestic wool production, attended a sheep fair in Ogden, New York. He later wrote that it was there that “I met Mr. [W.G. Markham] who brought the first 200 sheep to Japan on July 4, 1879.” It was Markham who recommended that Tanimura be appointed as an Honorary Fellow at Cornell University’s College of Agriculture, a position he held from 1910 to 1912.

From this grew Soyoho, a sheep farm located adjacent to the Imperial Summer Villa in Koroiso, 99 miles from Tokyo. The ranch
opened in 1917; by 1919 there were five such ranches established throughout Japan, populated by sheep that Tanimura had brought from the United States. Unfortunately the government failed to support Soyoho and all but one of the ranches eventually closed. The original Soyoho ultimately became part of the Imperial Villa, a stone sarcophagus holding the remains of the sheep. Following the Second World War Japan became a great textile producer, however most of the wool was imported from Australia.

Tanimura, however, remained a respected figure in the field of sheep husbandry. He gave lectures on the subject in Japan, the United States and Europe and served as a member of numerous sheep breeder associations in the United States and England. He also served as vice-president of the International Sheep Association.

Tanimura’s other agricultural efforts ultimately gained more success in Japan. He successfully introduced various grass seeds to Japan. In 1921 he brought Jersey cows to Japan to increase the nation’s milk production.

Issa Tanimura was a remarkable writer whose works covered a wide variety of topics. From 1907 to 1910 he edited the Japanese International Review, which was published in both English and Japanese. In 1910 he published A New Intermediate English-Japanese Dictionary. In 1915 he first published Live Stock Economics, which was reissued in 1917 and 1922. In 1937, after fifteen years of research, he wrote General Horace Capron, The Friend of Japan, a biographical study of the American agricultural expert who helped to introduce modern farming techniques to Japan. He also published numerous articles in Japan and abroad. Tanimura never married. Shortly after the Second World War he wrote that “I just missed a chance for marriage after having gone abroad eleven times. I have met several women in my life; three in America, three in Europe and one in China. I seriously considered marrying that Chinese woman 30 years ago. Time sure flies fast.”

With the two nations he loved so deeply engaged in combat, the Second World War must have been a difficult time for Issa Tanimura. Indeed, one Japanese source indicates that the later portion of his life “was not fortunate.” Following the war he served as an advisor for the forces occupying Japan. Towards the end of his life he reported that he was writing his autobiography as well
Issa Tanimura

as a second volume of his book *Live Stock Economics*, however there is no evidence either work was ever published.

Issa Tanimura died on February 4, 1961. His life can best be summed up with words written shortly before his retirement, describing him as “a modest and self-effacing gentleman long connected with the Imperial posture...who continually travels about the world and works for international goodwill.”

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An Interview with Margaret A. Leary, Author of 
_Giving It All Away: The Story of William W. Cook and His Michigan Law Quadrangle_

Kasia Solon

Margaret A. Leary is the director of the University of Michigan Law Library and is the author of _Giving It All Away: The Story of William W. Cook and His Michigan Law Quadrangle_, published by the University of Michigan Press.¹ This biography of the greatest benefactor of the University of Michigan Law School will be published in September 2011. She received a B.A. from Cornell University, a M.A. from the University of Minnesota School of Library Science, and a J.D. from the William Mitchell College of Law. She has worked at the University of Michigan Law Library in various capacities since 1973. After learning about her upcoming publication, I contacted her and she graciously agreed to an interview for the LH&RB Newsletter.

_Kasia Solon:_ First, congratulations on the upcoming publication of your book. For those who have not had the chance to see the University of Michigan Law School’s beautiful Law Quadrangle made possible by William W. Cook’s donation, could you describe it and what impression it made on you when first coming to Michigan?

Margaret Leary: My impressions of the Law Quad were prefaced by the fact that my parents both went to Michigan. My father was a very good amateur photographer. One of the black and white photos that I have always had in my office is a picture of the front of the Legal Research Building. It was probably taken in about 1935, within five years of the time it opened. My father had taken that picture. I kind of knew about the Law Quad in a funny way all my life. I just think it is a really magical place. I first saw it myself in person when I came for an interview in 1973. It did make a tremendous impression on me.

_Could you briefly summarize Cook’s career?_

¹ Margaret Leary retired as director of the University of Michigan Law Library in 2011. This interview was conducted shortly before the publication of _Giving It All Away._
Cook was born in Hillsdale, Michigan, in 1858 and went to the University of Michigan, did his undergrad degree, finished that in 1880, and then he went to law school and finished that in 1882. He went almost immediately to New York City, which was pretty unusual. Someone from Hillsdale who wanted to go to a big city then would usually go to Detroit, or Toledo, or Chicago. What was even more unusual was that, within two years of getting to New York, he became a member of the New York Bar in 1883 and in 1884 he began the process of becoming a member of a Masonic Lodge that is called the Kane Lodge—it still exists today. The Lodge that he joined had many of New York’s movers and shakers in it. And he started practicing law with a couple of other lawyers and had a number of cases where he represented wealthy people, in New York, Michigan and Ohio. In 1895 he became general counsel for a couple of cable and telegraph companies, which eventually became the Mackay Companies. That is pretty much how he earned his fortune. How did he get so rich? Basically it was from hard work.

He also began writing. Five years after he graduated from law school, he published his first book. And he continued to write and became the national expert on corporation law between 1890 and 1930, approximately. His major treatise went into about eight editions.²

How did you get interested in this topic?

What made an impression on me, in my first few months at Michigan, was that nobody knew anything about Cook. I would say, “Who gave all this money?” “Oh he was some corporate lawyer from New York, who was an anti-Semite.” That is about all they knew about him. Also in my early days in the job at Michigan there was a safe in my office—I guess it was a common thing in libraries that were built in the 1930s. The safe was originally intended to have the very rarest books and any cash that the library might accumulate. But in there I found this big, black head. It turned out that it was the model that was used to make the busts of Cook that are in the Reading Room and also in the Martha Cook building. It was based on a death mask that was taken. It had a little piece of paper that identified what it was and I thought someday I will have to follow up on this.

² William W. Cook, A TREATISE ON THE LAW OF CORPORATIONS HAVING A CAPITAL STOCK.
**Could you describe Cook’s relationship with the University of Michigan?**

He came to the attention of the university in around 1910 when Harry Hutchens, who had been dean of the law school, became president of the university. Hutchens recognized, earlier than almost anybody in public higher education, the importance of developing a strong alumni base as a resource, not only to bolster the reputation of the school, but also as a source of money and support.

I am not quite sure exactly how Hutchens became aware of Cook. Cook was a little secretive and he did not make it into the newspapers a lot. But there were other Michigan alums in New York City who could easily have alerted Hutchens to Cook’s success. Hutchens developed a very positive relationship with Cook and the first result of that was Cook’s gift of the Martha Cook Building. That gift was a giant gift. Hutchens used that—there are many lessons for development people in this book—he said “Gee look you have built this wonderful dorm for women, how about building a wonderful dorm for men.” And that idea of a dorm for men eventually morphed into the idea of the whole Law Quadrangle, a whole city block of law school buildings. Cook eventually died in 1930. The Lawyers’ Club had already been finished and the rest of the buildings were under construction when Cook died.

There is an interesting story of the years between 1910 [after Cook committed $10,000 towards the Martha Cook women’s dormitory] and 1930 [when Cook died] of the negotiations between Cook and the university over what he would give next. My book has, I hope, a certain sense of drama in it because the person who was dean of the law school for that whole period, Henry Bates, really wanted to control the project and Cook really wanted to control the project and Cook had the money. Bates’ attempts to influence the project, by 1925, had made Cook so angry that he refused to deal with Bates. So there was a period of five or six years when the university really does not know whether Cook is going to give any more money beyond the original Lawyers’ Club.

**Did Michigan get lucky with the timing of Cook’s death?**

The theme of the last chapter of the book is, “This is a story of luck.” It is luck that Cook did not stay married, it is luck that he
did not have any children. All events in a sense are luck, but it
was really fortunate that Cook died when he did. It was fortunate
that there was not a good treatment for tuberculosis; if there had
been, he would have lived well into the Depression and his estate
would have become worth practically nothing. The timing was
such that the university was able to convert his estate, which was
mostly stocks and bonds, into buildings. It is a story of luck and
one the lucky things is that Cook died when he did.

**Did Cook take an interest in the law library, the Legal Re-
search Building?**

Oh, a huge interest. For example, Cook did not want the faculty
to have offices, because he thought an office meant a place to
practice law and he wanted them to be doing research, not prac-
ticing law. It took a long time before anybody figured out—they
kept saying, “The faculty have to have offices!” “No, they do not
have to have offices. I do not want them to have offices!” What
Cook meant was, “I do not want them to have a place where they
practice law.” But it was only when somebody finally talked to
him long enough to figure out, “Ok, fine, they are not going to
practice law. They need an office in which to do research.”

Cook did not want there to be stacks. He said you can put all the
books you need in the reading room. Well that is because Cook
had been such a specialist for so long he did not need any books
except court reports. But other people needed other things. So
yes, Cook took a great interest in the construction of Legal Re-
search. And [the law library director] Hobart Coffey was able to
talk to him or, at least write to him, in a manner that was both
informative and not challenging.

**I find it somewhat paradoxical that you wrote this book in-
volving the Gothic Law Quadrangle while working in seem-
ingly the law school’s lone modernist architectural outpost,
the law library addition from 1981. I remember hearing that
this addition was built underground in part not to mar the
beauty of Cook’s Law Quad. What do you think Cook would
have made of this addition? Do you think your vantage
point from the modern addition gave you a different per-
spective on Cook’s accomplishments?**

Cook did influence the collegiate Gothic. The university bought
the land after Cook promised to build buildings. The university
was not involved at all the way it is now. Cook paid for what was
built. Cook told the architects what to build. He vetoed certain plans, approved others, especially “flogged”—that was his word—the architects over the design of the Legal Research Building. He told them it looked like a barn, then he told them it looked like a factory, then he said raise those towers up, elevate that reading room, put more windows in. He was involved in every detail of design. He wrote the inscriptions that are on the outside. He chose the seals that are in the reading room windows, he chose the various historical figures that are represented in the Lawyers’ Club dining room. Cook was the designer, so-to-speak, of the Law Quad.

I do not think he would have liked the underground addition because he was a real Anglophile. I actually love the contrast because it provides people a choice, among other things. You can be in this international style, or you can be in this collegiate Gothic; you can be all isolated or you can be up in the giant reading room; you can be in air conditioned space or not; you can be in kind of dark space or very bright space. If I were choosing a space for myself, I would choose the style of the underground building and I think being in the underground building has been very good for me psychologically because of all the light and the open and the ability to see outside. I am a happier person down there than I would be if I were in my old office in Legal Research. But that is just me!

I also think that the style of the collegiate Gothic architecture that the faculty have their offices in has influenced the nature of the Michigan faculty. Those offices are designed for people who like to be alone, designed for people who are introverts as opposed to extroverts. The extroverts on our faculty tend to go to certain offices, that are on heavily travelled pathways, and they leave their doors open. So I think we have developed to be a kind of a more introspective faculty than some law schools. That is just my personal theory. I just think architecture is tremendously important to people’s lives and influences us in ways that we do not recognize.

As a member of a profession concerned about book banning, what do you make of Cook’s final reactionary book, American Institutions and Their Preservation? Do you know whether the law library has ever made any special arrangements for this title or is it simply part of the general collection?
My recollection is that when I first came to Michigan, *American Institutions and Their Preservation* was in a locked range, where there were a lot of other books. I think it was the source of people saying that Cook was an anti-Semite, but it could well have been the source of people saying Cook was anti-Polish, anti-Irish, anti-Italian, and anti-anything except Canadians and people from the British Isles. But so were a lot of people in 1920. So was the university president. So was the president of the country. That was the era of the tightening-down on immigration. Two federal statutes that passed in the 1920s fantastically reduced the number of immigrants that could come into the country. So the book was hidden away; I would not go so far as to say it was banned.

I have a long chapter on that book in my book and, at my editor’s recommendation, I pulled it out and made it an appendix because it so interfered with the flow of the story of Cook’s life. It was one of the most challenging parts of the book to write because I did not want to appear to be an apologist for Cook. On the other hand, I hate to say it, there was a logical explanation for him to have hated immigrants the way he did. There are more ways to justify his feelings, but the way I chose was to describe the number of strikes that went on during his life and the impact those strikes had on the development of the country. Now I am a left-wing, total supporter of all of those strikes. Workers were being killed, injured, underpaid, and working in horrible conditions. However, they disrupted the country tremendously. I have got a whole long list of strikes that went on during his life and who the strikers were and the strikers were, for the most part, East European immigrants. So I can see Cook sitting in his fancy townhouse in New York, unable to take the train where he wanted to go because of a strike, or reading about strikes in factories. There is a reason for why he felt the way he did.

The thing that is clear is that in none of the documents that Cook created to give his gift to the university, which were primarily his will and a series of forty trusts that he set up, in none of them is there a word about no Jews, no blacks, no women, nothing like that. He did not try to impose his views on the university.

*When you first undertook this project, you were clearly well versed in legal research. This book also involved extensive historical research and writing. Are there any lessons that you learned along the way?*
I just had to figure it out as I went. The thing that I learned, that I still have to learn, is: “Do not make any assumptions.” Recognize the assumptions you are making and question them. As to the writing, I quickly realized that what was good enough for *Law Library Journal* would not necessarily be good enough for someone who had to pay $50 for a book. So I took a writing workshop at Antioch and I went for two summers to a Kenyon writing workshop. I took several online courses in writing and I learned a lot. I learned how to write scenes, learned how to create a structure, a plot. I learned how to write good dialogue—all kinds of writing skills that you have as a librarian are not necessarily what you need to write a book that people will pay for. Writing was by far the hardest part.


I think it was in 2004. I remember this distinctly: I was sitting up in the faculty lounge and I was having coffee with [the legal historian] Brian Simpson and a couple other people. So I am sitting there chattering about this latest thing I discovered about Cook and I remember Brian leaning forward and saying, in his British accent, “Margaret, are you writing a book?” And I remember thinking to myself, “No I am not, but I could!” And then I said, “Brian, yes, I am writing a book!”

Other pieces in this project were some articles in *Law Quadrangle Notes* and another piece on the foreign law collection. The idea was that as I worked along, I wanted to get the internal satisfac-

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tion of having finished something. Cook and the Detroit railways in my book is only a paragraph because it is just not a matter of general interest. So those articles were a method of not being totally frustrated in writing a whole book.

Originally the “Discovering William Cook” article was also going to be part of my book. There would be a chapter about whatever happened in Cook’s life, and then there would be a little sort of mini-chapter about how I found the information. Well it turns out that has two different audiences. And it made the book hugely long. In fact, U of M Press rejected my book twice, before they accepted it. They rejected the first one because they did not like these little mini-chapters about research. They said, “Nobody cares about that.” I thought, “Well, what an insult to my profession.” But it is true—the people who care about the life of Cook are not the same people who care about how I found the information.

I looked into publishing it myself and I was totally prepared to publish it myself. Then, at the last minute, I had an idea. In fact, my copyeditor gave it to me—she said, “Margaret, your book needs a sponsor, someone other than you who has credibility make the case for the book.” I thought, “Shoot, there isn’t anybody.” I thought a little harder and said, “Wait. This book has a development theme to it.” So I thought, I am just going to go down and talk to Todd Baily, who is the head of the law school development office. He said, “I think it’s an important story. I have some ideas.” He did not tell me what they were: “Let me go talk to the dean.” And a few weeks later, he called me back and he said basically, “The U of M Press will publish the book.” The law school supported the publication of the book—the dean thought the book was important to be published. I think it also helped that I was willing to pay for the design and that I had already had it copyedited once.

**What has the process been to bring this book to press?**

It has been quite a saga. I hired my own designer and I hired my own copyeditor, after I had written about half of it, who helped me as I wrote it. A copyeditor will look at the structure of the whole book and say, “This structure has these pros and these cons.” And then she would also look at the structure of each chapter. Does the chapter make sense? Does it flow logically from the previous one and flow logically into the next one? And then the copyeditor will work on the level of the paragraph—do your para-
graphs make sense? Talking about this from the highest granularity down to the lowest, then she will look at sentence structure. I cannot tell you how many times my editor would say, “Margaret, just tell me what you are trying to say.” And I would tell her and then she would go, “Well why then did you write this!” So I would write it all over again.

So it was in pretty good shape when the U of M Press got it and they do not have to do the design, which helps them out a lot. They were very pleased with it as the designer I’m using is Mike Savitski, who is nationally known, from Ann Arbor. He has assigned my project, which is relatively simple, to a young woman whose husband is a first year law student. So she feels very connected and that type of connection really I think helps to have a good result in the end.

It has been a real educational process though. The reason I even knew to look for a book designer was that I already had a copyeditor, who was been in the writing and editing business for most of her life. She kind of explained all the steps to me. I was so confused by the whole process—I could not understand what happened when—so I finally said, “I am sorry, I am an amateur, can we all please get together for half an hour?” There is my own copyeditor, the copyeditor at the press, a production person at the press, the book designer, and there is the process of proofreading that has to get done somewhere along the way. I just did not understand the sequence in which anything would happen and how things went back and forth. But after we sat down, we came up with kind of a schedule and I understood it better.

**Based on your own experience, do you think that law librarians are well-advised to spearhead efforts to research a law school’s history and, short of writing a book, do you have any recommendations or advice on how to do this?**

Yes, I do [think it is worthwhile] as a lot of questions do come up about the history of the law school. One of the things that I am really proud of initiating—others have carried it out—is the History and Traditions website at the University of Michigan Law

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I initiated it in about 2008 as part of our celebration of our sesquicentennial in 2009. I think that is an example of how the skills of the library collectively, in terms of building a website, and getting a grip on the history of the law school, pulling together photos of graduates, biographies of graduates, and lists of everybody who taught at the school, what classes they taught, and what world events were going on at the same time, I think that is a very valuable contribution of the skills of librarians to the school, having a sense of its history.

I submitted that website for an award from AALL and it did not win specifically because it was not about the library, it was about the law school. And I was kind of proud of that reason. The library did it and that is why in my opinion it is worthy of an award, because it is an example of what a library can do for the school. I am not claiming it has made a huge difference, but it has helped with alumni—people write in and say “My grandfather went to law school and I was so happy to find his photo.”

I also think that by understanding the history of the school, the librarians can understand the history of the role of the library in the law school. Most law libraries have been very important to their schools, so it is really nice to be able to document that.

I happen to have attended the same law school as you did, William Mitchell College of Law in St. Paul, Minnesota. Over the years, I have read about your generous donations to William Mitchell and the scholarship you have endowed. Has your examination of Cook’s philanthropic efforts influenced you at all in this regard?

I think it did. The university would not have had such beautiful buildings in the Law Quad if Cook had not played the role that he did. I fully appreciate that. In a way he was a bad example because he tried to control so much. I do not want to emulate that part of Cook.

What I admire and respect about Cook is that he did not want his name on anything. He named things after his mother and his fa-

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ther. The only things that are named after Cook are the Legal Research Building and the whole Law Quad; those namings were done after Cook died. He would not have wanted them. Every time they asked him, “Can we put your name on it?” he said, “No, these buildings are more important than any one person.” He said, “There are enough Cooks in that Law Quadrangle already.”

I understand that you will be retiring from your position at the University of Michigan Law Library and will enter the M.A. program in Creative Writing at Eastern Michigan University. Can you tell us more about your plans for the future?

I have some ideas for what I want to write next. So far there is not a whole book there, there are some articles. I want to do an article for the Business History Review about the company that Cook worked for, the place where he made all his money, the Mackay Companies. I originally intended the Cook biography to be a dual biography, that is of Cook and of the company he worked for, but it got too complicated.

I would really like to do either a series of short stories or a book based a little bit on the life of my former foster daughter, a total change of pace. And then I also want to do some more local articles about local politics in Ann Arbor.

I am retiring at Michigan at the end of July and I will then enter the M.A. program in Creative Writing at Eastern MI U next door! I am going to be taking these classes and I just finished my first crack at registering for the fall term. When I told my advisor what I was taking, she told me “First of all, you cannot possibly take 12 credits. It is not like undergrad”! I just thought, well ok, I do not know how to write, I need to learn how to write, and maybe it is going to be really hard to do these writing assignments. So I am revisiting that. And I think that in the course of the writing workshops that I am going to be taking I will come up with other ideas.

Kasia Solon is Access & Student Services Coordinator at the Tarlton Law Library at the University of Texas at Austin.

This interview was originally published in the Spring/Summer 2011 issue of LH&RB.
Thoughts on the History of Law and Governance Down Under: An Interview with Judge Paul Desmond Finn

Lesley Dingle

Transforming settler colonies in harsh, pristine wildernesses into functioning western societies has occurred several times in the last few hundred years. Several of these have ended up with the legacy of a predominantly Common Law legal system inherited from England: e.g. USA, Canada, South Africa, Australia, New Zealand. As time passed, however, each country developed nuances on that original theme, and each paid more, or less, attention to changes as they occurred in their legal *alma mater*. At the same time, the practicalities of governance had to be worked out to suit local circumstances, again using an imported template of parliamentary democracy. Such societies have now matured into nation states, and with their common heritage all are similar, yet, when looked at more closely, so different. The result is a fascinating mix, bequeathing its own unique legacy to the 21st century. In the meantime, the law that operates in England has taken its own radical pathway into the unchartered territory of the EU.

The Eminent Scholars Archive recently had the privilege of interviewing a specialist of the legal history of one of these “new” Common Law jurisdictions, and for the writer an opportunity to learn first hand of some of the peculiarities that shaped the current Australian situation. See [http://www.squire.law.cam.ac.uk/eminent_scholars/](http://www.squire.law.cam.ac.uk/eminent_scholars/).

The interviewee was Paul Desmond Finn, Judge of the Australian Federal Court (since 1995), who was visiting Cambridge as the incumbent Arthur Goodhart Professor of Legal Science. He had previously spent twenty years as an academic at Queensland and Australian National universities. US readers will find many references to differences and parallels in the USA, not only because the two nations confronted similar early problems as they emerged from colonialism, but because Paul Finn quoted American legal writing on several occasions. Also, he admitted to a deep admiration for American literature, which as an undergraduate he studied for part of his BA.

Justice Finn explains that to understand many of the preoccupations of society that informed the development of the law in Aus-
tralia, one needed to understand the country’s history. Early in his career he realised he did not have this knowledge for reasons he attributed to tensions dating back to the First World War which had made it too divisive an issue to teach in schools until the 60-70s. To tackle this “the best way to learn it was to teach myself, and the best way to teach myself was to write a book”. The result was the fascinating *Law and Government in Colonial Australia* which appeared in 1987.

Australia is a federation that came into existence in 1901 (Commonwealth of Australia), and although each state retained its own laws and legal system, there were common developments in governance that flowed from the necessity of the States to provide basic services for its population. This resulted in the unique phenomenon of Australian “State socialism”\(^1\)\(^1\), which Justice Finn thinks “was an absolutely wonderful development. It made people think about their place in society and the responsibility of the State for people in society.” It resulted, however, in the early recognition by legislators that a novel solution had to be found for citizens to be able to make claims against government, and here Australians parted early (1865) from notions of crown immunity from suit, which persisted in the UK and USA until the late 1940s. Similar differences can be found in attitudes to matters of equity, although here the history of Australian development was tardy, not radical - while Australia only finally abandoned separate equity and common law courts in the 1970s, such notions had long been abandoned in the USA, and even England. Of course there are many other differences.

US readers will find some strong parallels, however, with the struggle Australia has in coming to terms with the difficult question of what is called “native title” - the recognition of land rights for the original population, and squaring this with the earlier legal notions of *terra nullius*. Justice Finn’s personal accounts of cases he has dealt with will no doubt strike chords with US lawyers and issues related to First Nation’s cases. Solutions to such problems could not be sought by reference to developments in England, as

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1 Oxford University Press, 216pp.
there are no analogues, and he says they have to be statutory. Nevertheless there remain serious anomalies.

One route he advocates is through careful use of interpretation of statutes. Here he cites the general advances made in the USA in the culture of holding legislators to account via insisting on clear rules of construction. He favourably refers to the works of Roscoe Pound, Roger Traynor and Guido Calabrisi.

Justice Finn’s interview, against the backdrop of his *Law and Government in Colonial Australia*, gives some very perceptive insights into the fascinating dichotomy of the evolution of governance and the law in Australia. On the one hand a radical forging of new (albeit, sometimes flawed) experiments in the former, and, overall, a tardy development of adapting Australian law to Australian circumstances - “Australianisation”.

He summed up the history of the latter by pithily paraphrasing the US Supreme Court Judge Oliver Wendell Holmes, Jr. (1841-1935) - “the Common Law is the history of a country’s development slow grown...in Australia, it was the history of English development slow grown!”

I hope colleagues will find much of interest, and perhaps some controversy, in listening to Justice Finn’s interview.

*Lesley Dingle is Foreign and International Law Librarian and Founder, Eminent Scholars Archive, Squire Law Library, University of Cambridge.*

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BOOK REVIEWS

Sir John Baker
Baker and Milsom Source of English Legal History Private Law to 1750

Bentham, Jeremy
The Collected Works of Jeremy Bentham: A Comment on the Commentaries and A Fragment on Government

Blumberg, Phillip I.
Repressive Jurisprudence in the Early American Republic

Carter, Jesse W.
The Great Dissents of the “Lone Dissenter:” Justice Jesse W. Carter’s Twenty Tumultuous Years on the California Supreme Court

Davies, Sharon
Rising Road: A True Tale of Love, Race, and Religion in America

Hutchinson, Allan C.
Is Eating People Wrong? Great Legal Cases and How They Shaped the World

Lechelt, Jack
The Vice Presidency in Foreign Policy: From Mondale to Cheney

Moran, Gerald Paul
John Chipman Gray: The Harvard Brahmin of Property Law

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Justice, Legality, and the Rule of Law: Lessons from the Pitcairn Prosecutions

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In America legal educational tradition, this volume would be considered a “casebook” and in many ways, resembles one. The cases in this volume are selected from the extensive literature of court records prior to 1750, both from printed sources and manuscripts, and certain lectures and texts. This materials is arranged under the various historic forms of actions developed through the ages in English law. The purpose of this selection is to show the development of each form of action in this system of common law pleading which was held so dearly by English lawyers, and later by American lawyers in earlier centuries. This system of pleading was complicated and lawyers who became skillful in pleading was recognized in the legal profession for this special ability. In the mid Twentieth Century, in England and America, common law pleading was replaced by a more modern system of rules developed and promulgated by the courts. The decisions selected by the compilers were from the King’s courts where common law pleading was developed and does not represent decisions from other courts in the English judicial system. The authors aim is to point to the recorded notes of decisions and urged future scholars to supplement their efforts from records of local courts. Pleadings in admiralty, ecclesiastical courts and chancery were very different from these forms of actions and for that reason, are not found represented in this collection as the compilers note in their introduction.

What is the value of this material? These notes of holding in actual litigation contribute to our understanding of society at that period as well as extending our understanding of English legal history. The widow seeking her rights in property which she has been wrongfully taken away from her has as much pathos after all the centuries since as it would today. The authors have sought to compared different versions of the notes reported here with several manuscripts to insure their accuracy. It should be pointed out that these points of litigation exist in written manuscripts and if printed, was done many centuries later. Who recorded these notes is not known and were obviously were made for personal use or possibly the judges. They are not decisions in our present understanding of such documents but they were instructive of legal thinking at the time they were recorded and serve some purpose for the scribe who prepared them.
Anyone who strings a necklace has many beads from which to choose. Likewise, these editors had a wide range of sources from which to select those “decisions” which are included in this volume. Both editors have shown, through their scholarly writings, a familiarity with this literature and only a brave soul can point to other cases which they should have included.

It is difficult to explain to the modern reader the contents of this collection for terms currently use would not convey and accurate picture of its contents. In our modern terminology, some terms convey a different concept to contemporaries which may be confusing. For example, to describe these court cases as “decisions” conveys a different concept to the modern student. These “decisions” are written notes of litigation which may include the reasoning of the judges or exchanges between the attorneys or arguments made to the judges and no doubt served as a memorandum of actions taken by the court.

The editors efforts are not limited to the selection of cases but includes textual materials and statutes in an effort to aid the contemporary user, the editors were mindful that much would be unfamiliar today. For example, dates in the original are often references to the Church calendar such as the feast of St. Andrew and the editors have added the dates according to our current methods of references to months, dates and years. The editors were well aware that many references common centuries ago are not known except to the few scholars who are deeply immersed in this history so these enrichments made by the editors serve to make this collection more understanding to the modern reader.

The editors have sought to make the entries as accurate as possible. Where there are two sources, comparison have been made. Since these accounts were often written in Latin or law French, the editors have made their own translations where, in their judgment, this was necessary. This is a brave effort to make this materials known to the modern reader in a convenient form for few libraries have extensive collections of all the printed English court documents for many are found in publications of local English historical societies which are considered out side of the literature normally thought to be useful in a comprehensive English law collections in American law libraries. This reviewer applaud the efforts of these editors and only wish it was available when he had the temerity to try and teach to a law school class the glories and the usefulness of common pleading, trying to convince them that this system of pleading was introduced in many American
courts, although in modified form. Editions of English texts on this subject were common in the Nineteenth Century among the books published by American publishers.

Erwin C. Surrency
Professor of Law and Law Librarian emeritus
University of Georgia

The remains of English jurist and philosopher Jeremy Bentham remain on display at University College London more than 175 after his death in 1832. Dressed in the clothing he once wore, Bentham’s stuffed skeleton continues to hold his favorite walking stick–Dapple–on his knee.

Until recently the writings of this great reformer were not as well-preserved as his mortal remains, limited to an incomplete edition of his complete works that was published a decade after his death. Fortunately a new critical edition of Jeremy Bentham’s works and correspondence is being prepared under the supervision of the Bentham Committee of University College London.

*A Comment on the Commentaries* is Bentham’s critique of Sir William Blackstone’s *Commentaries on the Laws of England*. Never completed, the work did not appear in print until 1928. Bentham’s first major publication, *A Fragment on Government*, was originally published anonymously in 1775. These two related works deny the reality of Blackstone’s theory of social contract, and instead advance the idea of utilitarianism.

Edited by J.H. Burns and H.L.A. Hart, this volume belongs in the office of every legal historian and political scientist.

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1 Bentham’s head was damaged in the preservation process and has been replaced by a wax replica.

Officially titled *An Act for the Punishment of Certain Crimes against the United States*, the Sedition Act of 1798 was designed to prevent seditious acts from weakening the Federal government. Congress, then controlled by the Federalists, enacted the Sedition Act on July 14, 1798\(^1\) despite opposition from Thomas Jefferson and Congressional Republicans.

The Sedition Act made illegal the “writing, printing, uttering or publishing [of] any false, scandalous and malicious writing or writings against the government of the United States.” Federalist supporters saw it as actually liberalizing the more repressive Common Law.\(^2\) However, the Act was seen as unconstitutional by the Republicans: it was not authorized by the limited powers granted to Congress in the Constitution, it expanded Federal power in violation of the Tenth Amendment, and it violated First Amendment protection of free speech and of the press.

In *Repressive Jurisprudence in the Early American Republic*, Philip I. Blumberg, Dean and Professor Emeritus of the University of Connecticut School of Law, explains how the same generation that adopted the Declaration of Independence, the Constitution and the Bill of Rights could also adopt the restrictive Sedition Act. Dean Blumberg explains that the political revolution that overthrew British colonial rule was not accompanied by a legal revolution; English Common Law, designed to uphold and protect the monarchy, the legislature, the judiciary, and the established church, remained in place.

1 The Sedition Act of 1798 was among four laws collectively known as the Alien and Sedition Acts. The other laws were the Naturalization Act (officially *An Act to Establish a Uniform Rule of Naturalization*), the Alien Act (officially *An Act Concerning Aliens*) and the Alien Enemies Act (officially *An Act Respecting Alien Enemies*).

2 Among those Federalists who supported enactment of the Sedition Act were John Adams, George Washington, and Alexander Hamilton. However, John Marshall, not yet Chief Justice, refused to endorse the Act.
With the Election of 1800 on the horizon, the Sedition Act was almost immediately used by the Federalists to suppress Republican newspapers.\(^3\) While successful in the short term, with several Republican newspapers forced to close, the prosecutions ultimately led to public disapproval and Republican victories in the 1800 Congressional elections. The Republicans allowed the Sedition Act to expire in 1801, however the Jefferson and Madison administrations thereafter made use of criminal libel to attack the Federalist press in both Federal and state courts. American courts continued to enforce this repressive jurisprudence until the 1900s.

This well-written tome belongs in every academic library, and is a “must read” for those with an interest in civil liberties. Because it addresses the Sedition Act of 1798 in such detail, it will be of particular interest to anyone with an interest in free speech in wartime.

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\(^3\) Such prosecutions had actually begun prior to the adoption of the Act; among those charged with criminal libel under Federal Common Law prior to the Act’s adoption was Benjamin Franklin Bache, grandson of Benjamin Franklin and editor of the Philadelphia *Aurora*. Bache died of Yellow Fever before trial.
Jesse W. Carter served as an associate justice of the California Supreme Court from 1939 to 1959. This important figure’s dissents were sometimes, but not always, vindicated by later United States Supreme Court decisions.

Justice Carter was controversial not only for his propensity to dissent, often alone, but also his choice of words critiquing the reasoning of the majority. In *Kurlan v. Columbia Broad. Sys.*, 40 Cal. 2d 799, 819 (1953), for example, Carter makes one of his points against the majority view by stating, “It should be apparent to even the *least intelligent* that these programs are as valuable as the most gilt-edged security listed on the Stock Exchange” (emphasis added).

This excellent collection of essays is more than a tribute to a fine jurist who contributed in the areas of civil rights, labor law, contributory negligence, privacy, intellectual property, and freedom of speech. It also addressed the history and importance of dissent in court opinions.

As Carter is the first and presently only member of the California Supreme Court who was an alumnus of the Golden Gate University School of Law, faculty members of Golden Gate undertook the project to share the story of Carter’s life and his contributions to jurisprudence. The sixteen chapters address his biography and important dissents, as well as essays from United States Supreme Court Justice William J. Brennan, Jr. and Ninth Circuit U.S. Court of Appeals Judge William A. Fletcher on dissents. Authors include historical background, analysis, and most or all of Carter’s dissent for the cases discussed.

Specific cases discussed include:
• *Chessman* (I, II & III), a case involving the infamous “Red Light Bandit” whose trial transcript approved ex parte where the court reporter had died before completing it. On the issue of due process, Carter warned that not enforcing due process threatens “the armor which shields our liberties.”
• In People v. Gonzales, 20 Cal. 2d 165 (1942), Carter’s dissent anticipated an exclusionary rule for illegally obtained evidence to be applied at the state level.
• People v. Crooker, 47 Cal. 2d 348 (1956) foreshadowed Miranda.
• There were several loyalty oath cases in California during the height of the Cold War. Carter opposed loyalty oaths and refused to sign one himself. Carter’s position was eventually vindicated by the U.S. Supreme Court.
• Carter dissents in favor of free speech and picketing to effect the hiring of more African American clerks in Hughes v. Superior Court of Contra Costa County, 32 Cal. 2d. 850 (1948) in what the author describes as a harbinger of the civil rights movement and affirmative action.
• Payroll Guarantee Ass’n v. The Bd. of Educ. of the S. F. Unified School Dist., 27 Cal. 2d 197 (1945) led Carter to dissent against allowing people’s potential reaction to unpopular speech act as a veto against the exercise of free speech.
• Justice Carter argued against preventing those of Japanese descent from making a living fishing in Takahashi v. Fish & Game Comm’n, 185 P.2d 805 (Cal. 1947).
• In two 1953 cases, Justice Carter dissented against a restrictive reading of serious and willful misconduct of employers in workers compensation cases, arguing for a liberal construction in light of the social policy that prompted the legislation.
• Buckley v. Chadwick, 45 Cal. 2d 183 (1955) was a wrongful death case where Carter dissented against the application of contributory negligence.
• Carter’s dissent in Kurlan v. Columbia Broadcast Sys., 40 Cal. 2d 799, 819 (1953) foreshadowed more expansive rights in creative works in the entertainment industry.
• A couple’s picture was taken while in a romantic embrace in Gill v. Hearst Publishing Co., 20 Cal. 2d 224 (1953). While it was, in fact, taken in a public place, Carter argued that they did not thereby consent to have their romantic moment shared with millions of people.
• In *Hogan v. Ingold*, 38 Cal. 2d 802 (1952), Carter dissents in favor of expanded rights of stockholders in derivative suits.

• The author points to Carter’s dissent in *Simpson v. L.A.*, 40 Cal. 2d 271 (1953) as a beginning for the animal rights movement. Carter pointed out inconsistencies and notice issues in a law dealing with notice given to owners of stray dogs.

This book is helpful to understand the precursors leading up to the development of the law on numerous fronts, an understanding of the role and importance of dissents, as a historical look at a key figure in the California Supreme Court, and as an inspiration for those who believe the law ought to be different than it is.

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Rising Road provides intelligent and sensitive coverage of a 1921 Birmingham trial that has already received a good deal of attention from biographers of Hugo L. Black (see below, n. 8). The trial was that of the Reverend Edwin R. Stephenson, a Methodist “local minister” charged with—and acquitted of—the murder of Father James Coyle, a Catholic priest. To a modern observer, the backdrop for these events has all the trappings of the “benighted south.” As early as 1917 the journalist-critic Henry L. Mencken had described the former Confederacy as a region marred by stifling racial, political, and religious norms, all of them self-limiting, at best defective; his south was the land of “the Methodist parson turned Savonarola and of the lynching bee.” Davis is much kinder than Mencken to the white Protestant folk of Birmingham, but she is well aware that they were possessed by collective demons.

One of the city’s middle-class Protestants was the Baptist Hugo Black (1886-1971), who appeared as chief counsel for Stephenson’s defense. More ambitious than devout, Black would have been delighted to know in 1921 that the great accomplishments of his life were all before him, including his election to the U.S. Senate in five years, and his nomination to the U.S. Supreme Court in sixteen years. Black viewed the emotionally charged Stephenson case as professional challenge. If it gave him an opportunity to whip up the masses, so much the better—whether he entirely shared their manias or not. The same impulses were behind Black’s induction, two years later, into the second Ku Klux Klan. The hooded order was growing rapidly in numbers and influence in Birmingham during the 1920s. As to its impact upon the legal system, the question


was not whether any judges, lawyers, and policemen were in the Klan. Rather, one should ask how much influence they could bring to bear upon trials—or perhaps, with regard to the Stephenson affair, whether they needed to try.

Davies is a former prosecutor, and she sets forth the facts of the Stephenson case in a most lawyerly manner. Some facts were beyond dispute. Late in the afternoon of August 11, the defendant had shot Father James Coyle in the head after a brief encounter on the rectory porch of St. Paul’s Catholic Church. He had then walked deliberately to the nearby Jefferson County courthouse, was overtaken upon his arrival by Birmingham police officers, and immediately after his capture confined in the Jefferson County jail. Meanwhile Coyle, though transported by ambulance to St. Vincent’s Hospital, died upon the operating table (Rising Road, 57-78). The root of Stephenson’s hostility to Coyle (as the parson freely confessed to police and to newspapermen) was his belief that Coyle has “interfered” with his family by teaching Ruth Stephenson, only daughter of Edwin and his wife Mary, the doctrines of the Catholic Church. Worse, according to Stephenson, Coyle and some of his parishioners had influenced Ruth’s decision to join the Catholic Church. Worst of all, Coyle had, on that last day of his life, married Ruth to Pedro Gussman, a paperhanger who was a native of Puerto Rico.

Catholicism was one of the great bugbears of early twentieth-century America; and nowhere was anti-Catholicism more virulent than the south. In Georgia the former Populist firebrand Tom Watson used his Jeffersonian, a widely circulated journal, to accuse Catholic clergy of every crime from unnatural lust to treason. Ever more persistent was Wilbur F. Phelps of Aurora, Missouri, whose weekly Menace was devoted exclusively to warnings about supposed Roman Catholic crimes and subversion. Watson carried his brand of personal devolution to the U.S. Senate in March 1921. There he joined Alabama senator James Thomas Heflin, a passionate supporter of Jim Crow and disfranchisement, but equally intent upon detecting papal plots.\(^4\) Davies is well

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aware (Rising Road, 13-15) of the pervasive influence, in Alabama, of Watson and Phelps. Likewise she covers (Rising Road, 42-43) the tumultuous welcome given in Birmingham (December 1916) to Alabama native Sidney J. Catts, recently elected as governor of Florida after a campaign backed by prohibitionists and an anti-Catholic organization, the Guardians of Liberty.\(^5\)

Prior to the 1920s, Birmingham’s leading anti-Catholic group was the True Americans, or TAs, a group so secretive that little is known of them and nothing more is likely to be known. Like other historians who have covered the Ku Klux era in Alabama, Davies takes notice (Rising Road, 48-50) of TA involvement in the city commission elections of 1917, in which Dr. Nathaniel Barrett defeated the incumbent commission president, George Ward. Ward, an Episcopalian, was deemed insufficiently vigilant against Catholic influence; and besides, he had voted against closing Sunday movies! One of Barrett’s first acts was to dismiss the city’s chief of police and replace him with “Thomas J. Shirley, an open member of the Imperial Council of the Ku Klux Klan” (Rising Road, 50). Still, in 1921 Catholics were more likely to blame the TAs than the Klan for acts of discrimination and bias. Before the Stephenson case came to trial, for example, Pedro Gussman was arrested on a trumped-up charge of murder. He fought free of the charge, but in its aftermath Ruth Gussman concluded that her husband had been frightened or bribed into appearing as a defense witness. She renounced Pedro publicly, her statement to the press charging that “the True Americans had bought him out” (Rising Road, 189-198, quoted passage at 198).\(^7\)

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\(^6\) See Carl V. Harris, Political Power in Birmingham, 1871-1921 (Knoxville, Tennesse: University of Tennessee Press, 1971), 86; Harris views the Ward-Harris campaign partly as an example of a clash between “Old Birmingham” and suburban Birmingham. Suburbanites (then, as today) were more likely to be white, middle-class, Evangelical Protestants, also to be more firmly rooted in rural culture.

\(^7\) Horace Alford, attorney for both Ruth and Pedro Gussman, received a threatening note signed “the T.A.s.” Alford was kept busy
Xenophobia, racism, religious bigotry, secret societies, mass hysteria: Davies negotiates these waters in order to get to the legal maneuvering that preceded and accompanied the trial. Though Black’s biographers provide significant accounts of State v. Stephenson, Davies has written the most developed account. She assesses the maneuvers of Circuit Solicitor Joseph Tate and defense attorney Hugo Black (between whom no love was lost; see Rising Road, 133-134) from the standpoint of one who has “been there and done that.” With regard to the State’s case, she exposes likely tactical considerations that academic historians are likely to miss, showing with readable, fair-minded prose how a good cause can be lost in our adversarial system.

To take one instance: Much of the grand jury transcript of the case is extant, and one of that record’s most striking features is lengthy testimony given by Ruth Gussman, who asserted that her parents were violent bigots with a long record of hostility to Catholics in general and Father Coyle in particular. Most writers on the subject have been so struck by the damning nature of this testimony that they missed something even more meaningful. The grand jurors were not sympathetic to Ruth (Rising Road, 147-153, 155-156) or to the state’s case generally! Instead, they seemed ready to accept the defense’s version of events—that the priest had struck the preacher, knocking him down, and that he had establishing Pedro Gussman’s innocence of the Peoria, Illinois murder for which he was arrested. He also, reportedly, fended off attempts by the Stephenson family to commit Ruth Gussman to the state mental asylum, a move that they had considered earlier in response to her strong interest in Catholicism. See Rising Road, 23-26, 193-194.

seemed to be reaching for a pistol when Stephenson shot him first. The grand jurors did not rush to judgment; in fact they did not indict Stephenson until the first week in September, after a long adjournment. When they did indict, it was for second-degree murder, not a hanging offense (*Rising Road*, 142-169, 203-204.)

The trial began on October 17 with selection of a jury whose members reflected the city’s spectrum of blue-collar and middle-class occupations. As was customary in the Jim Crowe south, the jurors were all white men. The prosecution opened its “case-in-chief” the next day (*Rising Road*, 211-216). Several commentators have noted that the State’s presentation was unexpectedly brief and not particularly effective. Tate and his assistants called only a few witnesses. They did not call Ruth Gussman, whose grand jury testimony might have offered evidence of a long animus between Stephenson and Coyle. Later, the State offered crucial eyewitness testimony after both sides had made their main presentations. Black objected vociferously and the trial judge, William E. Fort, sustained the objection, ignoring Tate’s assertion that his eyewitness would rebut Stephenson’s testimony (*Rising Road*, 264-268). Of all modern writers on the trial, Hugo Black biographer Steve Suitts is harshest in his assessment of the prosecution. He describes “a long string of errors, possibly deliberate errors, on their part,” characterizing the late offer of an eyewitness as “a conspicuous, stupid blunder—so clear that it appears more sabotage than error.”

Davies, on the other hand, feels that Tate was genuinely trying to win. Davies would have us consider several mitigating factors. First, the charge of second-degree murder required only the simplest elements of proof. It was sufficient if the prosecution could prove that Stephenson killed Coyle with a deadly weapon (*Rising Road*, 216). If they could do so, the burden of proof was effectively shifted to the defense. Second, calling Ruth Gussman to the stand was unnecessary and would have been unwise, given her track record as a witness and the tenor of stories about her in the Birmingham *News* and the Birmingham *Age-Herald*. Reporters had swarmed after Ruth in the sort of feeding frenzy too familiar today. With an eye on selling newspapers they had implied that she was an unnatural daughter, a willful girl who had entered into an ill-advised

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marriage only to turn on her husband (Rising Road, 144-147, 188-189, 210). Davies sees Ruth as a victim, a young woman courageous enough to escape from an abusive family. But she also knows what Tate knew—that putting Ruth on the stand would have exposed her to cross-examination by Hugo Black.

Third, Tate’s crucial rebuttal witness, the eyewitness to the shooting, had surfaced only the “waning days” of the trial, after the state had finished its case-in-chief (Rising Road, 264-268, quote on 264). By all accounts, this man could have provided exactly what Tait needed needed: a close-up view of the shooting, not the heard-a-noise-and-looked-over-yonder versions that other witnesses offered. It is not hard, in the realms of legal history, to find stories of defendants hanged due to bad lawyering or bad luck. The peoples’ case in State v. Stephenson seems to have suffered from both afflictions. Overall, as Davies traces the currents of public opinion before and during the trial, it seems clear that the State’s case was doomed. Alabama Klan leader James Esdale would say afterward that “Hugo didn’t have much trouble winning that verdict” (Rising Road, 283). Esdale meant for us to understand that the Klan had rigged the proceedings. But it is not necessary for us to trust him. The truth was that the anti-Catholic culture of the times made a conviction difficult, Klan or no Klan. And to make a conviction well nigh impossible, all that was needed was for someone to play the race card.

Hugo Black was just the man, an attack-dog lawyer seemingly without scruples. From his decision to enter dual pleas (self-defense and temporary insanity), to his brutal cross-examination of prosecution witnesses, to his direct examinations of Stephenson and his wife, he was in effect telling a poignant story. Here was a good Christian family, hedged about with scheming papists who would stop at nothing to steal their child. Building upon the Stephensons’ agitation prior to the murder, Black persuaded the jury to accept that the preacher had been driven mad by anxiety. As for the genie of race, Pedro Gussman’s ethnicity was for Black a gift from heaven; for it allowed him to accuse Coyle of being a miscegenationist. Prepped no doubt by Black, Stephenson testified that he had told Coyle, just before his alleged fight with the priest: “‘You have ruined my home! That man [Gussman] is a Negro!’” Black then paraded Gussman in front of the jury, having first darkened the room so they could better see him as a person of color (Rising Road, 240-244, 251, 263-264, quoted passage on 243). In his closing arguments, Black would speak of Gussman’s
claim to be of “proud Castilian descent,” adding snidely that “he has descended a long way” (Rising Road, 275).

At several points during his illustrious career as a Supreme Court justice (1937-1970), Black discussed his decision to join the Klan. He probably did not think back, as often, over his management of Stephenson’s defense. But his involvement in both activities associates him, irrevocably, with a lawless movement. True, he left the Klan prior to the 1926 state elections and never looked back. His Senate career, little remembered today, was that of a prominent “New Dealer.” Then by votes and opinions over the course of three decades on the Supreme Court, he established himself as a great defender of our constitutional rights.

Yet, it is useful—more, it is important—to see Black’s earlier incarnation pull out all the stops of racism and bigotry. It is important because of what Black’s story proves: that individuals can change and grow; that we are not the prisoners of environment or chained to the sins of the past. Harper Lee’s Atticus Finch provides us with a mythic lawyer-hero, struggling to lead by example in a wounded society. But Hugo Black was the real thing, struggling to rise above himself; and Rising Road gives us a vivid tour of the tangled wood from which he emerged.

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*Is Eating People Wrong?*, the title of this book grabs the reader’s attention immediately. The author, Allan C. Hutchinson, goes on to provide a collection of vignettes telling the stories of eight prominent common law cases from around the world. From the often told tale of the crew of the ill-fated *Mignonette*,¹ to the Scottish snail in a bottle in *Donoghue (M’Alister) v. Stevenson*,² the reader is treated to recitations that bring the cases to life.³ The pertinent history of the parties and judges, the background for the time period and place, the decision, the legal consequence, and the fates of the original parties are all included. Well-written and interesting, each case is truly a well told tale.

The author of this work is a distinguished legal educator who has written and published extensively. This is not his first book on the common law. In 2005, he published *Evolution and the Common Law*. Yet, when reading this work it is clear that this is not a law school text. In fact, Professor Hutchinson states in his preface that he wanted to write “in a way that was directed primarily to nonlawyers...” and that he has “done little original or primary research myself.” It shows, as the book reads like a work targeted toward a popular market. This is due in large part to the form of the documentation supporting the author’s recitation. The author relies exclusively on a supporting bibliography at the end of the book with sources arranged by chapter. The bibliography, with only a few exceptions, is comprised of secondary sources. Beyond the bibliography, there are only two footnotes in the entire book, both of which provide additional factual information, not source information. There are no legal citations to any of the cases pro-

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filed in this book. In fact, only three of the cases have source citations of any kind. The citations for those three cases are in the bibliography and are to Wikipedia.

Professor Hutchinson could easily have provided citations to the cases. He could have used footnotes or endnotes to indicate which of the sources in the bibliography supported particular factual elements of the vignettes in his book. He could have looked at the original materials and perhaps brought new insight to the cases. It could have been done without detracting from the impact of the story line of each case. With that extra effort, this book could have been truly remarkable, a work for the lay reader and the serious legal scholar. Professor Hutchinson’s ability to draw the reader into the tale is extraordinary. He takes a legal concept that can be dry and makes it accessible by presenting it using eight remarkable cases. This work is an excellent everyman’s (or woman’s) introduction to the concept of the common law. *Is Eating People Wrong?* is interesting and easy to read. It could have been so much more.

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The vice president can assume the presidency at a moment’s notice. With this important duty, one would think that the vice presidency would be a position of vast power. In *The Vice Presidency in Foreign Policy: From Mondale to Cheney*, Jack Lechelt explores the development of the vice presidency and shows that until recently, the role of the vice president actually often held little power. Future presidents such as Nixon, Johnson, and Truman found that they had little influence as vice presidents, especially in matters of foreign policy.

This trend changed with the semi-institutionalization of the vice presidency due in part to the increased complexity of international and domestic matters and the increase in the president’s power and responsibilities. The semi-institutionalization of the vice presidency began with Vice President Mondale. It was during the onset of his vice presidency with President Carter that precedents were established for the vice president’s office. These precedents encompassed: Vice President Mondale having an office in the West Wing of the White House, which gave him close access to the president and increased his vice presidential power; Mondale’s inclusion in the paper flow that went to and from President Carter; Mondale’s access to such national security information as the Presidential Daily Brief; his ability to be present at any presidential meeting; the integration of the presidential and vice presidential staffs; the vice presidential privilege to walk into the Oval Office; and a weekly private lunch between the president and the vice president. These precedents have had a lasting impact on the office of the vice presidency, with all of the successors to Vice President Mondale and President Carter following these precedents to varying degrees. With the semi-institutionalization of the office of the vice president during the last three decades, the vice president has become an important figure in support of the president’s policies and has exercised great influence in foreign policy.

Lechelt offers an in-depth look at the semi-institutionalized vice presidency and the impact each vice president from Mondale to Cheney has had on foreign policy. For each vice president, he provides an overview of their early life and political career, their selection as a vice presidential candidate, how each candidate could help fulfill their president’s needs, and the creation of their
vice presidency. He then analyzes each vice president’s role relating to foreign policy in the following areas: surrogacy, delegated tasks, and independent influence. He discusses how these semi-institutionalized vice presidents often stood in for their presidents as surrogates in their dealings with Congress, at public speeches and appearances where they conveyed important announcements regarding policy, and in their diplomatic visits to foreign countries. With the vice presidential role of delegated tasks, Lechelt explores the foreign policy assignments given to the vice presidents by their presidents. For each vice president, he also examines their exertion of independent influence through their involvement in foreign policy matters that they consider important and their general advisory ability to influence their president in his decisions relating to foreign policy matters. Through Lechelt’s portrayal of Vice Presidents Mondale, Bush, Quayle, Gore, and Cheney in these areas, one sees the progression of the vice presidency into a position of importance and the active role that vice presidents now play in foreign policy matters.

Jack Lechelt is an assistant professor of political science at Northern Virginia Community College. His book *The Vice Presidency in Foreign Policy: From Mondale to Cheney* is well-written, scholarly, and a thoroughly engaging read. It is also very organized, with the chapter material relating to each vice president presented in chronological order and the chapter sub sections regarding each vice president’s delegated tasks, independent influence, and their surrogate role in foreign policy matters clearly delineated. In this book, Lechelt provides in-depth documentation of each vice president’s career and their important roles relating to foreign policy since the inception of the semi-institutionalized vice presidency. The Literature Review section, the extensive References section, and the exhaustive footnotes are a terrific resource for anyone doing research on the vice presidency and matters relating to foreign policy within the last three decades. I would recommend *The Vice Presidency in Foreign Policy: From Mondale to Cheney* for any academic or public library collection.

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In a law review article on the subject of judicial biography that was later reprinted in his book Law and Literature, Richard Posner stated that the production of such a work is labor intensive and fraught with interpretive difficulty. He mentions only two biographies as especially worthy of approbation—Dennis Hutchinson’s The Man Who Was Whizzer White and Andrew Kaufman’s Cardozo. With his sketch of Benjamin Cardozo—Cardozo: A Study in Reputation—Posner offered his monograph-length alternative to the massive tomes that predominated in the genre. By confining the details of Cardozo’s successful but admittedly quite uninteresting life to a brief essay at the beginning of the book and using other chapters to analyze the merits of the justice’s opinions as well as the nature of judicial reputation generally, the book impressed some critics as an exciting and unique way to evaluate a historical figure. Gerald Paul Moran’s new book John Chipman Gray: The Harvard Brahmin of Property Law does many of the same things, albeit in an even more felicitous and enlightening manner.

A tax lawyer by training, Moran developed a fascination with John Chipman Gray over the course of a career engaged in the study of wills, trusts, and estates. He goes out of his way to note that this book—his first after nearly 40 years of law teaching—is not a biography in the traditional sense, referring to it as an “essay” in both the introduction and conclusion. In truth, it is a series of short essays that cover different aspects of Gray’s life and scholarship. Although it would be easy enough for an author relying on this method to lose the narrative thread, Moran goes to great pains to ensure that each subsequent essay builds on the one that preceded it.

Unlike the aforementioned Benjamin Cardozo, who bulks large in the legal imagination because he succeeded in turning so many beautiful phrases, the memory of John Chipman Gray persists because he systematized and articulated the modern rule against perpetuities. The RAP, as many law students call it, was first stated in 1682 in the Duke of Norfolk’s Case and then restated in differing ways by a host of English and American courts. However, it was not until Gray’s monumental treatise The Rule against Perpetuities, published in 1886, that these precedents were marshaled in the creation of the precise rule that has bedeviled thou-
sands of aspiring lawyers: “No interest is good unless it must vest, if at all, not later than twenty-one years after the death of some life in being at the creation of the interest.”

Moran seeks to go beyond the fact patterns to discover what environmental factors inspired Gray to develop this rule. In several short but highly effective biographical sketches, he argues that a combination of Gray’s esteemed father’s bankruptcy, his own un stinting sense of rectitude as an upstanding Boston Brahmin, his scholarly coming-of-age during the classical age of legal formalism, and his partiality toward English precedents contributed to his insistence on the “remorseless” application of what he preferred to describe as the “rule against remoteness.” These sections contain a wealth of fascinating details, for Gray—despite a colorless and somewhat enigmatic personality—was connected to many of most important people and events of the late 19th century. He served with distinction in the Civil War, courted the same woman as Oliver Wendell Holmes, Jr., attended meetings of the Metaphysical Club, and oversaw the estate of idiosyncratic Boston arts patron Isabelle Stewart Gardner. In his position as a professor at Harvard Law School, he recommended promising young law students for clerkships with his brother Horace Gray, who had introduced that practice to the Court, and later with Holmes.

Moran also provides a stimulating discussion of Gray’s three principal works—the Rule Against Perpetuities, Restraints on the Alienation of Property, and the Nature and Sources of the Law. He squares the latter, which some scholars have characterized as an early work in the Legal Realist style, with the other two in a cogent manner. Restraints on the Alienation of Property arose out of Gray’s fury with what he viewed as an incorrectly decided Supreme Court decision, Nichols v. Eaton (1876), in which the Court upheld the enforceability of a spendthrift provision in a trust instrument. In response, he followed the formalist practice pioneered by his colleague Christopher Columbus Langdell, gathering precedents and inducing from them a series of inerrant legal principles. In The Nature and Sources of the Law, a much later work that arose out of lectures given at Columbia Law School, Gray frequently quoted Bishop Hoadly’s famous remark that “Whoever hath an an absolutely authority to interpret any written or spoken laws, it is he who is truly the Law-giver” in the course of qualifying claims made decades earlier by John Austin in his Province of Jurisprudence Defined. Although Nature and Sources seems to point toward one conception of the law and Restraints
another, Moran shows how both arose from Gray’s career as a legal practitioner in an age where fewer law professors practiced the law they taught: He believed that his interpretations of the law were correct, but he also recognized that judges, rather than legislatures, were chiefly responsible for adopting such correct interpretations.

Moran observes that even as the RAP lingers, both in the multitude of states that have not yet repealed it and in the property casebooks that emphasize it, the nature of its creation as well as the personality of its creator continue to fade into the mists of history. The fact that casebooks include so little historical detail is a regrettable failure of our system of legal education, and one that Gray—who remained somewhat skeptical of both the casebook approach and Socratic method developed at Harvard during his tenure there—would undoubtedly have deplored. Moran does a fine job of resurrecting at least one towering figure from anonymity while leaving plenty of room for future scholars to expand and enrich his research.

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If you’ve seen any of the film versions of *Mutiny on the Bounty*, you know at least some of the background for the legal case examined here. In 1790, the HMS *Bounty* left Tahiti after its mission to collect breadfruit plants for use as cheap slave food. It was on this return voyage that senior master’s mate Fletcher Christian and twenty-four crew members mutinied. After setting William Bligh and a group of crew members adrift on a small boat, the mutineers headed back to Tahiti for refuge. Later, Christian and eight of the remaining crew members left Tahiti on the *Bounty* with twelve Tahitian women, some of whom may have been taken against their will. After being joined by a group of Polynesian men, they headed for the previously uninhabited Pitcairn Island—an isolated island of two square miles located halfway between New Zealand and South America—and began a new community far from the eyes of the British government.

Some 200 years later, the image of Pitcairn Island in popular culture as a tropical paradise would be shattered by news reports of routine sexual abuse of the island’s women and young girls. As we learn in *Justice, Legality, and the Rule of Law: Lessons from the Pitcairn Prosecutions*, the island’s population has hovered around fifty and consists to this day of only four families, including the descendants of Fletcher Christian. After several investigations by the UK police, charges were brought against almost all of Pitcairn’s male residents, most of whom were related to the victims. Since many of the victims chose not to testify, being concerned with the survival of the island’s community, only seven men were prosecuted. Ultimately, six men were convicted and the convictions were upheld on appeal.

This collection of essays by British legal scholars takes a critical look at the prosecutions of the Pitcairn men and explores alternative approaches that may have achieved the same result with less disruption to the lives of the islanders. Beyond the primary issues related to the rule of law, the book also addresses the implications, particularly moral, of not taking action on behalf of sexual assault victims, as well as the practical difficulties of taking action. This leads to a critical question for multicultural societies about the extent to which law should be applied to cultural
groups that have their own customary laws that are different from the portion of the population who follows state laws.

The defendants in this case never argued that the alleged sexual abuse should be immune from prosecution merely on the grounds that it was an acceptable cultural practice, though this argument is raised by one of the authors. As noted throughout the book, there is evidence that even on Pitcairn the actions at issue here were widely regarded as morally wrong. Instead, counsel for the defendants restricted their defense to a series of arguments based on the rule of law, particularly whether or not Pitcairn could even be considered British colony.

To bolster the government view that Pitcairn was a British possession, the prosecution argued that since the Bounty mutineers were British, their settlement resulted in an annexation of the island. This was in fact a long-held view of the British legal system. William Blackstone, in his Commentaries, had set out the principles for determining the law in a newly acquired British settlement by stating that if English subjects were to discover and settle an uninhabited country, all English laws were immediately in force.¹ However, more than one author here takes issue with this notion that the original settlers took the law with them when they settled on Pitcairn. These authors argue that the courts did not address that the majority of settlers were Polynesian, not English. As one author points out, Pitcairn Island represented for the mutineers a place far beyond the reach of both the British military and the British legal system. If so, it seems highly unlikely that the men would have seen themselves as unconditionally committed to the observance of English law as their personal law.

Although none of the authors in this collection make any real moral defense for the defendants, one essay does propose that the island’s unique culture justifies reducing the defendants’ full moral blame. There are concerns throughout the essays as to

¹ W. Blackstone, Commentaries on the Laws of England...with Notes and Additions by Edward Christian, twelfth edition (London: Cadell, 1793-5). One of the interesting bits of trivia in the book is that Edward Christian, Cambridge law professor and editor of Blackstone’s Commentaries, was one of Fletcher Christian’s brothers.
what was fair on Pitcairn specifically. Among the suggested alternatives to prosecution were amnesty, counseling, and compensation to the victims. A different author, however, strongly objects to the notion, primarily touted by the media, of “tropical innocence.” He finds the prosecutions to have been a legitimate intervention on the basis that human rights always trump claims of cultural exceptionalism and goes on to argue that such cultural claims are rooted in a “lazy and excessive reverence for cultural difference.” (p.133)

Despite claims that the emphasis on Pitcairn’s isolation was a distorting influence in the media, the isolated island scenario is partly what makes this collection so compelling. As one author points out, this case can serve as a thought experiment, allowing us to “imagine the human condition in its most elementary form, before any social interaction has taken place.” (p.158) This is also where the lessons learned from the prosecutions come into play. The legal and philosophical issues raised here, particularly in relation to Pitcairn’s unique situation, are meant to serve as a guide for other remote communities lacking a governing body. The authors here make analogies not only to colonies and former colonies, but to modern oppressive regimes. There is also some relevance to modern societies where there is a gap between those who submit to the governing social and legal environment and those who follow “street” or other non-mainstream cultures. This is similar to the ongoing debate in the United States as to whether an accused should be able to cite a unique cultural background as a defense to a criminal charge.

While there is some slight redundancy between essays, the book works well as a whole. Each author takes a different focus on the case and there is a useful cumulative effect to reading the essays in the order presented here. As one essay raises certain questions, subsequent essays often address those issues. With the inclusion of a Pitcairn Island chronology, official correspondence letters, and the full judicial opinion, *Justice, Legality, and the Rule of Law* is an excellent reference resource for any scholar looking at the wide range of issues related to the rule of law in isolated communities.

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Leonard Orland is the Oliver Ellsworth Professor of Law at the University of Connecticut. He has written a fine, if a bit unwieldy, book that traces the sad history of money and other assets deposited in supposedly sacrosanct Swiss banks by European Jews during the Nazi era to its long overdue resolution by the American justice system. The book provides background and perspective on how and why the $12.1 billion in pre-war dollars (about $250 trillion today) of financial assets of Holocaust victims disappeared into thin air in the years following World War II. These assets were given over to Swiss banks by Jews and other Holocaust victims seeking to protect their life savings, having been lured by Swiss promises of secrecy and protection; but their heirs were met with cold, calculating denial by these same banks when they attempted to reclaim their rightful inheritance after the war.

Orland provides the narrative for the justice provided by American courts beginning in the late 1990’s with the Holocaust Victim Asset Litigation case and settlement, which culminated in the Swiss banks’ agreement to pay $1.25 billion for the relief of Holocaust survivors into a fund based and administered in the United States. The settlement monies were distributed as financial and medical services to hundreds of thousands of survivors all over the world. All legitimate claimants and their heirs to dormant Swiss bank accounts received the full proceeds of the accounts, which accounted for approximately $100 million of the fund, and the remaining funds were distributed to the neediest Jewish, Roma, Jehovah’s Witness, disabled and homosexual survivors.

Part one of this work concentrates on the documented historical record of the obfuscation and intransigence of the Swiss banks whose actions continued right up to the settlement that culminated the litigation. Part two explains the origins of the class action suit, and includes examples of the coordinated, complicated and voluminous defenses made by the Swiss banks, and shows how the class action suit provided a forum for justice to the survivors of the Holocaust. It enumerates in some detail the actions

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of the trial judge, the Honorable Edward R. Korman of the United States District Court for the Eastern District of New York who very ably led the parties to a successful settlement and supervised the distribution of settlement funds. Part three explains the intricacies and controversies of the settlement and shows how the judge applied equitable standards and the doctrine of cy pres in determining who would receive settlement money. Finally, part 4, shows how this litigation set the standard for other Holocaust era cases that sought restitution and justice for human rights claims related to the Nazi era.

Part 4 also contains a chapter on “Historic Injustice Litigations” which is the book weakest part. It attempts to argue that the standards established by the court in the Holocaust Victim’s Asset Litigation case should be applied to other human rights class actions, including the Mexican Braceros claims, the Japanese Comfort Women and Forced Labor claims, South African apartheid class actions, African American Slavery Restitution claims, Armenian Genocide and litigation against former Philippine President, Ferdinand Marcos. Most of the plaintiffs in these class actions sought relief in U.S. courts under the Alien Tort Claims Act and the Torture Victims Protection Act and most, if not all, have been unsuccessful and have been dismissed before trial or did not succeed in obtaining compensation for the plaintiff victims. These statutes were not at bar in the original case, and the authors’ inclusion here seems forced and it is not clear whether their presence in the book was a means to advocate for setting a standard for the settlement of class action human rights cases, a way to showcase the courage and fortitude of Judge Korman, a way show that most cases brought on behalf of victims of “historic injustices” are unsuccessful, or all three factors. It is simply not clear.

Having said that, this is still a valuable book. Along with all the background and the detailed account of the case, are several hundred pages of supporting documents for the litigation in several appendices. Included are excerpts from the Bergier Commission’s Final Report of the Independent Commission of Experts for Switzerland, litigation documents from the class action and other related documentation. From a research standpoint, of particular value and interest is the Judah Gribetz’, the Special Master who supervised the distribution of the fund), bibli-

ography, which has over 500 entries. The appendices comprise the major portion of the book, and are over 400 pages in length.

In the first pages of this book you will find the famous biblical quote “Justice, justice you are to pursue.”

That it took over 55 years, a justice system in a foreign country and on a different continent, a forthright judge and a novel legal concept for holocaust survivors to obtain some measure of restitution for their in-calculable losses is a testament to the tenacity of those who pursued justice, both on their own behalf’s and for others.

Adeen Postar
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3 Deuteronomy, chapter 16, verse 20.

Saskia T. Roselaar provides an exceptionally detailed portrait of the role that *ager publicus* played in Roman society during the years of the Republic. Her history of public land is pieced together from knowledge of Roman literature, law, and economics, in addition to the analysis of archeological material that has been recovered from field surveys. Roselaar’s work is the first in a series to be published by Oxford University Press that will use an interdisciplinary exploration of Roman law to examine legal rules in the context of the society that created them in order to understand the purpose that these rules served and the extent to which these rules proved effective.

This book found its origin in Roselaar’s Ph.D. thesis at the University of Leiden. Although there have been several academic works which examined the topic of *ager publicus*, these works primarily explored the laws relating to the public land and the legal instruments that regulated its possession. These works were produced by experts in the area of Roman law. In contrast to these studies, Roselaar wanted to put the laws concerning *ager publicus* into a wider context. It is her intent to expand our understanding of *ager publicus* by exploring how public land functioned in the Roman economy and society, subjects which she believes have been neglected by legal experts. (3) It is her contention, that these laws were not created in isolation to changes in the economy and society at large, and that the laws that governed public land adapted to the economic and demographic changes in Rome.

As explained by Roselaar, the history of *ager publicus* is “in a sense a history of the conquest of Italy” because *ager publicus* is comprised of land claimed by the Roman Republic which had been taken from the peoples they had conquered. (31) There is an ongoing debate concerning the manner in which this public land was disposed of after it was appropriated by the state. Some have argued that *ager publicus* was merely a transient category of property, which pertained to land that had been annexed from conquered societies which Rome intended to transfer to private ownership. (18) Roselaar argues differently, that *ager publicus* played a far more consequential role in the expansion of the Ro-
man Republic, and could be found years after its appropriation still in the hands of the state. Accounting for *ager publicus* that existed well after the Second Punic War, Roselaar demonstrates that public land was not privatized by the Roman Republic as quickly as experts of Roman history once surmised. And from this prolonged existence of public land in the hands of the state, Roselaar provides a compelling explanation as to the purposes that *ager publicus* served during this period in Roman history.

In the appendix to her work, Roselaar provides a systematic overview of the land classified as *ager publicus* in Italy during the time of the Republic. Included are locations of these tracts of land, dates in which the land was acquired, and indications as to how much of the land was privatized. No actual figures were provided, but rather speculations about the size of these tracts of land were offered, as she concedes that there is not enough information known presently that would allow for a precise accounting of *ager publicus* during the time of the Republic. Roselaar undertakes this task in order to support her argument concerning the existence of large tracts of public land that were retained by the state. After establishing that Rome had substantial holdings of public land that spanned over a significant amount of time, there is a question which arises as to why the Roman Republic would confiscate large tracts of land that it did not need. According to Roselaar, *ager publicus* was often used as a tool to pacify conquered populations. (292) During the early part of the Roman Republic, the land that was claimed by Rome was not of great use because Rome did not have any economically feasible methods to transfer agricultural products from these conquered lands to Rome. Very often the inhabitants of these lands confiscated by Rome were allowed to remain, ensuring the loyalty of these people to the state.

It was not until the second century that *ager publicus* served another role critical to the Roman Republic. During this period there was increased competition for arable land in central Italy due to population growth and an expanding market for commercial agriculture. As a result many small farmers saw their land being accumulated by the wealthy citizens of Rome. (219) In response to the decline of the small farmer, a solution was proposed, in which *ager publicus* would be distributed to the poor, providing them with their own plots of land, with secure rights of tenure that would prevent the wealthy elite from taking their land away. (220)
It was this land reform that occurred during the second century which significantly contributed to the Social War. Prior to this period, the inhabitants of land confiscated by Rome believed that they would be permitted to remain on this land as allies of Rome, as long as they refrained from rebelling against Roman rule. This permission secured the loyalty of these allies to Rome; however, this relationship was permanently altered once Rome began distributing this public land to poor Roman citizens. Despite the fact that these allies of Rome had refrained from rebelling, they lost possession of this land. Subsequent to this land reform, allies who had lost their land became more inclined to rebel against the control of Rome. (222)

Public Land in the Roman Republic provides a compelling argument as to the manner in which ager publicus aided in the expansion of the Roman Republic and its responsibility for the tensions that Rome would later have with its neighboring allies. It would make an excellent addition to any academic library collection that has significant holdings in the area of law or the humanities. I found this first volume in the Oxford Studies in Roman Society and Law to be quite impressive in drawing from the knowledge of several disciplines to increase our understanding Roman society. I look forward to future additions of this series as they examine later periods in the history of the Roman Empire.

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Child labor is a broad and complicated subject that requires analysis of dynamic economic, social, political and cultural forces while drawing from work in diverse academic fields. Most historians of child labor have focused on statutory or regulatory abolition of child labor or the social and economic changes of the nineteenth-century market revolution with scant attention paid to the role of courts in either the rise or the fall of children’s wage work. James D. Schmidt, associate professor of history at Northern Illinois University, aims to fill this gap in the extant scholarship with *Industrial Violence and the Legal Origins of Child Labor*.

A legal historian and scholar of the legal, labor, and social history of the nineteenth-century United States, Schmidt locates the key elements of child labor reform not in a dramatic reform tract, a single piece of legislation or a high court decision, but instead finds them local court litigation. Drawing upon the archival legal record left by tort and accident cases resulting from horrific industrial accidents in the Appalachian South between the 1880’s and 1920’s, Schmidt argues that local court litigation provided the stage for three elements -- working people, reformers and jurists -- to engage in public discourse and negotiation. This served to reorient the cultural imagination about a child’s place in modern industrial capitalism that moved them from the factory floor and to the schoolhouse and playground.

The delicate negotiations that played out in county courthouses throughout Appalachia, involved two class-bound notions of a child’s place in the industrial workplace: working people and progressive reformers. In the book’s first two chapters, Schmidt maps the terrain of these two constructions. Working class people envisioned an alternative education that integrated children into the world of production and ultimately prepared them for a lifetime of discipline and subordination. This vision replicated the agrarian family labor system and revolved around a set of producer-oriented values. These values entailed the expectation that children should contribute to their own livelihoods not upon reaching a certain age, but as soon as they possessed the physical capacity to work. The "child labor" reform movement represented children as passive, dependent, defenseless, incomplete,
and incompetent. Reformers sought to transform childhood into one that resembled the bourgeois childhood of formalized education and play, not work. They exploited gender, race, and class to portray young laborers as being under the grip of malevolent patriarchs. Rather than toiling on the shop floor, young workers should be learning and playing, which were better methods of preparation for the consumer society of modern capitalism.

The court records Schmidt cites recount the well-known dangers that confronted young people in the workplace. They also reflect the attempts to negotiate a safe work environment between parents, their children and employers, which would allow children to safely enter the working world with their producer-oriented values intact. These negotiations and the resulting promises were undermined by the avarice of employers and the systematic hierarchies of industrial capitalism. The dangerous environments and the failure to find a safe place for children in industrial life translated into death and disfigurement and, ultimately, lawsuits. In this context, working class families encountered the rapidly evolving legal conceptions of childhood.

By the mid-nineteenth century, courts were abandoning longstanding legal precedents that bestowed independent agency and the ability to contract upon children. Reform advocates’ efforts at disseminating a new lexicon of “child labor” led courts to recognize the natural incapacity of children and revise their conceptions of negligence. As important as this jurisprudential shift was, the law also functioned as an epistemological system during this time. It named divergent social practices, created fixed categories and boundaries, and supplied a language for talking about the place of young people in the working world. Thus, courts provided an arena where questions about the social and cultural meaning of childhood under industrial capitalism could be answered.

With each of these elements identified, Schmidt spends the final two chapters of the book illuminating how the commonplace legal interactions of young people and industrial violence contributed to the foundations of modern childhood. While uncertain about the details of reform tracts or shifting legal standards, working people were confident about their chances to obtain the compensation they sought for injury and broken promises in court. Young workers, their families, employers, and the larger community came together in local courtrooms to talk about the impact of horrific industrial accidents on their lives in an attempt to negotiate for safer workplaces. These tales sketched the same type of
picture that reformers sought to portray, but in language native to working class families. Recounting these tales in open court, however, was not the same as doing so on the porch, in the general store or in church. Rather, working class families were forced to adopt the new language of the law, which necessarily entailed that they use the leitmotifs of "child labor" — childish impulse, youthful incapacity, and negligence per se — in order to obtain the desired goal of litigation. These courtroom encounters completed more than a century of contestation by aligning the language of reformers, jurists and working people in a manner that renegotiated, redefined and reconstructed the work of young people in industrial settings as child labor.

In *Industrial Violence and the Legal Origins of Child Labor*, Schmidt has crafted a compelling and tightly woven work that combines legal, labor and children's history to make a case for the role of child labor in the construction of modern childhood in the modern legal and industrial order. That fact alone makes it well-suited for inclusion in any academic library, but it is a particularly excellent addition to collections with a focus on legal, labor or social history of the United States.

The book must also be applauded for its historiological orientation as well. Recent work by historians of child labor gloss over the important relationships and dynamics at play in such a complex topic and, in so doing, fail to give the topic the scholarly treatment it warrants. Schmidt chooses not to pursue a national or transnational history. By limiting his scope, Schmidt enables a deeper exploration of childhood and the pain, injury and death inflicted by industrial violence as spatially and temporally relative concepts. Beyond that, however, he casts childhood and child labor as a terrain of struggle where numerous social and political forces seek a construction (or reconstruction) that suits their interests: patriarchy, capital, the state and even children themselves. By taking this tact, Schmidt's localized analysis has national and transnational implications.

Schmidt recognizes the deep humanity of the cast of characters he features in his book, but he is also able to separate the emotive component of "child labor" from these larger issues. Many scholars on the subject seem unable to do so, which has the effect of limiting objective analysis of child labor as a scholarly subject. It is understandably difficult to be dispassionate about accounts of nineteenth-century children in the textile mills of the Appalachian South or the rail yards of Britain. Contemporary re-
ports about young children toiling in the carpet factories of India and Pakistan or being trafficked to work in Nigerian granite quarries are equally difficult to objectively analyze. However, if the goal is to come to some deeper understanding of this phenomenon and where it fits within the larger scheme of socioeconomic and political development, then it is important to achieve some degree of objectivity. Ultimately, the incorporation of studies similar to Schmidt’s in rigorous ways will have an impact on the way in which we understand important social relationships and dynamics such as patriarchy, gender, class, race, agency, the formation of worker and political consciousness, capital accumulation and the state.

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This biography is the inspiring story of the amazing professional life journey of William Reece Smith, Jr., an accomplished lawyer who worked tirelessly and with great success to promote the providing of free legal services for the poor in this country and around the world. Mr. Smith was proficient in many respects including as a Rhodes Scholar, varsity athlete, Naval officer, law firm managing partner, law professor, interim law school president, American Bar Association (ABA) President and International Bar Association (IBA) President.

The author, Michael Swygert, observes that the foundation for Mr. Smith's successful career was laid by his parents and grandparents. Mr. Smith's maternal grandmother—who lived in the family home from his infancy until he left for college, and who “profoundly impacted Smith’s view of the world”—worked to “improve the circumstances of mountain folk, mill workers, and inmates of mental institutions. . .” (13 – 15) She was the first woman to hold public office in Tennessee. To promote literacy, Smith's maternal grandmother “worked relentlessly for the creation of the [Plant City, FL] . . . public library.” *Id.* She volunteered most afternoons to “run the library when no one else was willing to do so . . . and purchased most of the library’s books” for several years. *Id.* After her death, a conference room in the Plant City FL library was dedicated in her memory. It was stated in her obituary that without her efforts, “Plant City might not have had a library.” *Id.* Her grandson followed her example “in seeking social change for a better society”. *Id.*

Mr. Smith served in the Navy, having received an undergraduate degree from the University of South Carolina (USC) and a Naval Commission in the United States Naval Reserve. (24) After release from active duty, he attended the University of Florida Law School (UF), graduating number one in his class with high honors. Swygert notes that Smith was SBA President and Editor of the UF Law Review. (25-29)

The author’s account of Mr. Smith’s years at Oxford University in Cambridge, England, as a Rhodes Scholar, Class of 1949, is interesting reading with many reminisces and anecdotes. The author’s descriptions of Smith’s studies, sports activities, travels, friends and acquaintances (including British royalty) provide a
personal, vivid sense of Smith’s “wonderful”, “amazing” and transformative years on a Rhodes Scholarship. Swygert concludes “Yes, he was bright, athletic and a hard worker prior to coming up to Oxford . . . But after his three years at Oxford, Smith was a more mature, worldly, scholarly and most importantly, a socially conscious and involved human being.” (51) Smith continued his association with the Rhodes Scholarship program for thirty years.

After a year on the faculty of University of Florida College of Law, Smith joined the Florida law firm of Carlton Fields where he remained for over fifty-five years, heading the firm for more than three decades, subsequently serving as Chairman Emeritus. (53-54) There is a chapter devoted to Smith’s first Florida Supreme Court case and the four cases he argued before the United States Supreme Court. (67-80) His successful stint as Tampa City Attorney drew praise from the press, where it was stated that Smith had the Council’s “respect due to his brilliant and knowledgeable manner in explaining the legal rights and wrongs of actions they plan to undertake . . .” (82) Mr. Smith’s presidency of the Florida Bar Association beginning in 1972 is discussed, as are his leadership roles in many bar and law-related organizations, including the American Law Institute. (113-130)

Commencing in 1976, Smith served as Interim President of the University of South Florida (USF), where he was remarkably successful in improving student and faculty morale and town-gown relations. The author observes that “Smith loved the challenge of running a major university and based on both inside and outside assessments, he had succeeded brilliantly.” (142) Many students, “[a]ll deans and some 900 faculty and career service employees signed petitions urging . . . [him] to accept” the Presidency of USF. Smith decided not to pursue the USF Presidency because he felt the “timing was right for . . . [him] to seek the ABA presidency.” Mr. Smith later described this as the “hardest decision of his life”. Id.

Swygert’s description of Smith’s candidacy for and election to the American Bar Association (ABA) Presidency provides unique insight into an ABA campaign. It is noted in this biography that Smith’s ABA Presidency was devoted in large measure to saving the Legal Services Corporation (LSC). As President-elect and President of the ABA, Smith worked “to seek to increase involvement of state and local bar associations in organized legal aid activity.” (149) He sought to increase understanding and involvement among the private bar (ABA) and government subsidized
legal assistance attorneys (LSC). (149-150) Swygert states that as ABA President, “Smith tried to educate politicians and the public of the magnitude of the inadequacy of legal aid services for the poor . . .” in order to advance the pressing need for more and better legal services for the underprivileged. (156) The author well describes Smith’s massive communications and public relations campaign to prevent disbanding of the LSC, and he attributes the success of the campaign to save LSC at least in part to Smith’s oratorical skills. “Those who have heard him . . . [say] . . . he captivates his listeners with lucid and insightful remarks, while making coherent and substantive points, all intermixed with humorous anecdotes.” (150) Swygert points out that as President and President-Elect of the ABA, Smith made more than two hundred speeches including addresses to all of the fifty state bar associations on numerous topics. (Id.) Testament to the success of Mr. Smith’s effort on behalf of the LSC is found in a thank you letter written in 1981 by the Executive Director of the National Legal Aid and Defender Association, where it is stated in part: “There is no question . . . but that you are the single person most responsible for saving the LSC. While many have worked night and day to assure the continuation of the LSC, your moral leadership and persuasion, combined with your ability to activate the Bar, is what put us over the top.” (169) Smith also worked to have the ABA fund a “Pro Bono Activation Project . . . to encourage the ABA to promote and assist new pro bono projects to be developed through state and local bar organizations.”(171) After his term as ABA President expired, Smith served for six years as Chair of the ABA Consortium on Legal Services and the Public. During that time he advocated to increase the private bar’s providing free legal services to the economically disadvantaged, and he continued to advocate for cooperation between public and private lawyers in providing legal assistance to the poor. (175-177)

Mr. Smith later served as President of the International Bar Association (IBA). Swygert notes that Mr. Smith was “the only American to be elected president of the IBA in its sixty-two year history.” (185) Commencing in 1981, Smith succeeded one of his ABA friends as ABA’s representative on the IBA Council. Smith participated in IBA Council meetings for eight years, “working with lawyers and bar officials from . . . Africa, Asia, Australia, Europe, and both North and South America.” (186) Smith was elected as the IBA Secretary-General in the mid 1980’s, and he “traveled around the world giving speeches” and becoming acquainted with IBA members in many countries. The author describes how Mr. Smith’s many contacts and his skills as a public speaker enabled
him to be elected to the Presidency of the IBA. (186) As an IBA official, Mr. Smith spoke at meetings and conferences around the world. “... As IBA President, Smith “flew in excess of 300,000 miles.” (186) By describing several of Smith’s trips to numerous countries, the author provides a glimpse of the huge effort made by Smith as IBA President. One of Smith’s most important purposes as President of IBA was to communicate his belief in “... the importance of strong national bar organizations and of responding to the need for pro bono legal service”, especially in the Third World. (188) Mr. Smith travelled to South Africa and Kenya in order to promote human rights. The author recounts Smith’s successful efforts to prevent Kenya’s cancellation of an IBA Conference in Nairobi because of Smith’s insistence on speaking about human rights. Unfortunately, Smith was forced to cancel the Nairobi conference because of “criminal elements on the streets of Nairobi” and to move it to New York (195). An IBA meeting in Zimbabwe during Smith’s IBA Presidency was in Mr. Smith’s view a “significant step in getting African nations to work together ...” (195-6) He also worked at promoting the concept of enabling bar associations of developed countries to help those in underdeveloped countries by pairing or “twinning” the former with the latter, which the author describes as “a step in the globalization of the international practice of law.” (196-198)

Swygert’s biography of William Reece Smith, Jr. is worth reading because it well describes the fascinating and remarkably successful professional life of a truly accomplished lawyer, who inspired by words and deeds. Swygert ably recounts how Mr. Smith’s family and countless professional friends and acquaintances here and abroad and Smith’s excellence at every stage in his professional life propelled him to great achievement as a leader in the service of the legal profession and the poor. In his final chapter, the author discusses Mr. Smith’s philosophy of service and professionalism. Swygert aptly concludes his biography with Mr. Smith’s own words: “As lawyers, we must understand that we do not exist merely to make money and to live ‘the good life.’ We must remember always that we are members of an honorable, independent profession committed to the unselfish service to others ...” (203)

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John Selden (1584 -1654) was the leading legal historian of the seventeenth-century England. He is a well-known figure for the period because of his learned writings and his participation in politics, especially in the parliamentary controversies of King Charles I from 1625 to 1629 and later during the Long Parliament of the 1640s. David Berkowitz (John Selden’s Formative Laws (1988)) and Paul Christianson (Discourse on History, Law and Governance in the Public Career of John Selden, 1610-1635 (1996)) have written works on Selden’s public and political life, while Jason Rosenblatt has written an excellent work on Selden’s Hebraic writings and its influence on his contemporaries (Renaissance England’s Chief Rabbi: John Selden (2006)).

Professor G.J. Toomer, a noted intellectual historian of seventeenth-century Europe, has written an intellectual history of Selden in which he provides an extensive description of Selden’s writings from his earliest work in 1609 to his death during Oliver Cromwell’s rule. Selden’s writings are so important that it was thought appropriate to have a three-day international conference commemorating the four-hundredth anniversary of Selden’s first work; see http://www.cems.ox.ac.uk/selden/ of which Professor Toomer was one of the keynote speakers.

G.J. Toomer was educated in England and the United States, and taught as a Fellow of Corpus Christi College, Oxford, and Professor of the History of Mathematics at Brown University. For many years his scholarly efforts were concentrated on the history of mathematics and astronomy. In these fields, he published what has become the standard translation of the most important ancient astronomical treatise (Ptolemy’s Almagest, 1984), and the first edition of the Arabic version of the standard work on Conics in antiquity (lost in the original Greek: Apollonius Conics Books V to VII, 1990). Since retiring he has devoted himself to the intellectual history of early modern Europe, especially 17-th century England, in which he has published an account of the study of Arabic (Eastern Wisedome and Learning, OUP 1996).

Toomer takes primarily a chronological approach to Selden’s writings, though he does categorize writings by topic. Selden’s earliest works are considered antiquarian and historical works. Selden’s
first writing were antiquarian works. He assisted Michael Drayton in his *Polyoibion* (1610), a collection of poems on English history and geography by adding descriptions to Drayton’s work. Another early work was a short treatise on duels (*Duello*) providing a history of them. And he wrote a preface to the *Janus Anglorum* (1610) on the ancient Britons and Anglo-Saxons.

Selden only wrote two works that were strictly on English legal history: Fortescue’s *De Laudibus Legum Angliae* and *Dissertatio Ad Fletam*. The former was a work by the sixteenth-century jurist on the nature of English government under the Lancastrian government. Toomer takes issue with Christianson that Selden did a “critical edition” of this work; rather he added an introduction and some notes but did not noticeably change the edition that was not done until 1869 (pp. 176-77 n.11). Of *Fleta*, a treatise on medieval law and Roman influence upon English law, the historian Harold D. Hazeltine thought “No one of Selden’s contributions to legal history...presents his learning and historical vision to better advantage than the Dissertatio ad Fletam.” (p.197) which has been reprinted as Selden Society volumes 72, 89, and 99.

During the second decade, Selden wrote *Titles of Honor* (1614), a description and history of the titles of nobility in England and the continent. His publication of *De Dis Syris* (1617; 2d ed, 1629) dealt with the gods of the ancient Jews and their relationship to the Greeks and Romans. His *History of Tithes* (1618) contradicted other current writers on the divine-right payment of tithes to the clergy. James I actually forced him to withdraw the book from circulation, though he did not actually apologize for his work. His writing on *Mare Clausum* (The Closed Sea)(1635) supported English control of the seas against Grotius’s *Mare Liberum* (1609)

Selden’s *Table Talk* (1654, published posthumously in 1689) has gone through the most editions of all of his works and still reprinted today.

More than half of the two volumes deal with Selden’s Hebraic and Oriental studies. Among his works were *De Successionalibus ads Leges Ebraorum in Bona Defecutorum* (1631) on the Jewish law of inheritance; *De Successione in Pontificatum Ebraeorum* (1636), on succession of the Hebrew priesthood; *De Jure Naturali et Gentium juxta Disciplinam Ebraeorum* (1640), a response in part to Grotius’ s works as well as a commentary on the Rabbinic Noachide laws, divine voluntary universal laws from the time of Noah; *De Anno Civili* (1640), an account of the Jewish calendar and its principles.
as well as a treatise on the doctrines and practices of the Karaite sect; *Uxor Ebraica seu De Nuptiis et Divortiis Veterum Ebraeorum* (1640), a thorough survey of the Jewish law of marriage and divorce and of the status of the married woman under Jewish law; and *De Synedriis* (3 vols. 1650-55), a study of Jewish assemblies, including the Sanhedrin, with parallels from Roman and canon law. (Rosenblatt, 2).

Toomer summarizes Selden’s scholarship including both success and failures in Selden’s approach. Over half of the work deals with Selden’s Hebraic works. He is able to show how Selden uses both published and unpublished materials to support his views. Selden’s first work introduced printed Arabic into England. Selden’s use of Hebraic texts, both published books and unpublished manuscripts, brought a new level of knowledge to contemporary English authors. His work on Karaites sect who believed in Scripture only and not tradition was just one of the important contributions he made to Hebraic studies and were cited by such writers as John Milton.

Selden was an important contributor to scholarship both in the library he collected used by himself and by lending to other scholars as well as his encouragement of other scholars. Selden’s friends included Robert Cotton, John Young and other collectors of manuscripts or librarians at the major libraries in England. He accessed the Cotton library, the Records in the Tower of London, obtained manuscripts through purchase from friends on the continent, etc. At the time of his death, he had the richest, though not the largest, collection in England consisting of some 6,000 books. His noted executors, Matthew Hale, John Vaughan, Edward Hayward and followed his request to share his library and provide the bulk of the library went to the Boolean Library, Oxford University, though Hale and Vaughan kept various books and manuscripts (which unfortunately in Vaughan’s case were destroyed in a fire).

Toomer provides seven short appendixes (pp.829-50) on various aspects of Selden’s writings, though the first is an autobiographical note by Selden (pp. 828-29) and appendix B contains a summary of legal texts cited by Selden with references to modern sources (pp. 830-38). He also provides a bibliography of Selden’s writings (pp. 853-58), a bibliography of the texts and books to which Selden referred (pp. 858-89), and a source bibliography of books and articles (pp.889-993). He concludes with indexes to
manuscripts (pp. 934-39), to Hebrew titles (pp. 941-43) and a general index (pp. 945-77).

Toomer’s knowledge of Selden’s work is extremely impressive from this reviewer’s point of view, especially his ability to critically analyze Selden’s Latin, Hebrew, Greek, and Arabic in his works. The recognition of his work at the above-mentioned conference is certainly warranted and any one interested in Selden will have to consult this book in any further research on this important seventeenth-century illuminary.

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Lea VanderVelde's biography of Harriet Robinson Scott is remarkable for its detailed and compelling portrayal of the lives of mid-nineteenth century American slaves and settlers. The author of Mrs. Dred Scott ably used historical records, including public records, ledgers, journals and letters, to recreate the life of Harriet Robinson Scott -- who was illiterate -- as an adolescent in the free Minnesota/Wisconsin frontier and later as a wife and mother in the slave state of Missouri. This biography is important as a historical description of the development of slavery in the years leading up to the Dred Scott decision and eventually the Civil War. Equally important is the author's depiction of Dred Scott's wife Harriet's role in the eleven year long litigation culminating in the U.S. Supreme Court decision, Dred Scott v. Sandford.

Using information gleaned from meticulous research, the author describes the lives of several of the settlers in the Northwest Territories with whom the adolescent Harriet worked and lived. There are true-to-life descriptions of interpersonal relations among white settlers, soldiers, Indians, servants and slaves and of lives impacted by frigid, harsh Minnesota winters. The author inferred that Harriet would have been exposed to and perhaps influenced by visitors to the home of her master, Major Lawrence Taliaferro, the U.S. Indian Agent at various outposts in the Northwest Territories. Living in close quarters with her master's family, the adolescent Harriet would not have been able to avoid overhearing conversations among her master and visitors, including famous travelers such as Catlin and Nicollet. Although no one knows with certainty how Harriet lived or what motivated her, the author surmises that her master's example influenced Harriet to later persevere in pressing the Dred Scott litigation forward.

"Given her proximity, Harriet may have been able to observe . . . events from the vantage point of her master, who regularly sought to promote distributive justice. Taliaferro's perceptions, passions, and views of independence and the value of marriage and labor, and even his tendency to repetition, were not intended to tutor her understanding of the world, but they must have had that effect,
nonetheless. They must have conditioned this young slave woman to expect justice. Her later tenacity in preserving her family’s independence could have sprung uninspired from her heart, but it is more likely that it was nurtured by her life’s experience—and the person who shaped that experience most forcefully these formative years was Lawrence Taliaferro. It appears reasonable to assume that the lessons learned through her observation of Taliaferro fortified her to eventually go the distance in the constitutional lawsuit.” (101)

The author’s historical research suggests that Harriet was treated as a servant, more than as a slave by Major Taliaferro. In the Northwest Territories, where the dichotomy was between settlers (including African American slaves) and Indians, Harriet, although technically a slave, would have been treated more like a white settler than an Indian. A settlement woman like Mrs. Taliaferro who was isolated by the harsh weather from women friends of her stature would most likely have shared her confidences with her two female slaves, including Harriet (60), adding to Harriet’s presumed inner sense of importance and belonging.

VanderVelde recounts that, after their marriage, Harriet and Dred Scott left the free Northwest Territories and moved to St. Louis in the slave state of Missouri with a new master circa 1840. The Scotts did not have any alternative, as there was no other place for them to go after settlers were forced by the military to leave their Minnesota settlement. Other small settlements were not appropriate for an “African American family without money or farming experience.” (176) Because their varied masters in St. Louis viewed and treated the Scotts as black people or slaves, Harriet’s “. . . return to St. Louis quickly dispossessed her of the illusion that she belonged like everyone else. In Missouri, unlike the wilderness frontier, there were no Indians—there were merely black folks and white folks . . . [St. Louis was] a city already segregated to some extent by race”. (181 and 183)

On April 4, 1846, when they could no longer bear to live as slaves and within a month after Dred’s return to St. Louis after a two year absence, the Scotts sued for their freedom simultaneously as a married couple (232), motivated at least in part by a desire to keep the family together. “The children’s ages must have affected the suit’s timing because their older daughter was eight years old . . . which meant that she was old enough to be hired out or
sold away. . . . As her separate market value rose, she was increasingly at risk of being sold away from the family. . . “ (230) The author noted that freedom in the abstract was probably not their goal, and keeping their family together most likely was their objective. (232) Additionally, 50 year old Dred was becoming less valuable to his master because of his advanced age and ill health.

VanderVelde posits that Harriet Scott was the moving force within the family. “Those who observed them together described Dred as agreeable but Harriet as the family’s driving force. ‘Dred’s real master was his wife,’ wrote one journalist who observed them together.” (231) In other words, the litigation, historically presumed to have been instigated by Dred Scott, was in all likelihood the struggle of his 28 year old wife, Harriet, who was determined to keep the family together for herself and the sake of her two young daughters.

The author provides a detailed and dramatic account of the travel of the lawsuit brought by the Scotts, who “sued simultaneously as a married couple” and “who persevered for 11 years to the highest court of the land. . . the only married couple to do so in a half century of freedom suits. . .” (232)

All in all, *Mrs. Dred Scott* -- Lea VanderVelde’s amazing recreation of the life experience of an illiterate woman -- is an excellent, highly recommended read, full of fascinating historical information and legal drama. This work is an important account of Harriet Robinson Scott’s life and of her role in our nation’s history.

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Barbara Young Welke is an associate professor of history and professor of law at the University of Minnesota who has published previous works about the convergence of gender, race, and the law in the United States. In this new book, she builds upon her previous themes to include citizenship.

As part of Cambridge’s New Histories of American Law series, this work offers a new theory of “belonging” in American society. Welke begins with the premise that able white men held most (if not all) of the economic and social power in the Colonies and that the American Revolution was a war to protect property and livelihoods. By interweaving primary sources with modern scholarship, Welke explores the correlation between the evolution of property law and the changing attitudes of able white men with respect to citizenship. At the heart of Welke’s work is the fact that the constitution does not define citizenship. As a result, the concept of citizenship has changed over the course of American history, especially in the “long nineteenth century” defined as the period from the Revolution through the 1920s.

Divided into three chapters with an introduction, conclusion, coda, and bibliographic essay, Welke poses interesting questions about what it means to be an “American” today. She eloquently describes some of the complex ways in which economics has shaped our national identity and how race, gender, and ability have defined our individual sense of belonging. Although ostensibly about citizenship, Law and the Borders of Belonging also touches upon other areas of law including property, family, contracts, and the freedom of movement. By viewing this period of history from the perspective of able white men, Welke is able to show the legal significance of various characteristics throughout American history and how changing paradigms have influenced the law.

Chapter 1 (“Constructing a Universal Legal Person: Able White Manhood”) reveals that expanded citizenship rights did not always result in expanded social or economic rights. The events that led to the early recognition of free African-Americans as citizens in some northern states are mostly ignored (p. 34), although the economic subjugation of those same African-Americans is ex-
plored in relation to the privilege enjoyed by able white men (p. 48). Similarly, the paths to “belonging” for women, children, Native Americans, and the disabled are also explored throughout Chapter 2 (“Subjects of Law: Disabled Persons, Racialized Others, and Women”). Readers following current events related to so-called “anchor babies” and various immigration problems related to the United States-Mexico border may appreciate Welke’s treatment of various court cases and the development of modern immigration law detailed in Chapter 3 (“Borders: Resistance, Defense, Structure and Ideology”).

Although the ideas expressed in Law and the Borders of Belonging are of interest to patrons in every type of library, this work best suits academic scholars. Law firms, courts, and public law libraries will have very few patrons who will appreciate Welke’s nuanced analysis of history. However, this work would make a welcome addition to any immigration law or legal history collection and is priced to be accessible.

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