UNBOUND
An Annual Review of Legal History and Rare Books

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UNBOUND
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THIS ISSUE IS DEDICATED TO THE MEMORY OF

ERWIN SUREMENTY

May 11, 1924 – November 11, 2012

The author of numerous books and articles on legal history and rare books, Erwin Surrency passed away in late 2012. He was Professor of Law at Temple University (1950-1979) and at the University of Georgia (1980-1995). He was a past chair of AALL and founding chair of this SIS. He was a member of the AALL Hall of Fame. He was co-founder of the American Society of Legal History and long-time editor of the American Journal of Legal History. He was a regular contributor of book reviews to this publication.

Edward published “My Journey Among Books” in the January 1992 issue of LH&RB. We republish that article here in his memory.
My Journey Among Books
Erwin Surrency

Two questions frequently asked of me are: how did I become interested in writing the *History of American Law Publishing* and whence came the information reported in the volume? This journey among books began very early. In literature courses I noticed the texts of serious works were generally introduced by a short biography with some insight into the author's previous work. Without such facts, a piece of literature had less meaning for the student, and these introductions added a dimension to the understanding of the work. Imagine a newly minted law librarian encountering in daily work Purdon’s *Pennsylvania Statutes Annotated*. Curiosity alone raised the need to know more about this editor of a set of statutes whose name had been brought forward for nearly a century. It was a surprise to find no available biographical information on Purdon. His first name, John, I learned from a list of members of the bar of Philadelphia. Purdon practiced law in Philadelphia, but little else is known of his activity, and certainly nothing was known as to why or how he came to compile his statutes.

Another widely used name in the same jurisdiction was Vale, who was the original editor of the digest for the state. A bit more was known about him, but there were no clues as to why Ruby R. Vale was moved to read all the reported Pennsylvania cases to compile a digest for the benefit of practitioners, a daunting task when the number of reported Pennsylvania decisions is considered. Was the work of these authors to be dismissed lightly as the work of “hacks?” What impact did these two works have on legal literature?

Professional contacts began to play a role in my evolving interest. Many of those far older than I, who were encountered at AALL meetings, impressed the novice with their knowledge of where to find that elusive creature, the law, for their emphasis was on “where,” not “how”! This was a time before collecting was made easy by the reprinting process, and a librarian had to look to the secondhand market to locate essential items. Many tales were told of where a particular set was found among dealers or how a particular collection was split, one part taken to one location and the other to some other private collection, and the two parts were later reunited. Several leaders in AALL spent a considerable amount of professional effort developing special collections from which we all have profited. Lewis Morse at Cornell gathered to-
gether the most comprehensive collection of the opinions of state attorneys general. Carroll C. Moreland put together a complete collection of the proceedings of state bar associations at the American Bar Foundation Library. Today law librarians profit from these efforts, for the bibliographies, with all their omissions and other perceived defects, made it possible for these collections to be more widely available with the aid of our modern technology of microform and reprinting.

Another group that interested me was the law book salesmen. The dealers of the period had comprehensive catalogs of the publications for all the law publishers, interleaved so that they could make notes as to the availability and the desirability of such sets. Comments on sets such as *American State Reports* prove interesting. The catalog of Joseph Mitchell in Philadelphia contained many comments as to the availability of specific items, or short notes about some fact concerning the item. It is unfortunate such pieces of information were not more consistently preserved.

These pieces of information were entered into my personal copy of Hicks' *Materials and Methods of Legal Research*, but like so much marginalia, these discrete pieces of information were not coordinated or organized.

One of my earliest discoveries was the variation in the printing of state reports, for, according to accepted lore, any printing or edition of 2 Wheaton’s (U.S.) was the same as any other. It gradually became apparent that the volumes in sets of reports were not originals, but generally consisted of a mixture of good and bad reprints. This led to my creating a typed copy of all nominative reports with comments, for where I traveled this notebook followed for the making of additional notes. After examining many sets it became apparent that lawyers are not critical of their literature and take at face value any printed source. Fortunately, as time moved on, the decisions of the American courts of the nineteenth century play a limited role in the lawyer’s work today, which lessens the importance of any omissions. But, knowledge of decision writing or statute making is still not a part of the lawyer’s professional knowledge.

In examining the decisions of the nineteenth century from many jurisdictions, citations to the opinions of the Pennsylvania, New York and Massachusetts courts were frequently encountered, which led me to conclude that the decisions of those courts were recognized as national authorities. One wonders how a set of reports from Massachusetts or England would find its way to the shelves of an ante-bellum lawyer in Georgia. Did they order these
books directly from the publisher in Philadelphia or New York, as
would be done today? Interestingly, the itinerant book sellers
made this possible. It became apparent that there was a wider
sale of law books than just on the local scene.

But, on closer study of American law publishing, another inter-
pretation was evident. All publishers like to have a large backlist,
and those publishers specializing in law were located in New
York, Massachusetts and Pennsylvania. Reprinting the reports of
these states by those publishers who sold law books nationally
was a frequent practice.

How is a biography of a law publishing house established? Sur-
prisingly, many publishing houses have prepared histories of
their companies, usually confined to the establishment of the or-
ganization and biographies of the early founders. Few give any
facts on the technology of printing—did the partnership or com-
pany own their printing plants and binderies? What methods of
printing did the company use in publishing their books? Few
have any correspondence with their salesmen or records on how
payment was made. A great deal could be learned from examina-
tion of the publisher’s catalogs, which often were bound into vol-
umes that they then sold.

A comparison soon made it apparent that certain publishers were
interested in certain types of titles that were ignored by others. It
is impressive that T. & J. W. Johnson of Philadelphia had an ex-
tensive business in publishing English texts with American notes.
The set known as The Law Library gave the subscriber a source
for the newest English legal textbooks, some of which were of
general interest.

If a single motivation was necessary to demonstrate to me the
need for a comprehensive history of law books, it was the charac-
terization of these early text writers as “hacks” and the dismissal
of the key number system and the American digest system as
“tricks of research” by certain contemporary writers. The writing
of legal texts is certainly not the exclusive preserve of law school
professors, and after examining the early digests, the key number
system seemed a significant intellectual innovation that made the
finding of decisions more “scientific.” Gradually, invitations to
appear on panels forced me to examine notes, which began to re-
inforce these conclusions. The decisions by Brightly, Bishop,
Wharton, and other legal writers deserved a more thorough ap-
praisal than a dismissal by authors who have so limited a
knowledge of law book publishing, which has a history of over two
centuries.
So much still remains unknown. Some publishers are known only from their imprints, yet fuller biographical information should be available. The most diligent efforts failed to find information about such publishers as Vernon law Book Company in Missouri, or Burnett Smith in Illinois. The lack of information dictated which companies would be omitted from the account of individual firms. Perhaps information about these individuals will come to light. Maybe more of the legal texts of the last century will be examined, leading to a better appreciation of their contributions to the development of American jurisprudence. This involves comparing them with others of the same period. It is my belief that a number of these legal texts rank very high when this examination is based on its contribution to reducing law to an orderly and careful study and on its literary merit.

My journey has not ended, and maybe, just maybe, a second edition will incorporate new information to fill some of the omissions.
LEGAL HISTORY

John Henry Wigmore (1863-1943): A Sesquicentennial Appreciation

Joel Fishman, Ph.D.* and Joshua Boston**

A legal scholar of exceptional status and unique insight, John Henry Wigmore quite literally wrote the book on evidence as commonly understood in and beyond his time, titled *Treatise on the Anglo-American System of Evidence in Trials at Common Law or Wigmore on Evidence*. He is also known for being one of the founding members of *Harvard Law Review*, and a professor and dean of the Northwestern University Law School.¹ With a bibliography of over 900 works, including many addresses, law review articles, books, pamphlets and translations, his contributions to

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the study of law are simply numerous as he dedicated himself to
the writing of many publications that continue to be relevant long
after his death.2 The 150th anniversary of Wigmore’s birth this
year makes it appropriate to explore and commemorate these
achievements and contributions to the legal field.

Wigmore was born on March 4, 1863 in San Francisco, Califor-

nia.3 He was educated at the Urban Academy in San Francisco
and subsequently received a degree from Harvard University in
1883; this was followed by a degree from Harvard Law School in
1887. Along with John Jay McKelvey, Joseph E. Beale, Julian W.
Mack, the four were the initial board of the first volume of Har-
vard Law Review.4 McKelvey was Editor-in-Chief, while Wigmore
began the “Recent Cases” department.5 Shortly after his gradu-
ation from Harvard Law School, he was given the opportunity to
teach law at Keio University in Japan in 1889 in which he learned
Japanese in only four months; this allowed him to develop a
study of comparative law between (at the time) the largely esoteric
Japanese legal system and the Anglo-American law of his class.6
This study in Japan led to Wigmore’s being considered one of the
foremost authorities in comparative law, as he would go on to au-
thor sets of papers for the Harvard Law Review such as “The
Pledge Idea: A Study of Comparative (Historical) Legal Ideas.”7

2 [Kurt Schwerin], Bibliography, 75 Nw. U. L. Rev. 19-122 (1980-
as the author of the bibliography, though his name does not ap-
pear in the bibliography. The bibliography is broken down into
Addresses: 1-25; Articles: 26-228; Books and Pamphlets: 229-
299; Case Comments: 300-452; Communications: 453-475; In-
troductions and prefaces: 476-503; Miscellaneous 504-5; Music
and Verse: 506-522; Notes: 523-776; Book Reviews: 777-889;
Translations: 890-910.
3 Roalfe, supra note 1, at 450.
4 Id at 448-450.
5 Roalfe, Wigmore, supra note 1 at 11; see his recollection article
50 years later, John H. Wigmore, The Recent Cases Department,
50 Harv. L. Rev. 862-67 (1936-37); see also the next article by
868-86 (1936-37).
U. L. Rev. 10 (1980-1981); Roalfe, supra note 1, at 450.
7 John Henry Wigmore, The Pledge Idea: A Study of Comparative
(Historical) Legal Ideas, 11 Harv. L. Rev. 18 (1897); Sir William S.
Holdsworth, Wigmore as a Legal Historian, 29 Ill. L. Rev. 448
(1934-1935).
Wigmore’s time in Japan continued to influence his work up until his death in various ways; some of the last volumes Wigmore published dealt with the law of the Tokugawa Shogunate (1603-1867) (16 volumes in all), which Wigmore had studied while in Japan. Around that same time, Wigmore also published new volumes such as *A Kaleidoscope of Justice and International Law and Practice*; these were more evidence of his continued dedication to the study of comparative law. He also served as editor of *Selected Essays in Anglo-American History* (3 vols., 1907-1909), *The Modern Legal Philosophy Series* (15 vols., 1911-1925) and *The Continental Legal History Series* (11 vols. 1912-1927).

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9 Id. at 123.
Wigmore returned to the United States in 1893 and assumed the position of Professor of Law at Northwestern University School of Law reorganized in 1891. In his first decade he wrote three major articles on the history of tort law which received praise from several noted scholars including Oliver Wendell Holmes, Jr. This led to a mentor-protégé relationship between Oliver Wendell Holmes, Jr. and Wigmore which grew by the first decade of the twentieth century into a friendship of equals. Wigmore valued Holmes’s *The Common Law* (1881) and Holmes liked Wigmore’s use of his views on judicial constraint in his treatise on evidence. In 1901, Wigmore became the dean of the Law School that he held until 1929. He then returned to the position of Professor of Law until 1934 and then became Dean Emeritus upon retiring from the school. In addition to his legal expertise, Wigmore was a man of strong personal conviction as well, turning down several lucrative offers after having accepted the position of dean at Northwestern. One of his first major accomplishments was moving into a new law school building and building up the law library (something he worked on until a year before his death). His leadership efforts led him through projects with the American Bar Association and the Association of American Law Schools, and he was instrumental in establishing the first legal aid clinic in the United States at Northwestern. He organized and founded the American Institute of Criminal Law and Crimi-
nology, the Air Law Institute and the Scientific Crime Detection laboratory. As part of the American Institute of Criminal Law and Criminology, he helped to create in 1910 the Journal of Criminal Law and Criminology which continued after the Institute was abandoned by the Law School and still being published today.

Wigmore’s work on evidence began as the editor of Simon Greenleaf’s Treatise on the Law of Evidence (16th ed. 1899) which won the first Ames Prize awarded in 1902 for the most meritorious work written in the previous five years. Wigmore on Evidence, the work for which Wigmore is best known, was said to be one of Wigmore’s greatest contributions to the legal field; published in its first form in 1904-1905 in four volumes, it was recognized as the turning point in Wigmore’s career and the definitive action that brought Wigmore into the respected position he continues to hold more than a century later. The stated purpose of Wigmore on Evidence was threefold: “first to expound the Anglo-American law of Evidence as a system of reasoned principles and rules; secondly, to deal with the apparently warring mass of judicial precedents as the consistent product of these principles and rules; and thirdly, to furnish all the materials for ascertaining the present state of the law in the half a hundred independent American jurisdictions.” Because of Wigmore’s unique position as a scholar of comparative law, he was able to use Wigmore on Evidence to illuminate and present in sum the bases and intricacies of domestic evidence law from an incomparable perspective. The second edition was published in 1923, in 5 volumes with a subsequent supplementary volume in 1934. Wigmore updated this treatise again in 1940, in a ten-volume edition; this third update was his final update to the treatise in his own words as subsequent editions would only appear after his tragic death on April 20, 1943.

18 Kocourek, supra note 7, at 123.
19 Roalfe, Wigmore, supra note 1 at 185.
20 Roalfe, Wigmore, supra note 1 at 43.
21 Roalfe, supra note 1, at 445; Kocourek, supra note 7, at 123.
22 Holdsworth, supra note 7, at 453.
23 Id.
24 Roalfe, supra note 1, at 445.
This third edition contained 85,000 judicial citations (compared to 40,000 for the first edition and 55,000 for the second edition) and 20,000 statutory citations plus other secondary sources. It consisted of 7,324 pages with all three editions and supplements numbering 19,358 pages!\textsuperscript{26} In light of his significant contributions to the study, it was once said of Wigmore that “[a]mong knowledgeable people in and out of the legal profession, the name of Dean John Henry Wigmore is synonymous with the law of evidence.”\textsuperscript{27}

A second major publication was The Principles of Judicial Proof as Given by Logic, Psychology, and General Experience, and Illustrated by Judicial Trials (1913). He substituted the word “principles” for “science” which he characterized as ““the book aspires to offer, though in tentative form only, a novum organum for the study of Judicial Evidence.” It was concerned with the science of proof rather than with admissibility (the procedural rules prescribed by the law), for he believed that the latter would become less important and the former more important with the passage of time.”\textsuperscript{28}

Wigmore’s final opus was A Panorama of the World’s Legal Systems. Published in 1928, it was the last of his more famous works and outlined the overarching structure of sixteen major legal sys-

\textsuperscript{26} Roalfe, Wigmore, supra note 1, at 215.
\textsuperscript{28} Roalfe, Wigmore, supra note 1, at 84, 201. A second edition of the same title came out in 1931 and a third edition in 1937 under the title The Science of Judicial Proof as Given by Logic, Psychology, and General Experience and Illustrated in Judicial Trials.
tems across history. Panorama was an altogether different sort of book of legal instruction, as it was based on an idea of teaching through representation of historical legal outlines in a series of pictures. Some scholars have said that Panorama’s intent was to popularize the study of comparative law and to familiarize legal scholars with some of the patterns of law that appeared in various legal systems. While receiving mixed reviews, Panorama did just that, as the illustrations included in the book humanized the idea of law and functioned as a method of attraction for students entering comparative law. Other articles on comparative law authored by Wigmore include various short operas such as “Our Treaty with Japan” in which he discusses a treaty between Japan and the United States in 1889 and “A Novel Suit” which deals with trademarking in Japan.

Wigmore was also strongly involved in the creation of the American Judicature society and was consultant of the American Law Institute. Many of these systems put into place by Wigmore, in addition to his legal works and selections for law libraries, are still in use today in varying capacity. Further beyond the legal field, Dean Wigmore’s projects include the study of music and poetry; he published a volume of 16 original piano compositions and nearly twenty of his works were categorized as pertaining to music and verse. These included whimsical titles such as “Lyrics of a Lawyer’s Leisure,” which comprised a madrigal, ten ballads, two hymns and three choruses. He also published two bibliographies of legal novels that were perennial listings over the decades and helped lead to the Law and Literature Movement.

29 Abbott, supra note 6, at 13; the first edition was published by West Publishing Co.; it was reprinted in 1936 by the Washington Law Book Co. and by the William M. Gaunt Co. in 1992.
30 Holdsworth, supra note 6, at 454.
31 Abbott, supra note 6, at 13.
32 Id.
33 John Henry Wigmore, Our Treaty with Japan, 9 Opera Minora 25 (1943); John Henry Wigmore, A Novel Suit, 9 Opera Minora 29 (1943); Schwerin, Bibliography, supra note 2, at 25.
34 Id.
35 75 Nw. L. Rev. at 82.
36 Id.
37 John Henry Wigmore, A List of Legal Novels, 2 Illinois L. Rev. 574-93 (1908) and A List of 100 Legal Novels, 17 Illinois L. Rev. 26-41 (1922). His articles helped to lead to the law and literature movement, see articles by Richard H. Weisberg, Wigmore’s “Legal Novels” Revisited: New Resources for the Expansive Lawyer, 71
Following a luncheon meeting, Wigmore died on April 19, 1943, eighty years and ten weeks old, due to an unfortunate traffic accident while riding in a taxi cab in Chicago. His friend, Albert Kocourek called it a “stupid mischance” and thought that Wigmore might have lived until the nineties like his contemporaries, Oliver Wendell Holmes, Jr. and Frederick Pollock.38

Wigmore’s expertise stretched far beyond mere legal learnedness in any one field; his scholarship and diligence propelled him toward understanding multiple subjects. It is this scholarship and diligence that have carved the name of John Henry Wigmore into the tablet of history, so that a century and a half after his birth, his incredible contributions continue to be appreciated.

38 Roalfe, Wigmore, supra note 1 at 275.
What’s in a Name? Book Provenance as a Research Tool

Stewart Plein*

Sometime on the afternoon of October 17, 1874, L.S. Hough, attorney at law, returned to his large, rambling home at the top of High Street with a stack of leather bound books. Hough had just purchased a five volume set of Bacon’s Abridgement at the sale of the estate of Margaret Gay, the widow of Mathew Gay, another Morgantown attorney. Hough was returning from the estate sale of his friend and colleague, Mathew Gay, Irish immigrant and one of Morgantown’s most prominent lawyers, having practiced in Morgantown for over 40 years. Although Gay passed away in 1857, the estate was not sold until the passing of Gay’s widow, Margaret.

From courthouse records listing the estate inventory, including purchasers and items sold, these books were the only items Hough purchased at the estate sale. The set of books Hough purchased was known colloquially as Bacon’s Abridgement. The title in full: A New Abridgment of the Law. Alphabetically Digested Under Proper Titles. In Five Volumes. By Matthew Bacon, of the Middle Temple, Esq. Hough purchased the sixth edition revised and corrected; with additional notes and references, and an additional supplement by T. Cunningham, Esq. This set was printed in Dublin, Ireland by the publisher Luke White in 1793. Hough

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* Stewart Plein is Rare Book Librarian at the West Virginia & Regional History Center.

1 A photograph of the Hough home at the top of North High Street can be located on the West Virginia University Libraries website for West Virginia History OnView: Photographs from the West Virginia and Regional History Collection: [http://wvhistoryonview.org/](http://wvhistoryonview.org/)

also purchased two supplemental volumes to the set at the sale, owned by Mathew Gay. Also published by Luke White, the supplemental volumes were printed in 1801, numbered six and seven in the set.

As a digest of cases and treatises, *Bacon’s Abridgement* proved to be quite a useful resource for attorneys. J. G. Marvin describes *Bacon’s Abridgement* in his *Legal Bibliography* (1847) as a work “probably in more general use in the United States than any other English Abridgment of the Common Law.” First published in 1736, the abridgement was a work in five volumes, collected and compiled by Matthew Bacon. Unfortunately Bacon’s entry for “Sheriff,” in the fourth volume, would be his last. After his death, Joseph Sayer and Owen Ruffhead, editors of the first edition, completed the task.\(^3\)

If Marvin considered *Bacon’s Abridgement* an essential text for American attorneys in 1847, L.S. Hough’s purchase of the 1793 set in 1874 speaks to the intrinsic and long lasting value of the work. According to Samuel Wiley’s *History of Monongalia County*, Hough was well known as “a lover of books and pictures, has a fine library, including some rare volumes, and is a gentleman of cultivated artistic and literary tastes.” (p. 356). Hough then, could have acquired this set for a variety of reasons; as a memento from a colleague, as a useful working set of books for his own practice, and as an antiquarian addition to his personal library. Whatever Hough’s reasons may have been, he had a desire to mark his purchase. Hough opened the first volume of *Bacon’s Abridgement*, and penned these words inside the front cover on the paste down, writing just beneath Mathew Gay’s book label:

“Mathew Gay’s book bought  
at the sale of A.P. Willson

L.S. Hough’s book bought  
at the sale of Mathew Gay’s

library from adver of the widow’s

Est. October 17, 1874"

Hough then varied the inscription slightly in each of the remaining six volumes:

“Bought by me at the sale of Mr. Gay’s Library October 17, 1874

L.S. Hough”

With these few words L.S. Hough charts the history of ownership for the seven volume set, providing just enough information for provenancial research to discover a community of early lawyers in Morgantown, WV. The men behind these names blazed their trail through local, state and national history. All of them were lawyers serving the Morgantown community. From Morgantown’s earliest days as a frontier outpost, to a community torn from Virginia to find a new home in West Virginia, and to the rapidly growing town it became in the nineteenth century, these men played important roles in the development of Morgantown and West Virginia University.

As Special Collections Librarian for the WVU’s College of Law, these very words attracted my attention while performing a routine inventory on a portion of our rare book collection. I made note of them in the inventory, making a mental promise to myself to return when time permitted. When the opportunity arrived to examine these books, I could never have imaged that this piece of documented book provenance could lead to the discovery of the earliest community of lawyers in Morgantown.

As is the case with genealogical searches, each name leads to another in the chain of ancestry. This inscription proved to be no different. Although, strictly speaking, the names included in this notation are not related by blood, they form the basis of a genealogy nonetheless. Each name leads to the next, often leading to other family members that become an integral part of the larger discourse. In short order I was able to reconstruct an early community of lawyers in Morgantown, tracing the earliest lawyer back to 1781, when Morgantown was still in the state of Virginia and lay on the edge of the Appalachian frontier.

Provenance⁴, also described as “marks in books,”⁵ since that is truly what they are, can take many forms. Marginalia, annota-

tions, gift inscriptions, author signatures and autographs are all considered provenance. Book labels, an early form of book plates, are also evidence of provenance. Stamped armorial shields, labeled names on spines, embossed names and businesses, among other methods of marking books show us how book ownership overlaps, not just from individual to individual but also among a group of people, or a specific community of individuals.

Provenance can inform us about the value placed on a particular book among a group of people, who, in this case, happen to be lawyers. Of note, particularly in this example, are the circumstances in which an individual copy of a book has changed ownership, and of evidence left in books that show how readers interacted with them.

The sixth edition of Bacon’s Abridgement, published in 1793, is now 220 years old. Oddly enough, thanks to L.S. Hough, it is easier to trace the earliest ownership history of the set, than it is to uncover its later history. The first line in Hough’s inscription charts our path: “Mathew Gay’s book.”

Mathew Gay

According to Samuel. T. Wiley’s History of Monongalia County, Mathew Gay was born in 1780, the eldest son of John and Margaret Gay of Tyrone County, Ireland. His mother Margaret was the sister of William McCleery, a lawyer living in Morgantown, also originally from Tyrone County, Ireland. Although the exact date of McCleery’s immigration to America is not known, it is believed that he emigrated around 1741. McCleery married twice. His first wife, Isabella Stockton, was well known in the area as the survivor of an Indian raid, having been captured at Fort Neally as a young girl. Neither of McCleery’s marriages produced children. (337-338).

excellent resource for this field of study. The University of Virginia’s Rare Book School also offers a one week course: Provenance: Tracing Owners and Collections, taught by David Pearson. http://www.rarebookschool.org/courses/collecting/c90/.

5 The term “marks in books” was popularized by Roger Stoddard, whose book, Marks in Books, Illustrated and Explained. (Cambridge, Mass.: Houghton Library, 1984), an exhibition catalog examined such markings from a wide variety of books.

6 The fascinating story relating the capture of Isabella Stockton, her rescue and romance, followed by the death of her lover prior to her marriage to McCleery is available in A Fragment. The Centennial Celebration of the Founding of Morgantown. 1785 – 100 –
William McCleery had lived in America for nearly 35 years before the outbreak of the Revolutionary War in 1775. During the war McCleery served as a colonel under George Washington. Col. McCleery was actively engaged in the settlement and government of the region surrounding Morgantown and was recognized for defending the area against Indian attacks.

Although it is not known where McCleery read law or when he became a member of the Bar, he is among the earliest lawyers in Morgantown and Monongalia County. His practice in Morgantown can be traced back to 1785. As an early land lawyer, McCleery played an important role in surveying and registering land patents and pensioner claims in Western Virginia. 

McCleery’s home was the first built in Morgantown. A frame structure, it was built in 1790 in the Georgian Colonial architectural style. The McCleery house stood at the corner of High and Pleasant Streets. McCleery’s home also served as the office for his law practice. Located on Morgantown’s main street, the house was later home to Judge Joseph Moreland. As businesses overtook the old homes on the main street, McCleery’s home became the premises for a drugstore and photographer’s shop in the 1930’s. Eventually the home was razed and Citizen’s Bank is now on the original site.

During Gen. Washington’s administration McCleery held the office of Collector of the United States Direct Taxes serving throughout the Whiskey Insurrection in Western Pennsylvania.

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1885 with addresses and papers. (Published by the Committee of Arrangements. Morgantown, New Dominion Print. 1902), 85.
8 Ibid. p. 86.
9 A photograph of the McCleery home, approximately dated as 1930’s, shows the businesses built around the exterior of the ground floor. This image can be located on the West Virginia University Libraries website for West Virginia History OnView: Photographs from the West Virginia and Regional History Collection: http://wvhistoryonview.org/
As Collector of Revenue in Morgantown, not far from the Pennsylvania line, the insurrection spread across state borders and into Monongalia County. On the night of August 9, 1794, thirty men, disguised and painted black, came to Morgantown and surrounding McCleery’s home, threatened him with loss of life and property. McCleery managed to escape and sending word that he had resigned his office convinced the mob to return to Pennsylvania.  

In 1799, after Isabella’s death, McCleery wrote to his nephew Mathew and asked him to come to America to live with him. Mathew was 19 in 1800 when he sailed from Londonderry, Ireland, landed in Philadelphia and made his way to Morgantown.

In was in the McCleery home that Mathew Gay came to live and study law with McCleery in his practice. After fulfilling residency requirements Mathew renounced his allegiance to King George III and became a naturalized citizen on June 12, 1805.

In 1807, Gay traveled to Richmond by horseback in order to be examined in the law. He spent the night at the home of Alexander Smith, (1739 – 1839) a wealthy man with a mansion and 1200 acre farm on the north branch of the Potomac. It was there Mathew met his future wife, Smith’s daughter, Margaret. Their courtship was a long one, Mathew and Margaret married 15 years later.

Mathew’s Uncle, Col. McCleery, held the office of Deputy Attorney-General in the County Court of Monongalia until he resigned in 1811. During the War of 1812 Virginia’s Governor, Wilson Cary Nicholas, sent out a call for soldiers in 1814 to repel a threatened invasion of Virginia by the British, thought to land at the Chesapeake Bay.

Gay, now a naturalized citizen, volunteered to join a Calvary company led by Captain William N. Jarrett of Morgantown. The company was ordered to defend Washington City, as the District of Columbia was called at that time. As they marched the company learned that the Capital had been burned, the British had departed aboard ship, and their services were no longer needed.

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12 Ibid, 338.
This turn of events proved fortunate for Gay, clearing the path for Gay’s appointment in June of 1814 as Commonwealth Attorney in the County Court of Monongalia, an office he held for 33 years until he resigned in 1847.\textsuperscript{13}

After McCleery retired Gay succeeded him, continuing to live and practice in the house on High Street. McCleery’s life was a long one, he died at 80 in 1821.

Among Mathew Gay’s considerable achievements included his tenure as a leader in the development of banking in Morgantown. Gay was a member of the first Board of Managers of the Monongalia Farmer’s Company of Virginia, a bank organized in Morgantown under a charter granted by the Virginia General Assembly in 1814. Gay remained a member of the board until the bank ceased business, when he was appointed to manage the bank’s closing finances.

In 1834, the Merchants & Mechanic’s Bank of Wheeling at Morgantown was organized by Thomas P. Ray, another community leader, with Gay serving as Director of the bank until 1841 when Ray, president of the bank, died. At that time Gay was appointed bank president and served until his death in 1857 at age 78.\textsuperscript{14}

Mathew Gay had become one of Morgantown’s leading citizens by 1827, when Gay was elected President of the Board of Trustees of the Monongalia Academy, one of Morgantown’s earliest public schools. He was continuously re-elected to that position until his death in 1857.\textsuperscript{15}

At the time of Gay’s death, the Circuit Court of Monongalia County held proceeding on April, 8, 1857 in order to recognize Gay’s long service to the profession in Morgantown, adjourning in his memory.

Gay’s personal book label is pasted in every volume of Bacon’s Abridgement. The book label,\textsuperscript{16} smaller than a bookplate, is a

\begin{itemize}
\item\textsuperscript{13} Ibid, 339.
\item\textsuperscript{14} Ibid.
\item\textsuperscript{15} Ibid.
simple rectangle hand printed by letterpress with his given name Mathew, misspelled with two “t’s.” The label is decorated with a running border of printer’s ornaments. Sold in sheets, the labels were individually and crudely cut and pasted by hand on the pastedown. Gay’s signature also makes a frequent appearance on the title page.

Thanks to Hough’s inscription we know how these books came to be in Gay’s possession. The next portion of Hough’s inscription reads, “Mathew Gay’s book bought at the sale of A.P. Willson.”

**A.P. Willson**

Alpheus Poage Willson was the son of attorney and politician Thomas Wilson. The first son of eight children born to Thomas and Mary Wilson, A.P. is the only child to use the variant spelling of the Wilson family name, using two ll’s instead of one, to spell Willson.

His father, Thomas, was born in Eastern Virginia in 1760. Thomas read law and apprenticed with Judge Stuart in Staunton, Va. until he was admitted to the Bar in Staunton. Thomas married Mary Poage (1777-1817) and they moved to Morgantown where Thomas was admitted to the practice of law in September 1781. He practiced in Morgantown until his death January 24, 1826.

Thomas Wilson’s political career spanned twenty five years. Wilson served two terms in the Virginia State Senate (1792 – 1795, 1800 – 1804), two terms as a member of the Virginia House of Delegates (1799 – 1800, 1816 – 1817) and one term as a member of the U.S. House of Representatives from Virginia’s 1st congressional district, March 4, 1811 – March 3, 1813. Thomas Wilson is noted as the first Monongalian to serve in the U.S. House of Representatives.17

Of the eight children born to Thomas and Mary Wilson, six sons and three daughters, five sons are known to have been lawyers. Alpheus, born in 1794, was a lawyer for a brief period of time due in large part to his untimely death at age 35. Four of his younger

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brothers also trained in the law, while the occupation of the fifth son, George Washington Wilson, is unknown.\footnote{Information on the descendants of Thomas Wilson can be found at: \url{http://www.wygenweb.org/calhoun/twilson.txt}. This website repeats erroneous information regarding the birth order of sons Alpheus and Norville. Alpheus was the first son. Additional children of Thomas and Mary Wilson are listed at the Find-a-Grave website: \url{http://www.findagrave.com/cgi-bin/fg.cgi?page=gr&GSln=WI&GSfn=t&GSpartial=1&GSbyrel=all&GSdyrel=all&GSst=52&GScntry=4&GSob=n&GSsr=201&GRid=7619438&df=all}. This site also has an engraving of Wilson posted online. Accessed January 12, 2012.}

Norville Wilson, the second son born to Thomas and Mary, became a minister. Norville converted to Methodism while studying law, serving the Methodist circuit in Winchester, Virginia.

Eugenius Marcus Wilson (b. 1797) was admitted to the Bar at age 22 in 1819. Eugenius was a member of the Representatives of Congress in 1829 when the Convention was held in Richmond. He died suddenly at his brother Norville’s home at age 34 of bilious fever, known today as typhus.

Edgar Campbell Wilson, (October 18, 1800 - April 24, 1860), was to become, like his predecessor Mathew Gay and his father, Thomas, yet another prominent lawyer with great influence in his community. Born in Morgantown, Virginia, Edgar completed preparatory studies, followed by the study of law. He was admitted to the bar June 24, 1832, and began his practice in Morgantown.

Edgar was elected as an Anti-Jacksonian to the Twenty-third Congress (March 4, 1833-March 3, 1835). He was unsuccessful in his candidacy for reelection to the Twenty-fourth Congress in 1834.

After resuming his practice in Morgantown, Edgar was appointed prosecuting attorney in the circuit court of Marion County in 1842. Edgar owned property as well as a timber company at Yellow Creek in Calhoun County. He was the father of Eugene McLanahan Wilson, a U.S. Representative from Virginia. Edgar died in Morganton in 1860.

George Washington Wilson, the youngest brother, b. 1811, is known to have served in the Civil War on the Confederate side. He too, like his brothers Alpheus and Eugenius, died young, at
age 50, and is buried in the Wright Cemetery at Cremo in Calhoun County. Of the three daughters, Agnes, Louisa and Julia, little is known beyond a glimpse of Louisa’s early married life. What is known is that each of the daughters married ministers.

A. P. Willson was born on March 2, 1794. Alpheus read law with his father Thomas, and initially followed him into politics. Alpheus was elected to the Virginia Legislature in 1819. The year 1821 was a year of great success for Alpheus, he was admitted to the Bar, married Eliza Evans September 20, and was elected to the Virginia State Senate, serving in the Senate from 1821-1825.\(^{19}\)

 Slack water navigation, a method of regulating water flow with a series of dams in order to increase navigation, had reached Pittsburgh. It was a great desire of the citizens that slack water navigation be brought to Morgantown. Alpheus was a delegate to Washington City, now Washington, D.C., to the Canal Convention of 1826. Although slack water navigation to Morgantown was a necessary means to increase the flow of commerce to and from Morgantown, all efforts made by the Monongahela Navigation Company failed. It was not until the latter part of the nineteenth century that slack water navigation was finally achieved.\(^{20}\)

Besides his duties as a lawyer and a political figure, Alpheus also served as the county coroner. Although he campaigned for this position, he hated the job, serving only one year.\(^{21}\) After marrying Eliza Evans, daughter of Jesse Evans, Alpheus was named Director of the Rock Forge Iron Works. The Iron Works were known as Hanway’s Rock Forge for the original owner, Samuel Hanway. Rock Forge is also referred to as Dicker’s Creek Ironworks. John Stealy, who took over the Iron works from Hanway, advertised for hands at the Furnace in 1815. From 1815 – 1824, Watts & Kiger,  

\url{http://digital.library.pitt.edu/cgi-bin/t/text/textidx?c=darltext;view=toc;idno=31735054780139}  
\(^{20}\) Greek Sayre, “History of Morgantown to 1853.” (MA thesis., West Virginia University. 1920). This information may also be found in Earl L. Core’s *The Monongalia Story, A Bicentennial History*, vol. III, Discord, p. 74.  
\(^{21}\) Letter from Alpheus P. Wilson, Morgantown, [Virginia] [West Virginia], to Archibald Woods, Ohio County, Virginia [West Virginia], 30 January 1815. Archibald Woods Papers, Manuscripts and Rare Books Department, Swem Library, College of William and Mary.  
\url{http://ead.lib.virginia.edu/vivaxtf/view?docId=wm/viw00093.xml}
Stealy’s sons-in-law, ran the works. Then in 1824 Watts was succeeded by Jesse Evans. Evans placed Alpheus in charge of the Valley Furnace, which smelted iron bloom, a rough mass of iron produced at the bloomery or furnace.\footnote{Earl L. Core, \textit{The Monongalia Story, A Bicentennial History}, vol. III, Discord, p. 74.}

Alpheus’s tenure at the Valley Furnace was short. His death, at age 35, was a result of his work for the foundry. The Swem Library at the College of William and Mary houses the papers of Archibald Woods, an uncle of Alpheus P. Willson. The following letter, relating the death of Alpheus, is among the Woods papers at William & Mary. The original punctuation and spelling have been retained:

Brownsville, Monday evening

Dear Washington

You have no doubt heard before this some rumor of the death of Alpheus – and painful as the information may be, I am under the necessity of saying it is too true.

On Thursday evening last, Mr. Brady of Grandville and Mr. Brand, started from Grandville in a boat loaded with bloom, etc. The river then rising rapidly, it appears they attempted several times to land above this place but could not, the night being so tempestuous and dark, and river so high. When opposite this place they approached the shore so close, as to (allow) Brady & Brand to jump out with the cables, Alpheus staying in the boat but the current was so strong that the cables was torn from their hands, and the boat continued onward, and it being dark about 2 o’clock, it soon went out of sight of Brady. Alpheus (so far as Brady could see) continued to row the boat, and nothing more was seen of him. Brady got a skift and a hand and immediately followed, and continued to Pittsburgh without any tidings – but the boat was found Friday morning safe in the mouth of Redstone about a mile before town, in a bottom which was overflown, and after the water fell Alpheus’ hat was also found not far from the boat, his saddle bags in the boat. Since that time every possible search has been made and will be contin-
ued. He most probably attempted to get out of the boat a short distance above the creek, where the shore was very steep and being dark, slipt in and was lost – I have been here since Sunday morning together with . . . Samuel Evans also. This event is most distressing. I left home before Eliza heard anything of it. I will write you again in a few days.

your Brother

E.C. Wilson

One of Alpheus’s sisters, Louisa, kept a journal. In her journal Louisa remembered the death of her brother Alpheus a year to the date of his death. Fragments of her diary were later collected and compiled by the Rev. Ashbel G. Fairchild. Unfortunately Louisa died only a few months later at the age of 23 from tuberculosis.

With Alpheus’s unexpected death, his wife Eliza is forced to sale the contents of the estate, since Alpheus died without a will. It is

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24 Louisa W. Lowrie. *Memoir of Mrs. Louisa A. Lowrie*. Available at the Internet Archive: [http://archive.org/stream/memoirofmrslois00fair#page/142/mode/2up](http://archive.org/stream/memoirofmrslois00fair#page/142/mode/2up). Louisa was Alpheus’s sister. This memoir was compiled by The Rev. Ashbel G. Fairchild. On the title page of the second edition there is this statement: “Louisa A. Lowrie, who died at Calcutta, Nov. 21st, 1833, aged 24 years.” Louisa died of consumption, known today as tuberculosis. She and her new husband John C. Lowrie sailed on The Star, May 30, 1833, to Calcutta to begin life as missionaries in India. The voyage took about 4 months. Louisa’s health deteriorated over the course of the journey. She lived only three weeks after her arrival in Calcutta. She is buried in the Scottish Cemetery there.

at this sale, advertised in the local Morgantown paper, that Gay purchased the set of Bacon’s Abridgement, adding his name on the title page beneath that of his colleague in the law, A. P. Wilson.26

**L.S. Hough**

Now we come full circle to L.S. Hough and his purchase of Bacon’s Abridgement. The remaining portion of Hough’s inscription reads:

L.S. Hough’s book bought  
at the sale of Mathew Gay’s  
library from adver of the widow’s  
Est. October 17, 1874”

L.S. (Lycurgus Stephen) Hough, (March 18, 1818 – May 2, 1886) originally from Loudon County, Virginia, moved to Morgantown in 1842. The Hough family was recognized in the region as among the oldest settlers of Loudoun County.2727 Hough studied law in the office of the Honorable Edgar C. Wilson, Alpheus’s brother.28 Hough was admitted to the Bar in Morgantown on March 29, 1844 and married Anna,29 the daughter of the Rev. Ashbel Fairchild.30


29 A Civil War era photograph of Anna Fairchild Hough can be located on the West Virginia University Libraries website for West Virginia History OnView: Photographs from the West Virginia and Regional History Collection: [http://wvhistoryonview.org/](http://wvhistoryonview.org/).

Hough too, rose to prominence as a lawyer in Morgantown, practicing law from the date he was admitted to the Bar. On May 20, 1863, Hough was appointed by John J. Jacob, the fourth governor of the state of West Virginia, as one of the Regents of the newly formed West Virginia Agricultural College, as West Virginia University was originally named. Hough served several terms as School Director.\textsuperscript{31}

Active in the community, Hough participated in Morgantown’s Centennial Celebration (1785-1885),\textsuperscript{32} serving as secretary for the program committee and authoring an essay published in a history of the event. Hough’s essay describes the establishment of Morgantown as the County Seat and its’ government and officers of the town. The list of trustees and their dates of service contains the names of Mathew Gay, Eugenius Wilson, brother of Alpheus, and Hough himself, serving as a trustee from 1870 – 1877.\textsuperscript{33}

Anna and L.S. had several children with two of them, a son and daughter, reaching some success in their lives. Their first son, Walter, was born in Morgantown, Virginia on April 23, 1859. Educated at the Monongalia Academy, the public school where Mathew Gay served as President of the Board of Trustees some years earlier. Walter also attended the earliest incarnation, the West Virginia Agricultural College, and continued his education there after it was renamed West Virginia University, achieving an A.B. degree in 1883, and a Ph.D. in 1894.\textsuperscript{34}

Walter found employment at the United States National Museum as an assistant (1886–94), later serving as assistant curator of ethnology (1896–1910), and then as curator after 1910. The National Museum is known today as The Smithsonian Institution. In 1892 Walter was made a Knight of the Order of Isabella when in Madrid as a member of the United States Commission.\textsuperscript{35}

In 1901, Dr. Walter Hough, while on an expedition in northeastern Arizona for the National Museum, is quoted with the perennial complaint of the archeologist:

\footnotesize

\begin{itemize}
  \item \textsuperscript{31} Wiley, \textit{History of Monongalia County}, p. 356.
  \item \textsuperscript{32} \textit{A Fragment. The Centennial Celebration of the Founding of Morgantown}. p. 11.
  \item \textsuperscript{33} Ibid. p. 114-120.
  \item \textsuperscript{34} Waitman Barbe. \textit{West Virginia University Alumni Record. 1867 – 1903}. Class of 1883. p. 89.
  \item \textsuperscript{35} Ibid.
\end{itemize}
"The great hindrance to successful archaeologic (sic) work in this region lies in the fact that there is scarcely an ancient dwelling site or cemetery that has not been vandalized by 'pottery diggers' for personal gain." 36

Walter’s older sister and the Hough’s first daughter, Clara,37 became West Virginia University’s first librarian, serving in the position of University Librarian from 1890 to 1897 until Eliza Jane Skinner; WVU’s first professional librarian was hired as Library Director in 1897.

Although she no longer worked as a librarian, Clara’s interest in the profession continued. She attended the first session of the Chautauqua Library School at the Chautauqua Institution, established in 1874, on the shores of Chautauqua Lake in southwestern New York State. Long held in high esteem for its education programs, the Chautauqua Institution initiated its Library School program in 1901. Forty-one students from twenty states attended the five week course from July 22 – August 15, 1901. “Principles of cataloging, including accession and shelf-department, classification, reference and loan work, and many practical details were taught.” Melvil Dewey, the creator of the Dewey Decimal classification scheme, was the general director of the school. Dewey’s opening lecture was titled “Qualifications of a Librarian.”38

Just when Hough’s set of Bacon’s Abridgement came into the possession of the WVU College of Law Library is unknown. It is pos-

36  http://www.nativeamericannetroots.net/diary/1302/the-antiquities-act
sible that Hough’s books were given to WVU after his passing in 1886, to enhance the library’s meager holdings. Unfortunately, due to inadequate record keeping, it is not known when or how the books came to be part of the rare book collections at the College of Law. Robert F. Munn, the future Dean of Libraries at WVU, in his dissertation for his Ph.D. in 1961, wrote the early history of the WVU Libraries. In his dissertation Munn includes the list of the first books to arrive in the library (pgs. 98, 243) and *Bacon’s Abridgement* is not among them.

The College of Law, founded at WVU in 1878, originally developed its own library and maintained it separately from the main university library. Munn describes the “poverty” of the university library holdings was such that departments, such as the law school, were compelled to set up their own departmental libraries, usually stationed in a faculty office and available to students within their own program. 39 Without further information, it can only be supposed that the books were given to the University sometime after Hough’s death in 1886. Perhaps his daughter Clara donated the set after she became University Librarian in 1890.

L.S. Hough, through his inscription, created a historical record that could be used to trace the earliest ownership history of an integral part of a lawyer’s working library, *Bacon’s Abridgement*. As it stands, this set of *Bacon’s Abridgement* remains a memorial to a group of lawyers who contributed largely to the town of Morgantown, increasing its development from frontier outpost to burgeoning town and home to the State University.

In this case study, provenancial research uncovered important information on local, state and national history, and to the discovery of a community of early lawyers who were prominent citizens in Morgantown. Historical information on local landmarks, the development and growth of Morgantown through individual actions, and the history of the development of WVU as well as information on a prominent WVU alumnus was also part of the discovery process. This case study has shown that there is much more to the names scribbled in books and research into this kind of provenance can provide important information that is useful to the institution, the region, and library patrons.

As a discovery tool, this research has proven to be invaluable for collection development. Information of this nature provides insight into the shaping of the collection in a way that connects law school history with the community, the university and the College of Law. Provenance information can also open a portal into the collections, creating opportunities for exhibitions, a webpage, or blog post that would be of interest to the wider community both inside and outside the College of Law. This research also connects the College of Law to our own local and legal community and the long standing support given to the university and the College of Law throughout its history and development. Although some questions remain unanswered, this research has furthered and deepened out knowledge of our history, our collections and the lawyers who contributed to the larger legal community of Morgantown.

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Matthew Hale (1609-1676): Four-Hundredth Anniversary

Joel Fishman, Ph.D.

Matthew Hale stands along with Edward Coke and John Selden as one of the major lawyers of seventeenth-century England. Holdsworth said of Hale: “His character and talents made him easily the greatest lawyer of his day [and] the most scientific jurist that England had yet seen.” Holdsworth also recognized him as the greatest common lawyer since Coke and as a lawyer superior to Coke.¹ The purpose of this short article is to acknowledge the four-hundredth anniversary of his birth and provide a short summary of the major events in his life along with a bibliography of books written by him and about him.

The following short biography is based primarily on Alan Cromartie’s biography of Hale in the Oxford Dictionary of National Biography.²

Matthew Hale was born on November 1, 1609 in Alderly, England and died on December 25, 1676. Hale’s parents died when he was a child. He matriculated at Magdalen Hall, Oxford in 1626 under the tutor Obadiah Sedgwick, a noted Presbyterian preacher later in mid-century. He entered Lincoln’s Inn in 1629. His friendship with William Noy, royal attorney-general, helped guide his study of medieval manuscripts, while his friendship with John Selden furthered his legal and religious thinking. He had seven years of training when he was called to the bar in 1636. In the 1640s, he defended Sir John Bramston, judge of ship money fame, twelve bishops impeached by parliament, Archbishop William Laud (including writing his defense speech delivered by John Herne). He practiced before the courts and became a bencher of his Inn in 1648. He served on the Hale Commission of 1652 to reform the law and was then appointed by Oliver Cromwell a judge of the

¹ Harold J. Berman, Law and Revolution II 466 n.51 (2003).
Court of Common Pleas in 1654. He sat in Cromwell’s first parliament in 1655, but not the succeeding one. He did not accept any office from Richard Cromwell, but sat for Oxford University in Richard Cromwell’s parliament and for Gloucestershire in the Convention of 1660. He became chief baron of the Exchequer in November 1660, and was knighted in 1661. King Charles II appointed him Chief Justice of King’s Bench in May 1671, a position which he held until his retirement in February 1676, just a short time before his death.

Hale’s writings were all published posthumously. He was a scholar who collected a large collection of legal manuscripts that were bequeathed to Lincoln’s Inn. Hale’s *History of the Common Law of England* (1713) was one of the first books to organize English law in a taxonomy that Blackstone used later in his *Commentaries*. Charles Gray provides an important introduction to the modern edition of the work republished in 1971. Hale’s *History of the Pleas of the Crown* (1736) was the major authority on criminal law for a century. A couple of his short works on admiralty law and were published in Francis Hargrave’s *Collectanea Juridica Consisting of Tracts Relating to the Law and Constitution of England* (1794). Hale’s *Prerogatives of the King* was a major seventeenth-century viewpoint of monarchical authority, albeit with some limitations. D.E.C. Yale’s commentary provides an important background essay to the publication as part of the Selden Society publications (no. 92).

Hale is also known for his religious writings, writing as early as 1638 a work later published as *A Discourse of the Knowledge of God and of Ourselves* (1688). Hale was friends with Archbishop Ussher during the Cromwellian decade (Ussher posited the beginning of the world in 4004 B.C. based on counting biblical years) and disliked the Restoration religious settlement that restored Anglican authority in the church and state. He was a friend of Richard Baxter, a moderate Presbyterian minister, and he helped draft the Comprehension Bill of 1668 which tried to mitigate the Church of England’s persecution of religion dissenters. The measure failed but he showed his moderation again by resisting pressure to imprison the Quaker George Fox. Among his religious works were *Contemplations Moral and Divine* (1676) and *The Primitive Origination of Mankind* (1677). Cromartie recognizes his religious change from a Calvinist to Arminian position over the decades and his beliefs in a “broadly ethical religion,” no doubt brought about through his relationships with divines John Wilkins, Richard Barrow, and the latitudinarians John Tillotson and Edward Stillingfleet,
The following is a bibliography of his works providing the first publication of each title, several of which went through multiple editions. One can check the online English Short Title Catalogue (1473 to 1800), at http://eebo.chadwyck.com/home. Another good source, for instance, is Yale Law Library’s online catalog. His manuscripts found their way into various hands and so his works were published posthumously in the eighteenth century in various editions and have been published up to the end of the twentieth century.

I. Books by Hale


Hale, Matthew. A Discourse of the Knowledge of God, And of Our Selves I. By the Light of Nature, II. By the Sacred Scriptures / Written By Sir Matthew Hale, Knight ... For His Private Meditation and Exercise ; To Which are Added, A Brief Abstract of the Christian Religion, And, Considerations Seasonable At All Times, For the Cleansing of the Heart and Life, By The Same Author. Lond: Printed for William Shrowsbery and are to be Sold by Richard Chiswell, 1688.


Hale, Matthew and Bartholomew Shower. De Successionibus Apud Anglos, Or, A Treatise of Hereditary Descents, Shewing the Rise, Progress and Successive Alterations Thereof and Also the Laws of Descent as They are Now In Use : With a Scheme of Pedigrees and the Degrees Of Parentage and Consanguinity. London: Printed and are to be sold by Robert Battersby¼, 1700.


Hale, Matthew. Historia Placitorum Coronae. = The History of the Pleas of the Crown, by Sir Matthew Hale ... Now first published from his Lordship's original manuscript, and the several references to the records examined by the originals, with large notes. By Sollom Emlyn ... To which is added a table of the principal matters. In two volumes. ...[London] : In the Savoy: printed by E. and R. Nutt, and R. Gosling, (assigns of Edward Sayer, Esq;) for F. Gyles, T. Woodward, and C. Davis, 1736.

Hale, Matthew. The Jurisdiction of the Lords House, or Parliament Considered According to Ancient Records ...Including a Narrative of the Same Jurisdiction from the Accession of James the First; ed. F. Hargrave. 1796.


Hale, Matthew. The Original Institution, Power and Jurisdiction of Parliaments ... With a Declaration of the House of Commons, Concerning Privileges ... Being a Manuscript of ... Judge Hale’s. London: Printed for Jacob Tonson; Benjamin Barker, and Charles King, 1707.


Hale, Matthew. A Short Treatise Touching Sheriff’s Accounts. 1683.


Hale, Matthew. A Treatise, Shewing How Usefull, Safe, Reasonable and Beneficial, The Inrolling & Registring of Conveyances of Lands, May Be to he Inhabitants of This Kingdom By A Person of
Great Learning and Judgment. London: Printed for Mat. Wotton ..., 1694.

Hale, Matthew. A Tryal of Witches at the Assizes held at Bury St. Edmonds for the County of Suffolk on the Tenth Day of March, 1664 [i.e 1665] before Sir Matthew Hale, Kt., then Lord Chief Baron of His Majesties Court of Exchequer / taken by a person then attending the court. London: Printed for William Shrewsbery¾, 1682.

II. Bibliography of Books and Articles on Hale

This bibliography is drawn from The Royal Historical Society Bibliography, http://www.rhs.ac.uk/bibl/; LegalTrac, and Hein Online, and Worldcat. It is a fairly comprehensive bibliography, but may be missing some titles unaware to this author.

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**Articles**


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Hartog, Hendrik. *Someday All This Will Be Yours: A History of Inheritance and Old Age.* 68

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Hoeflich, Michael H. *The Law in Postcards & Ephemera 1890-1962.* 74


Molesworth, Robert. *An Account of Denmark: With Francogal-lia and Some Considerations for the Promoting of Agriculture and Employing the Poor.* 82

Roth, Randolph. *American Homicide.* 85

Zuckert, Michael P. and Derek A. Webb Eds. *The Anti-Federalist Writings of the Melancton Smith Circle.* 88

Throughout the centuries, law has been shaped by culture and society. They, in turn, have been shaped by law, producing legal institutions and legal heritages that are rich and complex. In *Magistrates and Pioneers: Essays in the History of American Law*, Warren M. Billings explores these and other concepts in the context of American law. Through an anthology of his shorter works, he brings history to life, painting a vivid picture of Virginia and the colonial Chesapeake region in the seventeenth century, as well as nineteenth-century Louisiana as he explores their legal orders, processes, and institutions. Billings traces the legal development of these regions to modern day, introducing the reader to the dynamic forces and personalities which impacted the growth of their legal cultures and institutions. Throughout these essays, Billings also educates the reader upon the value of legal books and records, the need for preservation, and offers opportunities for future research.

Billings first introduces himself to the reader in Essay 1. He discusses his background, describing how he became a historian and developed his scholarly interests. While examining Virginia’s court records, he gained the desire to chart the course of colonial Virginia’s legal order. He pursued this goal, gaining an understanding for how the legal institutions worked, how various personalities affected the development of politics in the region, and learning how Virginia’s colonial laws shaped and were shaped by Virginia’s emerging culture. While delving through the Supreme Court of Louisiana’s archival records, Billings noticed parallels between the legal developments of Virginia and Louisiana. Exploring these parallels led to the reassessment of Louisiana’s unique legal order and the crafting of the New Louisiana Legal History field. His love of books and their history, moreover, led him to a study of the law books that were used during these periods to gain insight into the mindset of early Virginians and Louisi-ans, and learn what they knew about their law.

His collecting and studying of these books enriched his scholarship and provided valuable teaching opportunities. Billings’ love of teaching and history is further reflected in his mentoring efforts with both his students and colleagues through his talks and writings. This is seen throughout his essays, as Billings takes opportunities to suggest to the reader new areas to develop and offers lines of investigative inquiry such as his emphasis on the value of
legal treatises and legal records as historical evidence, and the need for their preservation.

Billings develops these themes throughout the essays that follow. He begins each essay with a headnote, in which he describes the circumstances that led to his writing the essay and the purpose behind it. He also uses these headnotes to collectively unify the essays, providing a thematic continuity throughout the book. In Essays 2 through 4, Billings tells a compelling tale of seventeenth-century Virginia’s history and legal development. He looks at the evolution of its political institutions, and how these institutions were affected by the General Assembly’s adoption of a county court system of local government, which ultimately fragmented Virginia’s political power. Through his efforts to link law with culture, he sheds new light on colonial Virginia. He demonstrates how Virginia’s body of law was influenced by the colonists’ cultural backgrounds and their absorption of English legal treatises. In turn, the growth of Virginia’s body of law was an essential component to its developing culture.

Billings builds upon these themes further in Essay 4. He examines the colonial lawgivers and how they gained their legal knowledge. He explores how they adapted English law to work in Virginia. He also provides a fascinating view on how lawgivers were influenced by English legal literature, and describes various key works that played a part in this process, including “how-to-do-it” books that provided the colonists models for developing laws and procedures.

Billings adds captivating dimensions to his history of colonial Virginia in Essays 5 through 9. He provides the reader with a fascinating overview of Jamestown, using vignettes to recreate the capital city where the Virginia legislature convened before it was destroyed in 1698. Billings then presents a biographical sketch of Sir William Berkeley and explores the impact Governor Berkeley had on Virginia, its General Assembly, and Virginia’s relation to England. In the process, he sheds new light on Berkeley, using material that he gleaned from an archive he created of Berkeley’s papers. Billings also provides a historical look at the development of the General Assembly, the House of Burgesses, the Courts of Judicature, and the Council of State and examines how they worked. He then offers an example of the General Assembly’s legislative efforts, exploring the development of the law of servants and slaves in colonial Virginia. Finally, in Essay 9, Billings explores the litigation mechanisms relating to Virginia’s colonial court system and describes the meaning of due process of law as it related to this era.
In Essays 10 through 16, Billings paints a compelling picture of Louisiana as he explores its history and legal development in the nineteenth century, and the influences that affected its evolution into present day. Drawing upon the themes and methods he applied to his study of colonial Virginia, Billings sought to gain an understanding for how Louisiana’s legal institutions worked, how various personalities affected the development of its politics, and learn how Louisiana’s laws shaped and were shaped by its culture. This research is prevalent in his essays on Louisiana’s history. First, Billings presents one of the mainstays of the New Louisiana Legal History field in Essay 10. He advocates for the collecting and preservation of the great array of legal sources and records crucial for the study of Louisiana legal history, and suggests methods of preserving these sources. He stresses the great need for these efforts as the more documents that are saved, the more opportunities exist to understand how Louisiana law shaped its culture and how Louisiana culture helped fashion its laws. Moreover, Billings offers the interested researcher multiple opportunities for exploration in Louisiana legal history and suggests several lines of investigation. He discusses how sources such as court records and legal treatises could be studied to learn more about Louisiana’s legal heritage, the development of its courts, legal practices, and procedural rights, the education of its lawyers, and the rise of the Louisiana bar.

Drawing upon parallels between early Virginia and Louisiana, Billings stresses the value of comparing the legal traditions of Louisiana to other states and Europe to learn how legal concepts transferred to Louisiana and were adopted into its legal traditions. He also suggests the possibility of looking at the bond between Louisiana’s culture and its laws as a worthy topic of exploration.

Billings develops many of these lines of inquiry further in Essays 11 through 16. He demonstrates how court records can be used as sources of historical evidence when he describes the case involving the last will and testament of the Supreme Court of Louisiana Judge François-Xavier Martin. In Essay 12, he discusses how treatises offer valuable lines of inquiry to historians, and shows how the study of a little known treatise -- Lewis Kerr’s *Exposition and the Making of Criminal Law in Louisiana* -- could be used to gain understanding about the origins of Louisiana’s criminal laws and procedures. This treatise serves as an example of how lawyers and lawgivers learned about the law. Billings also offers the interested researcher a terrific appendix of Kerr’s cited sources, which reveal the works that influenced treatise writers of
this era. Billings then provides insight into how Louisiana’s Supreme Court worked and evolved through a study of its administrative capacities pertaining to areas such as bar regulation, procedural rules, auxiliary staffing and citation formats during the period of 1813-1995. He describes the colorful development of Louisiana’s bar and its ties to the Supreme Court of Louisiana through an exploration of the bar’s origins and the influences of such personalities as Huey P. Long. In Essay 15, Billings offers a compelling tale of the convergence of European civil law and Anglo-American common law into the creation of Louisiana’s distinct legal jurisdiction and explores how this system evolved into modern times. Drawing from court documents, Billings finally provides the reader with an engaging account of the controversy surrounding the Louisiana judicial election of 1934 after the death of Associate Justice Winston Overton. He describes how the maneuverings of Huey P. Long to elect his candidate John B. Fournet demeaned the Supreme Court and almost destroyed the bar association. The controversy also demonstrated the foibles of Louisiana’s judicial system and its elective process.

In conclusion, Billings offers the reader two fascinating and inspiring essays. In Essay 17, he compares Huey P. Long and Harry F. Byrd and describes how these personalities affected the development of politics in Louisiana and Virginia, as well as how they manipulated the legal order of their states in order to control them. In Essay 18, Billings looks at the history of scholarship relating to Virginia’s culture and legal orders. Moreover, he inspires the interested researcher through his suggestions of a multitude of opportunities to explore for future research.

Warren M. Billings is a Distinguished Professor of History, Emeritus, at the University of New Orleans. Currently, he is a Visiting Professor of Law at William and Mary. A vintage scholar for over forty years, Billings has written and edited numerous books and articles. A renowned academic of early American history and law, he has greatly influenced the colonial Chesapeake and New Louisiana Legal History fields. Moreover, through his love of the history of books expressed in his writings, Billings has contributed to the growth of American legal historians, demonstrating the importance of legal treatises and records as historical evidence for the understanding of early American law and culture, and for learning about how lawyers and lawmakers received their education. The emphasis he places on the importance of collecting and preserving legal books and documents, and his own efforts to do so have enriched the body of historical sources available to researchers. Moreover, Billings’ influence as a teacher is evident through the generosity of spirit expressed in his essays as he
suggests new areas of legal history and lines of investigative inquiry that could be explored by the interested scholar. His book, *Magistrates and Pioneers*, is well written, educational, entertaining, and inspiring. It is a terrific book that will interest historians, legal scholars, librarians, students, and anyone with a love for legal history and old books. The book’s exhaustive footnotes and the appendix Billings provides in Essay 12 are terrific resources for anyone doing research in legal history, especially that relating to Virginia and Louisiana. They also are great tools for anyone doing collection development in these areas. I would recommend *Magistrates and Pioneers: Essays in the History of American Law* for any academic or public library collection.

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David J. Bodenhamer is the founder and Executive Director of the Polis Center, Professor of History, and Adjunct Professor of Informatics at Indiana University – Purdue University, Indianapolis. He is the author of several articles and books on American legal and constitutional history, history of criminal justice and criminal law, and nineteenth-century United States. *The Revolutionary Constitution* is Bodenhamer’s interpretation of the literature on the United States Constitution. He writes in his introduction, “The goal is to explain the Constitution as an organic, contested, and dynamic frame for government in which our past concerns and experiences influence our present understanding.” [p.5] Bodenhamer writes, “…our conceptions of power, liberty, individual rights, and the role of government… have defined and shaped who we are as a people.”[p.ix] In seeking to balance power and liberty, the framers established a structure that would allow future generations to continually readjust the scale. Bodenhamer demonstrates how the works of legal philosophers, such as John Locke and Sir Edward Coke, influenced the Constitutional framers’ thoughts on power and liberty. *Cato’s Letters*, a collection of essays by Thomas Gordon and John Trenchard on the struggle between power and liberty, “became a best seller in the colonies. Published in six editions by 1755, the collection of warnings ranked second in popularity only to the Bible, with its bound volumes in an estimated half of all colonial homes on the eve of the Revolution.” [p.26] The first three chapters of *The Revolutionary Constitution* cover the history leading up the Revolutionary War and the drafting of the Constitution. In his survey of influential political philosophies, Bodenhamer discusses early documents, including the *Mayflower Compact* and the *Magna Carta*, as examples of the English belief that free people had the right to consent to their government. He writes of social and historical events giving the reader an understanding of the economic concerns of the framers of the Constitution. Colonial politicians’ knowledge of English law and government, the concept of balance being the key to liberty, rights centered on protection of property and for individuals accused of crimes, and consent of the governed through representation are all present in the Constitution.

Bodenhamer makes the case that the Constitution is an imperfect document, the result of compromises and subject to dispute over interpretation from the moment of its adoption. He includes analysis and discussion of Supreme Court cases extensively in *The Revolutionary Constitution*. Court decisions and interpretations
reflect the changing social and economic conditions, expansion of national power, the role of states, and shifts in American culture have resulted in changes to the doctrine of federalism. Debates about state and national government authority resulting from passage of The Patient Protection and Affordable Care Act of 2010, marijuana laws, and Arizona’s 2010 law to control illegal immigration further demonstrate continuous change.

The last seven chapters of *The Revolutionary Constitution* focus on constitutional principles: federalism, balance, property, representation, equality, rights, and security. Each chapter reinforces Bodenhamer’s thesis that the Constitution was the product of the first modern revolution. He begins each chapter with a brief and well written story. For example, Carrie Chapman Catt’s fight for women’s suffrage in 1920; Lincoln’s Gettysburg Address; and September 11, 2001 introduce representation, equality and security respectively. The stories caught my interest and made it easy to understand the complex principles.

I found the chapters on rights and security particularly interesting. President George W. Bush’s handling of 9/11 and the invasion of Iraq, President Lincoln acting while Congress was not yet in session to prevent southern secession, and Present Franklin D. Roosevelt’s vigorous use of president power to support the Allies are three examples of how presidential power expanded. “In times of crisis, concerns about national security generally trumped individual rights.” [p.205]

*The Revolutionary Constitution* includes an 18 page index and end notes. Bodenhamer’s brief summaries and explanations for why he included each title make his *Further Readings* section especially interesting. Bodenhamer is a concise writer. His survey of literature, historical and cultural events, and summaries of landmark cases provide an analysis of how the Constitution came to be and has changed over time. He is skilled at explaining complex theories and political terms, making this a good introduction for any student interested in the Constitution and in American history.

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In 1767 and 1768, Catherine II published the Nakaz, also known as the Great, or Grand, Instruction (hereinafter referred to as “Nakaz”). Catherine wrote the Nakaz in French and Russian. The Nakaz was intended to act as guidance and as an agenda for the legislative commission to create a code of laws. In writing the Nakaz, Catherine borrowed heavily from Montesquieu; however, Catherine named the government as the mediating institution instead of using Montesquieu’s monarchical structure.

Butler and Tomisnov offer a collection of the Nakaz in five different languages: Russian, Latin, French, German, and English. Additionally, there are two English-language texts contained in this compilation. The Nakaz of Catherine the Great: Collected Texts is the only compilation to offer all five languages in the same book.

Butler and Tomisnov add to the value of the book by including a preface and a section on bibliographical and textual notes. As editors, they include the history surrounding the issuance of the Nakaz as well as comments about the time period. Butler and Tomisnov include a number of footnotes to resources that give the researcher further information about Catherine. For example, one source notes that Catherine suffered from many headaches while she was writing the Nakaz (note 6).

The book concludes with a bibliography of the printed editions. The Nakaz of Catherine the Great: Collected Texts serves as a complete and interesting resource for anyone researching or interested in Catherine II or the Nakaz.

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The Oxford History of the Laws of England is the premiere, outstanding historical study of the development of English law under the editorship of Sir John Baker. This is the third contribution to the set. Volume I by Professor Richard Helmholz covered Ecclesiastical Law, volume VI by Professor John Baker covered mid-fifteenth to mid-sixteenth centuries (and see volume II by Hudson book also reviewed in this issue). Because of its coverage of the long nineteenth century, the authors have written three large volumes of more than 3,000 pages on the topic. The six authors have divided the work into three parts of Institutions, Public Law, and Private Law: volume XI covers the English legal system (English law in an industrializing society, public law, courts of law, and the legal professions); volume XII covers private law (property, contract, commercial law and torts); and volume XIII covers fields of developments (criminal law, law as an instrument in social protection and control, family law, labor law, and rights relating to personality and intellectual property).

In the “Manifest” of the first volume, the authors state that “these volumes do not seek to provide a social history of the law, or examine closely the impact of law on society. Rather, they seek to offer primarily a history of the law itself, focusing on its institutions and doctrines, and considering how these changed in response to changes in the wider world.” (lix) The authors further wish that the volumes “will help explain to a wider historical audience, both how the law worked, and how it reacted to social change.” (lx)

Volume XI serves as the introduction and background volume to the two succeeding volumes. Part One covers English Law in an Industrializing Society providing an in-depth overview of the government, sources of law, theories of law, law and religion, law and political economy, empire=s law, international and private international law. Part Two covers the Public Law: Parliament, Central Executive, Church and State, Army, Local Government, and Judicial Review. The authors show how much of the institutions have continuity with their past and not just changing institutions. Parliament especially transformed from a body considering legislation
to actually passing it. Liberalism transformed into democracy as the Reform Acts expanded the vote and the electorate voted for parties into and out of office. A section on private legislation described how bills might deal with individuals, but also with local legislation like transportation issues, and local improvement bills. In the mid-1840s, some bills created for topics that all future bills would follow (templates). Local government changes as a result of the 1835 municipal legislation continued throughout the period.

Part II deals with the Courts of Law (525-958) in which Patrick Polden discusses both the continuity and changes that occurred with the court system. The court structure changed during the middle of the period with the creation of the Judicature Acts. In Part IV, Patrick Polden discusses the Legal Profession of the judiciary, barristers, solicitors, and education of the lawyers. Judicial biography and prosopographical analysis provides a study of the different levels of judges. The chapter on barristers discussed the background, the education, and how a barrister would begin to practice including the authoring of books (1035-36), miracles, huggery, and ‘soup’ and ‘dockers.’ He also discusses the different bars available to work in public offices, the common law bar, chancery bar, and parliamentary bar, followed by a section on the Inner Bar (sergeants at law). A chapter on the institutions and governance of the bar is followed by a chapter on the solicitors who outnumbered attorneys from 1:1690 in 1831 to 1:1450 in 1901 (1114).

In the final chapter on the Education of Lawyers, it is interesting to note that attorneys had no educational requirements but had to attend an Inns of Court, while legal education at the universities was also moribund. Students were expected to learn in a law office, but later in the century there were attempts to improve legal education through the Council for Legal Education in 1852 (though not completely successful), and a Solicitor’s Act of 1860 to provide educational requirements for solicitors. Finally, there are interesting sections on legal periodicals (1201-1211) and law reports (1211-1222) showing the importance in the growth of English legal periodicals and the development of private law reporting replacing nominative reports that had existed since the mid-1500s.

In Volume XII Stuart Anderson writes the chapter on property, while Michael Lobban writes on contracts, commercial law, and tort. Property law includes succession and inheritance, property rights, land transactions, leases and mortgages and servitudes, changing nature of real property law, and trusts and trustees. Anderson begins with inheritance and moves to the reports of the
commissioners on real property during the 1820s. Under land transactions, the strict settlement from the seventeenth century eventually declined in the nineteenth century through a variety of acts that led to the Settled Land Act of 1882. Leasing dealt with only about 10% of the population. Lobban’s discussion on the changes in contract law in the nineteenth century was partly due to the treatises written at that time (300-313). Procedure was changed primarily by the abolishment of the system of special pleading in 1875 and the merging of separate jurisdictions of common law and equity being fused together.

Lobban writes eight chapters on contract law including formation, consideration, misrepresentation, mistake, contractual terms and their performance, contractual remedies and restitutionary remedies. Changing economic conditions also resulted in multiple changes of contract law. A second chapter deals with offer and acceptance as a development and unilateral contracts, followed by a chapter on consideration that served to distinguish “contracts from promises to make gifts, and thereby to draw a line between legally binding obligations and moral ones.” (359) In this chapter, the theories of consideration are drawn from both England and American treatise writers like Frederick Pollock, Oliver Wendell Holmes, and J. B. Ames. (394-399) Misrepresentation and mistake were new developments in law, while the case of Hadley v. Baxendale (1854) led to a new approach to damages. Specific performance was a discretionary remedy. Restitutionary remedies include equity actions, waiver of tort, mistaken payments, failure of consideration, money paid, and the redefinition of quasi-contract.

Commercial law covered the major topics of joint stock companies, insurance, negotiable instruments, bankruptcy and insolvency, and consumer credit and debt. Of insurance, marine, fire, and life assurance dominated the market, with accident insurance coming in mid-century. Lobban discusses each category under sections on the principle of indemnity, the formation of insurance policies, and claims on the policy. Negotiable instruments include promissory notes, letters of credit, and bills of bankruptcy lading, banks and checks. The chapter on bankruptcy is discussed chronologically through different stages from 1820 to 1914. Consumer credit and debt were important to the maintenance of the domestic economy as shown through the imprisonment of debt, the 1883 Bankruptcy Act, pawnbroking, money lenders, and hire purchase agreements.

Lobban’s chapter on tort law highlights the change from a rural and agricultural society to an urban and industrial society by the
end of the period. Industrial Britain led to new challenges that were met by legislation rather than the courts as the government slowly enacted laws after the 1870s. Tort law was a body of ‘disparate rules’ not explained in a treatise eventually written in 1859 in the United States and an 1860 English treatise by C. G. Addison. Lobban writes on negligence, personal injuries, workplace injuries, intentional and economic torts, nuisance, and property torts.

In Volume XIII Keith Smith writes on criminal law (part I), Raymond Cocks on statutes, social reform and control (part II), William Cornish on labor law (part III) and law of persons (family and other relationships) (part IV), and personality rights and intellectual property (part V). Keith’s contribution of 475 pages consists of an in-depth look at the criminal justice system of the period. He begins with an overview followed by a short history of the professional police department, procedural law from pre-trial to post-trial procedure, sources and general principles of criminal law, and four chapters on specific types of criminal law. Interestingly, he points out in the introduction that by the early 1900s, over 80% of all prosecutions was tried summarily by justices of the peace and not involves professional magistrates. In addition, the increase from indictable to summary offenses led to an increase in lay justice and decrease in (petty) jury trials. The development of the professional police departments varied throughout the country, prosecuting practices varied as well, while defendants’ rights increased over the period, though half of the defendants did not have representation by the end of the century. The increase in court reporting and treatises helped in developing a greater uniformity in judicial practice, especially in the rules of evidence, though the right against self-incrimination was of limited value. Punishment and deterrence continued throughout the century, but the number of capital crimes decreased and themes of punishment changed.

Cocks’s discussion of social reform and control begins with a discussion of statutory law that became the underlying method of change. The chapter on the poor law that had existed since Elizabethan and Stuart era, underwent major changes with the Poor Law of 1834 but still did not solve problems. By the early twentieth century, unemployment and pension law reforms began alternative systems to assist the populace. Succeeding chapters dealt with charities, education, health and factory reforms, and housing were all affected by an increasing number of legislation. His concluding chapter deals with a discussion of historians’ views (Dicey, MacDonagh) of explaining how legislation was created.
Cornish’s section on labor law is the shortest section of the volume with a discussion of contract and role of labor as labor unions developed and followed by trade law developments through legislation in the latter half of the century. In addition, the role of the judiciary is explored in reviewing unionism, the effects of the labor movement on the elections of the first decade of the twentieth century, and resulting legislation.

Cornish’s section on family law shows that ‘family law’ was not known to Victorians, but rather the law relating to husband and wife that were not mutual relationships but with the husband and father at the head down to wife, children, etc.

Cornish’s section on intellectual property starts with a description of Warren and Brandeis’s article on “The Right of Privacy” published in *Harvard Law Review* (1890) as the most significant and cited law review article in legal publishing as the beginning of his discussion on personal reputation, privacy, and intellectual creativity. Following a discussion on libel and defamation, he discusses the developments in copyright and patents. The copyright law beginning with Statute of Anne (1710) later defined copyright as a form of property relating to published books in *Donaldson v. Becket* (1774). Later acts such as the Copyright Amendment Act of 1842 and Fine Arts Copyright Act of 1862 and a full discussion of foreign relations beginning with the Berne Convention and the creation of imperial copyright. A chapter on the patent system centered on laws passed in the late nineteenth century. Two further chapters are on trade secrets and trademarks.

There are tables of cases and statutes in the front of each volume that total 194 pages and a bibliography of 58 pages for the three volumes (sum of three found at the end of each volume), plus names and subject indexes. The *Oxford History* is expensive but worth it, and it is highly recommended for all academic libraries.

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In early twentieth century, bar associations across the country attempted to encourage the growth of legal education and stricter admissions policy to the bar with the assistance of the state courts who regulated admission to the state bar. However, the increasing amount of immigrants, women, and general public who desiring to become lawyers through the attendance of night schools or by “reading for the bar” through working in a law office meant that there needed a wide range of legal textbooks available for introduction to the law. In the first decade of the twentieth century, there were 40 evening law schools as well as corresponding law schools. Among the various sets that came into existence at that time is Chadman’s *Home Law School Series* of twelve volumes, the titles of which are given above. As the reader can see, these volumes, each comprising around 200 to 300 pages, were written for a basic introduction to law based on the topics generally given on a state’s bar exam. Chadman, in his introduction to volume 1, states that: “The Home Law School Series aims to perform the same office for the American student as the [Blackstone’s] Commentaries did for the English student of law.” (p.6) Chadman listed three advantages to those who used these books: “first, to be enabled to read the fundamentals of the science understandly; second, to have furnished to him or designated what he should read; and third, to have such a reading collected into reasonable compass.” (p.16). These short volumes contain broad overviews of the law, written in a plain style to easily read and understand, along with footnotes to statutes and caselaw for sources. The *University of Pennsylvania Law Review* (1907) dismissed the work on criminal law in a single paragraph which is understandable from the law school’s perspective, but it is inter-
esting that they even recognized it for a review. Chadman’s work, however, had some success and later reprinted in 1912. Having not seen the work, the *Cyclopedia of Law* (1908) maybe a reprint under a different title or at least is based on the earlier work. It was published by the American Correspondence School of Law (1908). The *Home* series was also included in the 19th Century Legal Treatise Collection in microfiche published by Research Publications and appears in the West’s/Gale’s Making of Modern Law digital collection. He was also the author of a *Concise Dictionary* (1908) for general readership and the *White House Handbook of Oratory*.

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

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Legal Origin Theory is one volume in a series of books devoted to economic perspectives on the law. Editors Deakin and Pistor divide this entry into six parts. Each part consists of scholarly articles, a majority of which appeared in publications from the years 2001 to 2008. Readers of the articles will encounter proofs of propositions, tables of data, graphs, and figures. The editors offer a twelve-page introduction with a bibliography. There is no index.

Deakin and Pistor explain the nature of the legal origin theory, that “a country’s legal origin determines its path of economic development,” and note that the idea has made a significant contribution to law and economic philosophy while also raising controversy. (p. ix). Researchers articulated the theory in the 1990's after finding not only that common law and civil law countries regulate their economies differently but that they also experience different economic outcomes because of these alternative regulatory methods. The editors note that, although there is criticism of the way the theory categorizes countries and their legal or regulatory structures as well as the very concept of the doctrine, the interest in legal origin theory continues. In their introduction, they consider whether the theory will be influential in the study of three fields in which its advocates have sought prominence: comparative law, the connection between law and markets, and how the law affects “social ordering.” (p. x).

Comparative law generally is the study of differences among legal systems. This field had already suggested the possibility that common law systems produce more robust economic growth than do civil law systems. But the legal origin theory offered empirical data that law issued by courts rather than legislative bodies made the common law system more “adaptable” and “efficient” and, thus, better suited to strengthen a country’s economy. (p. xi). However, as Deakin and Pistor point out, upon testing, the data in one of the seminal studies which introduced the legal origin theory has been deemed flawed. The editors include this study, Law and Finance, in Part I. They refer to other studies that are critical of the theory in the areas of accuracy, methodology, and lack of use of historical data. In turn, legal origin theorists acknowledge in The Economic Consequences of Legal Origins, also in Part I, that better economic outcomes in common law systems may be time-specific, i.e., likely to occur when the world’s
economies are not involved in catastrophic events.

Legal origin theorists have largely conducted their studies using England as the common law example and France as the civil law illustration, along with regressive analysis to extract data from these countries and apply it to others. The editors claim that the data used and arguments made by the theorists are “narrow” when compared to earlier scholarship on the impact of the law on economies. (p. xvi). They find that the theorists see legal systems as existing simply to “perfect” markets, without accounting for the destruction that market forces sometimes cause or considering the broader policy goals that legal systems are intended to meet. (p. xvi). Deakin and Pistor also point out that the theorists cannot argue that legal origin is connected to higher GDP because some civil law systems after World War II saw much growth. The editors argue that while legal schemes can be designed to promote economies, “unfettered” markets do not necessarily mean long-term economic progress. (p. xvi). The Introduction concludes with summaries of the articles included in the volume. In keeping with the editors’ opening observations, the majority of the articles in the book which directly address the theory are not very supportive of it.

The first trio of articles covers the “Concept and Consequences” of the legal origin theory. (p. 1) In Legal Origins from 2002, authors Edward L. Glaeser and Andrei Shleifer discuss the influence of the English common law system and the French civil legal system throughout the world. They list the disadvantages of the civil law system in contrast to its common law counterpart, i.e., more regulation and corruption, and less protection for property.

One of the, perhaps, unexpected benefits of reading Legal Origin Theory is the exposure to history one receives from the articles that present the political background of the countries in question. This inclusion of historical details appears in the first article. The authors illuminate differences in authority that the sovereign held in England and France and the ramifications on each country’s judicial system. Interestingly, although the king in England had greater power over the people than the French king, England established a judiciary with more independence from the state than France. England could afford to delegate adjudications to juries, unlike France where citizens were more likely to be antagonized by bullies or powerful magnates. Because the political climate was more unstable in France, the state had a heavier hand in settling disputes. Thus, one fundamental way in which the countries differed was the greater degree of the sovereign’s control over the judiciary in France, authority which was affected through codifi-
cation of laws to check judges’ decisions. From these legal origins, the authors reason that property owners received more protection in a common law system because the judiciary was independent from the state; owners fared worse in a civil law country where judges, hired by the sovereign, were more interested in pleasing the powerful than in delivering justice.

Writing a few years before the Legal Origins article, Rafael La Porta, Florencio Lopez-de-Silanes, Andrei Shleifer, and Robert W. Vishny, in 1998, provide Law and Finance, the article that Deakin and Pistor consider “possibly the most influential of the empirical legal origin papers.” (p. xvii). The authors provide a survey of the laws in forty-nine countries that protect shareholders and creditors. They find that both groups have greater legal protections in common law countries and that law enforcement is also stronger in those places, only enhancing the protections for investors. Through their studies and evaluation of other scholars’ work, they conclude that poor legal protection of investors leads to poor economic growth.

Ten years later in 2008, three of the Law and Finance authors respond to peers who studied their work with The Economic Consequences of Legal Origins. They argue that if their results are accurate, common law countries favor outcomes generated by the private market, whereas civil law countries prefer government-directed outcomes. The authors summarize different legal families or systems, describe how these systems affect laws, and explain how the laws affect economic growth. They note that legal origin theory does not argue that common law rules and regulations are always best or best for every country. Instead, they argue that common law traditions have often provided incentives to markets that have helped them to grow. This third article is the last strong endorsement of legal origin theory in the book.

In the second section, the editors provide articles that allow the reader to consider the nature of the common and civil law systems. Harlan F. Stone summarizes the history and opines on the status of common law jurisprudence in the United States, as of 1936. He notes that the common law with its adherence to precedent is not as inflexible as it may sound; legal decisions can move away from precedent where the result would be illogical. Ideally, courts in a common law system strive to provide “continuity” while evolving. (p. 11). He encourages the American judiciary to adapt to social change as exemplified by legislatures and regulatory bodies, to procure a strong future for the common law system in America.
Advancing to 1976, Andre Tunc explains the basics of the French civil law system by addressing the relationships between the civil code and the legislator, the judge, and the doctrine of civil law. He writes about France’s effort to modernize its civil code. In assessing the doctrine of civil law, he offers that the writers of the code historically understood that laws must come from experience. Thus, forty years apart, a common law and a civil law historian emphasize the value of pragmatism for their systems.

The editors balance this appearance of consensus with Pierre Legrand’s insistence twenty years later that European Legal Systems Are Not Converging. He opposes measuring convergence trends based on countries’ rules and concepts because these manifestations of law are superficial in terms of what they reveal about a country’s “legal culture.” (p. 60). When comparing legal systems, he advises researchers to include the “cultural, historical, social or economic.” (p. 59). Legrand predicts that the common law and civil law systems in Europe will not converge because the legal cultures underlying them are “irreducibly different” in matters like method of legal reasoning and the general approach to and of judicial decision-making. (p. 64). Legrand believes that legal professionals from different legal cultures can never quite understand each other; they cannot escape their “accluration.” (p. 78).

Because the volume is primarily a collection of others’ writings, the views of the editors about the many issues that legal origin theory touches on are mostly left in the background. However, the editors do scrutinize the theory in their introduction. The choice of articles is also a reflection of the arguments about the theory that the editors believe are essential for the well-educated reader. With the next studies, “Data and Methodology,” the editors offer research that conflict with the theorists’ conclusions. (p. 201).

First, in 2009, Holger Spamann argues that the anti-director rights index from the influential Law and Finance article is flawed. He distinguishes his work by using what he calls “raw legal data,” which is evaluated by attorneys and coded according to a protocol. (p. 206). In 2006’s Empirical Critique, Michael Graff finds that while legal systems treat investors differently, the common law system does not necessarily provide a better legal environment for economic growth.

Following these critiques, the next articles conclude that “institutional determinants” play the most important part in determining a country’s economic growth. (p. 355) The authors of The Colonial Origins of Comparative Development track the effect of institu-
tions on economic growth by looking at historical colonization. Geographic areas that lent themselves to colonial settlement formed better institutions and experienced stronger economic growth than areas that could not be settled. Unlike the Law and Finance study, the authors’ work focuses on the condition of the colonies rather than the identity of the colonizers. Economic Development, Legality, and the Transplant Effect, co-written by editor Pistor, argues that the way a country’s law was transplanted to and received by it matters in the effectiveness of its legal institutions and economic development more than the legal family the law originates from. In The Great Reversals, the authors propose that the lack of financial development in some countries comes from incumbents who fight development for fear of competition.

The article that criticizes legal origin theory most directly is Mark J. Roe’s Legal Origins, Politics, and Modern Stock Markets. He writes in 2006 that there is nothing in a country’s legal origin which prevents it from establishing legal structures that promote economic growth. He argues that a country’s political choices and day-to-day realities after the destructive twentieth century world wars are greater determinants of its economic condition than its “medieval legal origins.” (p.498).

Roe’s article is an appropriate segue into the book’s concluding section, for he presents evidence that differences in legal systems between the traditional common law and civil law countries are not as stark as they once were. Both systems legislate, regulate, and adjudicate. The last two papers similarly address the overlap of legal systems. Franz von Benda-Beckmann writes about legal pluralism. Ugo Mattei wraps up the book writing about Taxonomy and Change in the World’s Legal Systems. He suggests scholars create a new taxonomy for the world’s legal systems so that knowledge can better transfer between them. He classifies countries by legal system into three families: rule of professional law, political law, and traditional law, and argues that some legal systems fit into more than one family.

By providing the scholars’ own words in seventeen articles, the editors present an undiluted forum of arguments for and against legal origin. However, with the inclusion of the articles in the second half of the book, the editors suggest that one should not expect a particular outcome from a legal system based on how that system is traditionally characterized. In other words, common law does not necessarily equate with better economic growth.

Because the book is a series of articles, it lends itself to review through the use of citators. If one is curious about the reception
of one of these seminal or provocative articles, its reputation can be explored through tools like KeyCite, Shepard’s, or Hein Online’s citator. The editors have done the same with Law and Finance in SSRN and Google Scholar, finding a plethora of citing sources. Thus, Legal Origin Theory can be viewed as a starting point for the scholar pondering how a country’s early legal system might affect its economic condition to the present day.

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Paul Halliday, Professor of History at the University of Virginia, has produced a fascinating examination of the development of habeas corpus from its inception in the 1500s through the early 1800s. Since the writ’s inception, hundreds of books, articles, and pamphlets have been written on this topic, but Halliday’s work stands alone. Traditionally, habeas scholarship has relied on the texts of Blackstone and Coke, but Halliday looks beyond these texts and delves into original sources in order to provide a window into judicial processes. His findings turn our common understanding of the origins of habeas corpus on its head in that he concludes that the authority of the writ began, not as a right of the imprisoned, but as a power of judicial discretion over jailers. Halliday’s preparation for this work required the inspection of court activities (court writs, rolls, and rulebooks) pertaining to 2,757 prisoners spanning three hundred years (1500-1800) to analyze how judicial power was applied and the patterns of its use. The purpose behind this extensive archival research can be summed up by a statement early in the work in which the author explains, “...when we write legal history, we typically listen to what judges said – especially a famed one like Coke – rather than watch what they did” (p. 57). In essence, after hundreds of years of research which relied upon reported cases, Halliday reveals the true workings of the English courts by watching what judges did, not what they reported.

Indeed, the book is heretical to traditional scholarship on the topic in that the author dispels the common notion that the great writ was created to protect those falsely accused. Halliday does this convincingly by looking beyond the confines of the court process and examining the topic in the broader context of England’s empire. He describes how habeas corpus grew out of a volatile mix of social, religious and political controversy and how its use actually began as an instrument of judicial power. As the author explains, it was an authority derived (or perhaps more accurately, commandeered) from the king’s prerogative and was in fact “a power more concerned with the wrongs of jailers than with the rights of prisoners” (p. 14). Throughout the work Halliday also uses his research into contemporary political pamphlets, newspapers, and religious sermons to illustrate how the exercise of authority was shaped over time.
Like the message it brings, the arrangement of the book is somewhat nontraditional, but is nevertheless quite effective. Rather than approach the subject chronologically, the book is arranged into three topical sections: “Making Habeas Corpus,” which discusses its foundations in the king’s prerogative; “How It was Used,” which addresses the varying definitions of imprisonment and the social and geographic range of the court’s use of authority; and “Habeas Corpus Bound and Unbound” which covers the changing uses of the writ into the nineteenth and twentieth centuries and events and processes allowing for suspension of the writ.

In the second part of his book, Halliday explains how early uses of habeas corpus required that a story be told to the court by the person seeking liberty. Similarly, Halliday uses vignettes to illustrate how early courts broadly defined the concept of detention to allow for the use of the writ to extend beyond simple arrests. Two such examples described in detailed were the granting of requests from eighteenth century sailors seeking to escape impressment by the Royal Navy and wives imprisoned in their houses by violent husbands.

Those looking for extensive comparisons to the modern habeas corpus debate will be somewhat disappointed. The focus here is on foundational aspects, and the reader will find little on current events or even American historical events. For example, Lincoln’s suspension of habeas corpus is marginally touched upon and Andrew Jackson is not even mentioned, but the author does trace back to 1689 the foundations for suspending the writ when required by necessity. Halliday also concludes his book with the observation that habeas corpus is an elastic concept that has a long history of loosening and tightening depending on “necessities,” and recognizes the continuous struggle with the tension “between what is in our law and what we would like to be in it” (p. 316).

Halliday’s work is sharply written, rich with details, and should be required reading for all scholars writing on any topic which touches on habeas corpus specifically and constitutional law generally. For the researcher, this book contains a detailed index, over one hundred pages of end notes and a wonderful appendix detailing the author’s survey methods of habeas corpus use. The vignettes can be excerpted for curricular use, but the work needs to be read as a whole to understand his revisionist message fully. Since its publication in 2010, Habeas Corpus: From England to Empire has been awarded the Inner Temple Book Prize, was a New Statesman Favorite Read of the Year, and has been cited in
dozens of scholarly journals. It deserves a place on the shelves of all law libraries for current and future students and scholars.

Douglas Lind
Law Library Director and
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Southern Illinois University Law Library

Before Social Security, Medicare, and pensions, people approaching retirement did not have the same options retirees do now. Nursing homes, retirement communities, and paid home assistance are all relatively recent developments. Older people relied on children, other relatives, and even servants and tenants to care for them. Economic opportunities for young people could draw younger relatives away from the home, so their elders had to entice potential caregivers with the promise of inheriting the elders’ property. Hartog’s book focuses on cases in which their promises were broken.

Inheritance decisions were regarded by older people as their primary insurance against losing caretakers and companions in their later years. Hartog quotes from several contemporary books and articles urging property owners to retain control over their property as long as possible to help secure care from children and other caregivers. Surely most of the younger generation cared deeply for their elders, but there was no substitute for economic security, and older people were very reluctant to relinquish control.

Thus the older people in the cases Hartog describes asked younger caregivers to stay and care for them, promising once they had passed away, the caregivers would inherit an estate that would make the their trouble worthwhile. While this arrangement may have worked well for many families (and never gave rise to lawsuits), in some cases the property owners’ promises were not realized. Wills went unwritten, the property owner changed his mind after an argument, or other potential heirs challenged the will. The resulting cases landed in courts of equity, which evaluated the work provided by the caretakers to decide whether the care only would have been provided if a binding contract had been made. If the care could have been provided as part of a loving family relationship, then the promised inheritance was regarded as gratuitous and unenforceable.

What types of caregiving the chancellors (judges on courts of equity) regarded as evidence of binding agreements seemed to depend on the gender and economic potential of the caregiver. For instance, if the caregiver was a son who could have left home and pursued his own career, then the inheritance was more likely to be enforced. On the other hand, if the caregiver was a daughter or female servant, the court was more likely to think the caregiver
was still economically (and even legally) dependent on the property owner. Women were held to a higher standard to show their caregiving labor was extraordinary enough to only be attributable to a binding contract.

Expectations of familial duties shifted over time. Care that was once regarded as merely discharging the duties of a family member became extraordinary work that would not have been performed if compensation (either through cash or property) had not been offered. Some cases in this book did not involve claims for promised inheritances, but rather unpaid wages for caregiving services that were rendered. When these claims were brought by children, they raised questions about when work was performed as a family member and not compensable, or as an employee and worthy of pay. Over the years covered in this book, the economic prospects of young people changed. Work that was expected of dutiful children later became labor for which pay was expected. Such caregiving then shifted from paid family members to paid employees from outside the family, foreshadowing the professional elder care industry we now have.

Hartog succeeds at a difficult task: taking a rather specific set of cases (over 200 cases from New Jersey decided between the late 1840s and early 1950s that involved claims of inheritance promises in exchange for caregiving) and drawing out common themes that teach us how members of different generations related to one another. Hartog clearly spent a great deal of time in the archives; the book contains details and testimonial quotes from a number of cases. These details enable Hartog to tell vivid stories of familial disputes that landed in court. In some respects, the stories in this book are very similar to legal conflicts heirs have today over sharing an estate. While money was certainly a central issue, these conflicts also involved sibling rivalries, personality conflicts between in-laws, and disagreements over lifestyle choices. Some colorful characters appear in the stories, making the book an interesting and entertaining read.

Hartog’s narratives are carefully documented in notes at the end of the book, and the index appears thorough. Someday All This Will Be Yours will fit well in academic collections supporting research in elder law, gerontology, family law, estate law, and legal history.

Benjamin J. Keele
Research and Instructional Services Librarian
Indiana University Robert H. McKinney School of Law
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John W. Head is currently the Robert W. Wagstaff Distinguished Professor at the University of Kansas School of Law. He has also taught in Europe and Asia and previously served as legal counsel to the Asian Development Bank and the International Monetary Fund. Professor Head’s prior publications include books and articles on global business and economic law, and a 2005 book on dynastic Chinese law codes.

Based upon the back cover and introductory materials of Professor Head’s book, I expected to find a highly readable text that would fall in the “popular history” genre. The back cover of China’s Legal Soul, for example, claims that the book’s narrative “is readily accessible by—and written for—non-specialists.” Further, in his preliminary material, the author posits that he will offer “occasional citations to authorities and additional reading” (p. xxiii), and that he has tried “to use footnotes sparingly in order to provide as clear and straightforward a ‘story line’ as possible.” (p. xxiv). My expectations for an easy read, however, were certainly not met; this is purely a scholarly work. When approached as such, though, Head’s book provides an exceptionally well-organized and valuable exploration of China’s contemporary legal identity as viewed through a historical lens.

Certainly the strength of this book is its organization and the author’s ability to “step into” the text to remind the reader where the author has been, and where he is going. This is a talent that, in my mind, many academics (and most students) lack. Early on, Head clearly articulates the purpose of the book—an exploration and search for what he terms China’s “legal soul,” which he defines as “the set of fundamental and animating legal principles or values that give a society, particularly the legal system of that society, its unique spirit and character.” (p. xiv). He then sets forth the structure of this exploration—carefully explaining the content of each of the four chapters in the book and how that content relates to the book’s aim. Before the opening sentence of the first chapter, the reader has a crystal clear idea of how the author’s quest for China’s modern legal identity will unfold in the forthcoming pages.

Chapter I opens with a “nutshell” account of the development of dynastic Chinese law. Head views dynastic Chinese law “as not
only an engaging story worthy of study in its own right, but also a key that can help...unlock the door to understanding the essence of contemporary Chinese law.” (p. xv). In this section, the author adeptly describes the conflict between Legalism and Confucianism, which eventually morphed into what the author describes as an “alloy” that combined the two competing ideologies. This “alloy,” according to Head, eventually found expression in the various legal codes of dynastic China (e.g., Han, Tang, and Qing), each of which the author describes in detail. Head subsequently gleans four distinct themes from his survey of dynastic China: 1) the extraordinary continuity of China’s traditional law; 2) dynastic law’s consistent rejection of foreign influences; 3) the role (if any) of the “rule of law”; and 4) the manner in which Imperial Confucianism served as the “legal soul” in this period of Chinese history.

Head next turns to addressing these four themes as they relate to contemporary Chinese law. In Chapter II, he specifically examines the first two themes described above. With regard to the continuity of law, Head opines that there has been “a complete and irreversible discontinuity” (p. 95) of dynastic Chinese law in the modern era (which encompasses about the past 100 years). In terms of foreign influences, the author concludes that, like dynastic law, contemporary Chinese law reflects a thorough filtering of external elements. Head finds China’s resistance to foreign influences (particularly Western) to be unique among legal systems undergoing substantial reform, reasoning that the Chinese have a more intimate relationship with their past than most Westerners.

Chapter III subsequently explores whether there is a “rule of law” in contemporary China. Here, the author relies heavily on Professor Randall Peerenboom’s concepts of “thick” and “thin” versions of the “rule of law.” Head ultimately concludes that a “thin” version of the “rule of law” does exist in today’s China, albeit only barely. Chapter IV then cuts to the heart of the author’s purpose in writing the book; that is, the question of whether a “legal soul” exists in contemporary China, as it did during the country’s dynastic era. In addressing this question, Head considers six candidates, including Neo-Confucianism and Marxist-Leninist-Maoist-Dengist thought, for serving as modern China’s “legal soul.” After systematically rejecting the first five possibilities, Head proposes his own aggregate hodge-podge of elements, which he terms MOLECARP—Materialist-Oriented, Legitimate, Extroverted, China-Appropriate, Restorative-Progressivism. The author, however, even dismisses this package of elements, ultimately concluding (at least tentatively) that modern China lacks a “legal soul”—a finding that Head finds particularly troubling.
Head’s text is indeed dense, but his ability to weave in and out—constantly providing the reader with a roadmap—gives the book a strong underlying framework, and an overall logic to the book’s purpose. Although the text alone is well organized and readable, however, it is the author’s heavy (on the verge of excessive) use of direct quotations, footnotes, and charts that results in some arduous reading. Embedded within the 217 pages of primary text are a number of lengthy direct quotations, as well as over 400 footnotes—many of which are extensive and simply cannot be ignored because of their explicative value. Head has also included several detailed charts and tables, such as those covering “Main Chinese Dynasties and Periods,” “Post-1979 Chinese Laws,” and “Legal Terms and Concepts,” along with a 12-page appendix to Chapter III that contains examples of “rule of law” definitions. Like the quotations and footnotes, the latter also interrupt the flow of the main text, but are necessary and effective accompaniments that support and illustrate Head’s contentions.

Praise for the book’s framework is certainly in order, but what about the content of the book itself? Although I lack any detailed knowledge about the corpus of English language commentary on modern Chinese law, I surmise that Head’s book is not duplicative of other recent scholarship on the topic. Based on searches in WorldCat, my sense is that most of the recent English language sources are descriptions and analyses of substantive Chinese law and the legal system. Head’s work, in contrast, is novel as he explores the overall essence, or what he terms “legal soul,” of the contemporary Chinese legal system. The author is convincing in his justification for such a journey, stating that “the question is deeply important because...a country that plays as significant a role as China does on today’s world stage needs some guiding legal ethic to help it withstand the strains that can come from both inside and outside the society.” (p. 221). Albeit pessimistic, Head’s striking conclusion that modern Chinese law lacks such a guiding ethic or soul is a valid and logical one—ably supported by his observations and arguments throughout the book. Indeed the book’s conclusion is rather abrupt, but it does leave the reader wondering about the continued viability of China’s legal system—certainly the effect that the author was seeking when he penned the final paragraph.

Unquestionably, China’s Legal Soul is a work of scholarship, most appropriately suited for academics and academic library collections. The book is specifically recommended as a valuable addition to the shelves of academic law libraries with developing Chi-
nese law collections, as well as larger university libraries with Chinese history sections.

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As a modest collector of legal ephemera, I was delighted to hear that legal historian Michael H. Hoeflich had published a work on legal postcards and ephemera, and even happier that Joel Fishman wanted me to review it. For the most part, my initial enthusiasm was born out by the attractive volume filled with bright full-colored reproductions of legal-themed postcards, trade-cards, and greeting cards (all drawn from the author's personal collection).

The book begins with an informative essay by Hoeflich, the John H. & John M. Kane Professor of Law at the University of Kansas School of Law, that attempts to place the collected material into its historical context. He begins by noting that late nineteenth century saw the invention of technologies like chromolithography and photographic reproduction that allowed the mass printing of a color items, and these technologies exploded just as the postal systems in Great Britain and the United States were fully developed. The result was the penny postcard, a item that went quickly from being a blank white card for short messages to being a dynamic device for advertising, civic promotion, humor, and even some light titillation. It arrived at a time when mass popular culture was taking full root and the new cards echoed the same themes that the new penny press engaged: romance, scandal, greed, alcohol abuse, and the law.

Hoeflich finds it "not at all surprising that many of the comic postcards express anti-lawyer sentiment" (p. vii). Lawyer jokes have long been a part of popular humor in the Western world, with jibes about their hair-splitting arguments and greed common themes. He also notes that the postcard makers often focus on the novelty of women lawyers, perhaps reflecting popular opposition but also perhaps seizing the opportunity for some transgressive sexual frisson. (The French card-makers appear most interested in this kind of "costume play"). The sexism of some of the cards is matched by the crude ethnic humor of others, ranging from light Irish humor to ugly anti-Semitism.

However, often the properness of the legal costume and the formalities of the trial are used merely as a foil for cute illustrations of children as lawyers and judges. Fans of the "Lawyer Dog" Internet
meme would immediately recognize the humor of the animal postcards—even his German counterpart "Honden Wetboek" (p. 15). In other postcards and ephemera, the lawyer is merely the straight man for the colorful plain-speaking client. Another of Hoeflich's subcategories is "Drinking Lawyers" but many of the traditional jokes in these cards could easily be recast for drunken plumbers and doctors.

While varieties of humor make up the bulk of the postcards and ephemera, there are also chapters on legal advertising, law buildings, and photographs of leading attorneys (even cards with portraits of trailblazing women lawyers). I can attest to the popularity of these genres; my postcard albums are full of courthouse illustrations and hand-colored photographs just like the selections depicted in this book and legal advertising items frequently draw lively auctions on eBay. One advertising sub-genre Hoeflich omits is campaign palm-cards for judicial and prosecutorial offices in the United States. (If nothing else, this otherwise excusable omission deprives the reader of some outstanding examples of 19th century facial hair).

All-in-all, The Law in Postcards & Ephemera 1890-1962 is a enjoyable work and a valuable addition to any legal history collection. The items visually depict the image of the lawyer and the law in the popular culture of Western Europe and America in the nineteenth century and for this alone it should be in every academic library. One interesting supplemental feature that make these connections more explicit is the short table of references to complimentary passages in Marc Galanter's Lowering the Bar.
Lawyer Jokes and Legal Culture (2006) found at the end of the book. There is no index but the thirteen topical chapters make this unnecessary. The photo-reproduction is excellent--let’s hope that this is not the last effort by Lawbook Exchange to add some color to legal history.

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University of Louisville Law Library

Hudson’s legal history of England from Saxon to Angevin times begins with AD 871, the first regnal year of Alfred, King of the West Saxons and conqueror of the Danes. It ends in 1216, when the famously ill-reputed King John was locked in a civil war with the barons and churchmen who had forced him, in June 1215, to sign Magna Carta. Hudson’s voluminous work is the second in a series that presently stands at thirteen volumes. The present reviewer cannot claim to have read all the other twelve, but he is confident that Volume II can stand with any of its siblings. In fact, we can now add Hudson’s name to those of Maitland and Holdsworth1 as authors of indispensable works on early-medieval law.

Hudson’s plan is to present parallel treatments of legal institutions, procedures, and doctrines across what he perceives as three periods: First is “Late Anglo-Saxon England” (871-1066), spanning the rise and remarkable persistence of the Wessex dynasty established by Alfred, popularly known as “The Great.” Second is “Anglo-Norman England” (1066-1154) covering the rule of William I, popularly known as “The Conqueror,” and his descendants. Third is “Angevin England” (1154-1216), beginning with the long reign (1154-1189) of Henry II, a legal revolutionary, empire-builder, and perplexed family man.2 Within each of these periods Hudson presents chapters on “Kings and Law,” “Courts,” “Procedure,” and “Land,” and “Moveables”; by the Angevin third of the book, land-law practice has taken over the procedural chapter. The three major divisions are in effect parallel books-within-a-book. There is some variation within each; but for all three eras Hudson (in addition to the topics mentioned above) also addresses legal issues related to crime, status, and families. This struc-

1 For Maitland, see Frederick Pollock and Frederic William Maitland, The History of English Law Before the Time of Edward I, 2nd ed., 2 volumes (1898; Indianapolis: Liberty Fund, [2009]). For Holdsworth, see William S. Holdsworth, A History of English Law, 17 volumes (London: Methuen, 1903-1972); note that most of the material pertinent to readers of this review is found in Volume II of Holdsworth.

2 The “Angevin” kings were Henry II and his sons Richard I and John. Henry II was the son (and Richard and John the grandsons) of Geoffrey of Anjou, husband of the Empress Maud, who was herself daughter of England’s King Henry I (died 1135). The term “Angevins” come from the French lands of Anjou.
ture makes it very easy for the reader to trace particular developments across time.

Like Maitland before him, Hudson is at his best when exploring complex problems in reasonable language. He lacks Maitland’s epigrammatic brilliance, but his work shines when he addresses matters of procedure. If Maitland allows us to imagine that we that we have learned to think like a medieval person, then Hudson allows us to feel what it was like to have “been there.” Consider Hudson’s patient and lucid treatment (pp. 67-92) of the stages and possible outcomes of a trial before the “suitors” of an Anglo Saxon shire court. After formal (and formulaic) accusation, denial, and presentation of information and arguments, the court would reach a “mesne” or intermediate judgment (pp. 78-79) as to what would constitute proof in the matter. Proof might involve oath-giving, and not just the oath of the accused, but of varying numbers of his equals, neighbors, or sureties—in short, of his “oath helpers” (pp. 81-82).

Failing to satisfy the court with oaths, the defendant might be put to the ordeal. If the accused party was reputed to be of bad character, the court might skip the oath phase and go straight to the ordeal. Hudson presents this topic, always so appealing to students, with a clear sense of its increasing appeal to Alfred and his successors. He makes it clear that kings of the Wessex line saw the union of state power and religious awe (ordealss were administered by priests) as a force for order and civilization, and quite possibly as a means “to counter a major problem [false swearing?] in a system resting on oaths” (pp. 85-87; see also pp. 181-186). Following the success or failure of oaths and/or boiling water, the court would issue its final ruling (pp. 87-91) based on consensus among its senior members, typically the leading landholders or “thegns.” Having wrapped his readers up in a nice package of community or collective judgment, however, Hudson is quick to point out that there were exceptions—that some “evidence presents judgments being given by kings, great men, or officials, that is by those presiding over the court” (p. 88). Throughout the book, indeed, Hudson’s mastery of sources allows him to be candid about the gaps in our knowledge.

Hudson does an outstanding job of clarifying points that can easily, in such a transitional world as that of the Anglo-Normans, es-

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3 But then, who doesn’t?
4 The Ordeal was associated with Shire Courts; it was not allowed in cases before lower, even more local tribunals such as the “Hundred Courts” (p. 85).
cape our full grasp. To take one of many such, Hudson enhances our appreciation of manorial courts, which were essentially an innovation of the Normans (p. 273, 284-289). It is a basic and widely taught fact that royal courts, from Henry II onward, absorbed legal business formerly decided by feudal tribunals. But Hudson reminds us that Norman and Angevin kings viewed all landholding as derived from royal power, from Saxon grants of “sake and soke” to post-Conquest feudal or honorial grants. Therefore from the kings’ point of view, aristocratic courts were useful, and remained so, as an integral part of the machinery of royal government (pp. 289-290, 528, 556-562).

Hudson also reinforces our understanding of the Normans’ strong connection between landholding and military service. Given this approach to state security, it was inevitable that the security of military tenures should be a continuing interest of the crown. Henry II inherited the chaos born of the civil wars of his predecessors. His responses, as Hudson demonstrates systematically, took the form of the celebrated “possessor assizes.” These were forms of action tried by royal courts on behalf of individuals whose had unlawfully lost (1) possession or “seisin” of a free tenement, (2) inheritance of the tenement, or (3) exercise of customary rights and privileges such as that of “advowson,” i.e., the right to nominate priests to serve in a parish (pp. 520, 524-527, 603-626). Plaintiffs initiated these actions by purchasing writs issued from the royal chancery, thereby enriching the crown and repressing land-grabbers. In common with the “Grand Assize” (pp. 600-603), the possessory assizes worked through local fact-finding juries. Together with the juries of presentment introduced in criminal proceedings by the Assize of Clarendon (pp. 514-

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5 Likewise, royal courts superceded some of the authority of the shire courts; but like manorial courts, they continued to exist. Shire Courts served both as courts with substantive powers and as procedural way stations for litigation destined for royal courts; see Hudson, pp. 550-556.
6 Between the Empress Maud (note 2, above) and King Stephen (1135-1154).
7 These phrases describe the assizes of “novel disseisin” (1166), “mort d’ancestor” (1176), and “darrein presentment” (late 1170s).
8 The Grand Assize (1179) was a new wrinkle in the earlier, still-existing system of “Writs of Right.” It offered defendants (in trials of the right to land) the opportunity to substitute trial by jury for judicial combat. Its introduction marked a decline in trial by combat—and of all the abuses to which that form of justice had been subject.
9 The Assize of Clarendon dates to 1166.
515), the new forms of action moved English justice away from the law of wergild and firmly toward the notion of a common law.

Hudson benefits from decades of scholarship on medieval English law, consisting not only of the painstaking presentation of original sources offered year after year by the Selden Society, but also of numerous useful secondary works. He thus has advantages denied to either Maitland or Holdsworth; though like both historians he often draws upon deep study of a classic treatise. In Maitland’s case the definitive work was the mid-thirteenth century production associated with royal judge Henry de Bracton. In Hudson’s case the treatise is the late twelfth-century work named for Henry II’s warrior-justiciar Ranulf de Glanville, who recorded, organized, and promoted his master’s revolution in law. Hudson frequently comments upon this Tractatus de Legibus et Consuetudinibus Regni Angliae, or relies upon it; the term “Glanvill” rates more than sixty entries in Hudson’s “index of subjects” (p. 937).

It is simply giving Hudson his due to say that his accomplishment is inspiring (as well as intimidating); but this does not mean that, in our search for one-stop treatises, we can dispense with Maitland or Holdsworth. Hudson, to take one example, contains several references to “final concords” or “feet of fines”; but Maitland

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presents us with a fluidly written essay on these early written records, proving by his exposition that the technical and procedural can become an agency of cultural change.\textsuperscript{13} Likewise Hudson discusses the rise of a legal profession at only a few points, more or less in passing—and this is natural, since there was no developed “legal profession” by the time of Magna Carta. For a more thorough treatment (and one that takes us beyond Hudson’s end-point) we can be grateful for Holdsworth.\textsuperscript{14} This is after all the way of great legal works. The publication of one inspired synthesis (think of Blackstone) does not obliterate the usefulness, and certainly not the pleasures of its predecessor (think Coke).

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\textsuperscript{13} Pollock and Maitland, History of English Law, II: 99-110.
\textsuperscript{14} Holdsworth, History of English Law, II: 311-319, and (for the beginnings of the Inns of Court) 506-512.

This Liberty Fund reprint combines three different works in which Robert Molesworth had a hand. An Account of Denmark and Some Considerations for the Promoting of Agriculture and Employing the Poor were both written by Molesworth. Molesworth also translated Francis Hotman’s Francogallia. Justin Champion edited this edition and includes a thorough introduction. There is also a detailed description of the previous editions of the included texts that were used to create this volume as well as any additions or deletions made.

For those unfamiliar with Robert Molesworth the introduction provides an incredibly useful biography of the man and his works (pp. ix-xl). Robert Molesworth (1656-1725) was a writer, member of parliament, and steward of his own estates in both England and Ireland (pp. ix). He has been recognized as one of the last “Real Whigs” (pp. xi). The Whigs were a political party in England which prized the public good above all forms of government. Molesworth believed in public liberty and civil rights and blasted political and religious corruption (pp. ix, xii). He also championed the importance of reading and education even encouraging his daughters to read and learn (pp. xiv-xv).

An Account of Denmark receives top billing in this edition, probably because it is Molesworth’s most famous work. His work as William III’s envoy to Denmark in 1689 provided Molesworth with the necessary information to write An Account of Denmark. In An Account of Denmark, Molesworth provides a detailed description of the country as it was in 1692. The first several chapters describe the lands constituting Denmark as well as any of the other countries belonging to the King of Denmark (Ch. 1-5). Molesworth then goes on to discuss the form of government in Denmark, including the progression to a hereditary and absolute monarchy (Ch. 6 & 7). The discussion then moves on to the people of the country (Ch. 8). Molesworth movingly discusses how poor people suffered from hardship, degradation, and sickness. He even compares the people of Zealand to slaves in Barbados (pp. 70). The ways in which the country raises money form the basis of

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Chapter 9. Molesworth describes the revenue stream as coming from taxes upon subjects, customs paid by foreigners, and rents the King collected from his own estates (pp. 76). Chapter 10 discusses the army, which by modeling Denmark's army on that of France, Molesworth argues the King built it to an unsupportable size. Discussions of the court (royal household) and interests between Denmark and other countries and princes follow (Ch. 12-14). The work ends with a discussion of clergy, learning, and the conclusion (Ch. 16).

The discussion in An Account of Denmark which law librarians will find most interesting is that of the laws and courts of justice (Ch. 15). This is the one area where Molesworth has praise for Denmark. He expounds that, “Danish laws, I must needs begin with this good character of them in general, That for justice, brevity, and perspicuity, they exceed all that I know in the World” (pp. 143). Molesworth even expresses a greater respect for the advocates in Denmark than those in England (pp. 143). Molesworth describes the general three court system in Denmark comprised of the Byfoghts Court in Cities and Towns or Herredsfougds Court in the Country; the Landstag or general head Court for the Province; and finally the High Court in Copenhagen, where the King sometimes sat and Nobility of the Kingdom always sat (pp. 144). Limits were set on how much someone must pay to plead a case (pp. 146). Molesworth appears most impressed by the fact that Apothecaries could not practice unless appointed by the College of Physicians and confirmed by the King; furthermore, the shops were inspected two or three times a year and prices were fixed (pp. 148).

Francogallia was originally written in Latin by Francis Hotman in 1574. This piece discusses the ancient free state of France (or Gaul). Robert Molesworth translated the work into English and this edition includes the translator's preface included in the second edition of the translation. Interestingly, the footnotes inform the reader that the translator's preface was not included in the 1711 Timothy Goodwin edition of Francogallia, but did help form the basis of an independent later text, Principles of a Real Whig (pp. 171). Francogallia was the most difficult of the three works to read. This could be in part because the work was translated from the original Latin as opposed to the other two works which were originally written in English. Francogallia charts the progression of the region from pre-Roman occupation into its existence as a Roman province, through the possession by the Franks. The line of succession of the Kingdom is discussed at great length (Ch. 6 and 7). Hotman devoted an entire chapter to the right of the royal family to wear a large head of hair (Ch. 9). Different is-
sues relating to the particular family line which ruled the area are discussed in detail.

*Some Considerations for the Promoting of Agriculture and Employing the Poor* is a slight departure from the other works in that it discusses agricultural concerns, rather than focusing on governmental bodies. This piece was the easiest to read and most interesting of the three works in the book. Molesworth expresses great admiration for many of the practices in effect in England, and disparages Ireland for failing to promote and enforce the same policies. According to Molesworth, “the whole Oconomy [sic] of Agriculture is generally mistaken or neglected in this Kingdom” (pp. 332). The essay goes on to expound on the problems in Ireland caused by the practice of having multiple tenants on the land. Molesworth promotes the idea of instituting a “School for Husbandry” in each county, where an expert in the English methods could teach (pp. 345). He even goes on to suggest that people continue to work the land on Holy Days, including Sunday afternoon, in bad harvest weather.

This book was hard to read at times. Some typeface changes were made. For instance, I was able to consult an original printing of the second edition of *Francogallia* and noticed that it followed the old English typeface tradition of using an “f” to signify an “s”; whereas this edition thankfully departed from that custom. However, the original spelling of many words was maintained. Therefore, readers encounter such words as “chuse”, “compleat”, “shew”, and “publick”. I understand that maintaining these period spellings helped to retain the original character of the works; however, it did make me pause every time I came across such a word, to allow my brain time to process how that word would be spelled today. I found that this pause interrupted the flow of reading and therefore made it more difficult to ensure a complete comprehension of what I had read.

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The homicide rate in the United States has always been high and remains two and half times higher “...than any other affluent democracy” (p. 4). Discovering the cause of the high homicide rate is a question of urgent concern. In American Homicide, Randolph Roth, professor of history and sociology, has researched the problem of the high homicide rate in the United States through a historical analysis of the records documenting individual homicides. Roth hypothesized that the high homicide rate in the United States follows a consistent pattern that began in the precolonial era and has persisted. To further support his claims, Roth has included information documenting his sources and research methods.

Roth is keenly aware that his hypothesis does not fall within the stereotypical reasons posited for violence in American society and stated, “It will become evident that homicide rates among adults are not determined by proximate causes such as poverty, drugs, unemployment, alcohol, race, or ethnicity, but by factors that seem on the face of it to be impossibly remote, like the feelings that people have toward their government, the degree to which they identify with members of their own communities, and the opportunities they have to earn respect without resorting to violence. History holds the key to understanding why the United States is so homicidal today” (p. 3). Based on his analysis, Roth posits:

“Four similar correlations emerge from an examination of homicide rates in parts of the United States and Western Europe throughout the past four centuries:

1. The belief that government is stable and that its legal and judicial institutions are unbiased and will redress wrongs and protect lives and property.

2. A feeling of trust in government and the officials who run it, and a belief in their legitimacy.

3. Patriotism, empathy, and fellow feeling arising from racial, religious, or political solidarity.

4. The belief that the social hierarchy is legitimate, that one’s position in society is or can be satisfactory and that one can command the respect of others without resorting to violence.”
Roth argued in support of his hypothesis using evidence from hundreds of individual homicide cases. He charted changes in rates and patterns of homicide through the lens of gender, race, ethnicity, religion, and geography, creating an intricate pattern not of connection, but of disharmony in the history and contemporary society of the United States.

Roth’s analysis of homicide patterns is careful to distinguish homicide as killings that occur between unrelated adults and are not as a result of war or conflict. By doing so, Roth was able to focus on what we might currently refer to as “random acts of violence.” As might be expected, Roth was able to document that killers are almost always men. Even so, the patterns that are revealed in the circumstances in which women killed are fascinating. This gender analysis shows that women were most likely to kill a spouse or master/mistress in an indentured servitude arrangement. As with war, he separately addressed domestic killings which were spousal homicides, romance homicides, or other homicides where the victim and killer were related in some way.

Interestingly, the rate of spousal homicide spiked when handguns become widely available. Prior to that time, a woman who died at the hands of a spouse usually died from injuries sustained from physical abuse. As ownership of handguns increased, so did the rate of spousal homicide and, more specifically, homicide by gunshot. (Child murder is not addressed in this volume and will be the subject of a future book.)

Roth analyzed homicides chronologically from pre-colonial times to the present. Within each era of consideration, significant differences in homicide rates due to race, religion, ethnicity, and geography were discussed and placed in a historical and political context. In each era, one can clearly see social factors that affected how individuals felt and interacted with their contemporaries, and how those interactions could be dysfunctional and lead to homicide. Tracking the homicide rates of African Americans and Native Americans is particularly interesting, especially how those rates did and continue to differ in geographic areas of the United States. The stability of the rates and patterns of homicide in the United States since 1900 is remarkable itself and worthy of further analysis as records become available.

Roth asserts that the data necessary for an analysis of the twentieth century homicides rates, in order to complete an analysis comparable to that of the previous centuries, is currently unavailable. Nonetheless, he asserts that the pattern is clear to see. After reading historical accounts that support his hypothesis, one can clearly see how those same factors are influencing our cur-
rent state of politics and homicide patterns in the United States. At times, one might have to refer to the name of the chapter to be certain of the time period under discussion because the patterns are so consistent across time and clearly visible in the present day. Roth’s statement, “There was little to bind Americans together when their sense of political kinship failed” (p. 23) is particularly concerning in today’s political climate. One feels a sense of urgency in finding solutions to bring Americans together with a sense of community and faith in government.

Although Roth affirmed that solutions may not be self-evident, he believes that his analysis of the causes and patterns of homicides may inform change in a positive way. One cannot help but be excited at the idea that with the discovery of a clear pattern for high homicide rates, solutions can be developed and implemented. After reading this book, one will see the pattern in every homicide and consider what could have been different that would have prevented the murder. This book is highly recommended for a wide audience including scholars, sociologists, and, perhaps most importantly, the politicians who could be working to foster political unity. This book gives one hope that someday, the United States will be known as a peaceful country instead of a violent country.

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It is perhaps not surprising that the names of Alexander Hamilton, John Madison, and John Jay are deeply embedded in American historical tradition. Among other things, their collective contribution to *The Federalist* suffices to secure their place in public mind. However, the Anti-Federalist contributions to the fierce struggle over ratification of the constitution provide thoughtful insight into the reasoning of those who operated to defend the power of the states, as well as, to articulate a significant critique of specific elements of that constitutional enterprise.

Michael Zuckert, currently chair of the Political Science Department, University of Notre Dame and Derek Webb, Princeton University, have provided the reader with extensive access to what amounts to the “losing” side of the constitutional ratification debates. Indeed, their editorial effort extends the earlier work undertaken by Gordon Wood and the late Herbert J. Storing who devoted substantial academic effort aimed at tracing the intellectual contributions that derive from the Anti-Federalists. Very simply put, the United States Constitution ratified in 1789, is the delicate synthesis of views put forth by Melancton Smith (and his circle) over against the Federalist perspective. This edition, therefore, provides us with valuable access to the fullest extent of Smith’s contributions to a pivotal period in the formulation of the American polity.

There is considerable evidence that Melancton Smith was the key figure among the Anti-Federalists. A native New Yorker, Smith became one of the most formidable opponents of Federalist Alexander Hamilton during the constitutional convention. These debates deserve wider exposure for reasons of civic understanding and enlightened political discourse. Zuckert and Webb were aided in their work through the vehicle of an approach, known as ‘principal component analysis’ (PCA) which has been completed by John Burrows, professor emeritus of literary and linguistic computing, University of Newcastle, Australia. Through the computational analysis of a writer’s vocabulary it is possible to establish authorship with a considerable degree of certainty. Accordingly, the application of PCA encourages us to accept that Melancton Smith was, in all probability, the singular author of letters appearing under the name of Brutus and the Federal Farmer.
When revisiting the letters, speeches, and pseudonymous essays of Melancton Smith the reader is rewarded with an enormously powerful series of meditations on the substance, style, and sense of the constitutional project being lionized by the Federalists. Political discourse has been in a state of decline from several decades and it is both dispiriting and inspirational to listen to Smith as he reasons about the fate of the American experiment.

Recently scholars have begun to trace some linkages between the Anti-Federalists of the nineteenth century and the Progressives of the twentieth century leading up to the New Deal. Indeed, it has been noted that Ronald Reagan helped promote a resurgence of the Anti-Federalist political philosophy, including the view that the federal government presents us with more problems than solutions. More contemporaneously, the reflections of Smith, and his Anti-Federalist colleagues, reminds us that American government is not by any means a ‘more perfect union’ and admits of continuous improvement. There remain some essential points of emphasis put forward by the Anti-Federalists which warrant our attention. Against the ‘new science of politics’ espoused by the Federalists, Smith continuously returns to a notion of classical republicanism that builds a central government upon a system of strong states. We are reminded that the Greeks presented to the world “the theatre of human greatness” and constructions such as the Amphyctionic Council of ancient Greek cities might provide a useful model for a deliberative body within a republic. Furthermore, the Anti-Federalists were committed to a simple form of government guided by an accessible ‘common good’ in contrast to the more complex approach articulated by James Madison that encouraged a clash of factions. Also, the Anti-Federalists made a particular point of speaking in favor of direct and responsive government which included a preference for strong states and representatives who more closely reflect those they represented. Smith spoke eloquently about the need to avoid “a reduction of all the states into a consolidated government” and that the “most important end of government then, is the proper direction of its internal policy, and oeconomy; this is the province of the state governments.”

3 Supra note, 291.
4 Supra note, 214.
Flowing from the above noted concerns about direct representation of citizens, Smith argues well for a vision of self-governing communities that operates against the appearance of political elites, or an aristocracy, that will debase the form of government to be fashioned in America. While the Federalists were fearful of the tyranny of the majority, the Anti-Federalists were clear in their conviction that the American political order would fall prey to the wealthy and powerful. Smith admits that there are “natural aristocrats” among them, such as John Adams. However, he remained firm in the view that men of the “middling class” were needed to draw a “true picture of the people.” For Smith government is intended to protect the rights of the people and establish a civic order that would promote their happiness. In such institutions as the Senate, Smith saw scope for sinecure and special interest.

Smith turns his attention to the role of the superior court; the third point in the triangle of government which includes the legislative and executive elements. Here, again, he offers views which highlight the propensity for a government body to become removed and remote from the common citizen and will tend to serve the interests of the wealthy and powerful. The authority vested in the superior court will make its members unaccountable for any misconduct and also lead to an atrophying of the state court system.

The assertions and arguments of the Anti-Federalists continue to have resonance for those considering constitutional matters as they relate to executive, legislative, and judicial functions. Smith’s writings deserve wider popularity and this recent edition serves a most appropriate purpose for contemporary legal scholars and academics concerned with the mechanics of government. It is perpetually useful to return to founding principles not only for understanding the strength of the modes and orders that have been built upon those principles, but also, to contemplate the challenges and considerations offered by those who called those principles into question. The American republic suffered through a fundamental re-examination of its genesis during the Civil War. Smith was conscious of the wickedness of slavery and his insertions into the debate over the form, function, and features of the constitution were calculated “to furnish the world with an exam-

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5 Supra note, 304.
6 Supra note, 298.
7 Supra note, 298.
ple of a great people, who in their civil institutions hold chiefly in view, the attainment of virtue, and happiness among ourselves.”

This publication also includes a pamphlet on the case of *Rutgers v. Waddington* (1784) which resulted in a ruling by the Mayor’s Court of New York dealing with that state’s Trespass Act of 1783. Here we see Melancton Smith’s ingenuity in opposing the legal acumen of Alexander Hamilton. Once again, Smith was bested by his Federalist foe, but not without framing some excellent arguments and entreaties in favour of caution regarding constitutional, legal and political matters.

Zuckert and Webb have assembled a comprehensive range of writings that have been established as being authored by Melancton Smith. The Anti-Federalists undoubtedly found an eloquent advocate in this multi-faceted individual who, while seeing the promise of the federal form of government, insisted upon the need for dialogue to ensure that the foundation of that general government was solid and sound. Our predilection for the Federalist triumvirate of Hamilton, Jay, and Madison should be adjusted to welcome wider study of loyal New Yorker, Melancton Smith.

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8 Supra note, 214.