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Abstract: This paper uses three previously unstudied manuscript copies of the Britton – an Anglo-Norman text that translates and modifies the primary legal treatise known to medieval England, the Latin Bracton – to reconsider the centrality of this text to legal education in fourteenth-century London. It argues that the Britton was used significantly more regularly than we might expect. My evidence shows that one copy center had at least two exemplars at its disposal, that multiple manuscripts were produced according to a "standardized" format, and that enough copies of the text circulated in the fourteenth century for multiple editions of the text to develop. In light of this discovery, I argue for a re-evaluation of the relationship between oral learning and written learning in the early Inns of Court.

Conventional wisdom and most to-date scholarship on legal education in medieval England insists that the only way students could master English Common Law was by sitting in on court sessions and learning at the feet of the previous generation. The emphasis on a predominantly oral tradition supplemented by written aids for only the most sensitive and concrete details is superficially born out by material evidence from the fourteenth century. Year Books and Formularies (both defined and discussed below) proliferate from the very opening of the courts in London. Furthermore, modern scholars of medieval law have long prioritized study of these materials, increasing their presumed centrality as legal reference works. Legal treatises such as those found on the continent, in contrast, are few and far between. Only two were

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ever written, and neither would have been an effective teaching tool or handy reference guide.

However, as I argue in this paper, the traditional, modern definition of "treatise"—one informed by continental European legal practices and dependent on linguistic register (Latin) and authorial status (known author, preferable renown author)—is far too narrow, and obscures the true role of written treatises for the teaching of English Common Law. Anglo-Norman translations of Latin treatises are still "treatises" and need to be integrated into our understanding of legal practice. One such translation, the *Britton*, an Anglo-Norman translation of the only comprehensive English Common Law treatise to be written (the *Bracton*), survives in such a quantity and in such textual variation that it rivals in importance almost all other legal texts from the fourteenth century. This paper examines in detail three copies of the *Britton*, arguing for the popularity and wide spread use of the text in fourteenth-century England. It then uses that information to re-interpret the weight traditionally ascribed to oral transfer of Common Law in the middle ages.

Before investigating the three individual manuscripts of the *Britton*, I will introduce in more depth current opinion about Common Law education in late-medieval England, as well as basic information about the *Britton*.

In his authoritative summary of English Common Law (1990), J.H. Baker identifies three primary branches of written material associated with the burgeoning practice of Common law: Formularies, Year Books and Treatises. Formularies were essentially collections of precedents written in Anglo-Norman. These frequently focused on the forms of writs that could be presented in the King's courts. Year Books, also primarily in Anglo-Norman, generally included lists (by year, hence their name) of particular eyre sessions. These could be studied for insights into the procedure of the courts. Year Books were anonymous, and regularized: most likely the cumulative result of the teaching process rather than the result of a personal compilation. Finally, the treatises, which Baker describes as "systematic expositions[s]" of

2 See Baker "Legal Literature" pp. 200-222.
3 Baker, 204.
4 Baker, 205; Year Books were exceedingly popular, already by 1940, 26 Year Books were identified from the first ten years of Edward III's reign alone. See Rogers, "Manuscript Year Books" for more information.
Traditionally in Latin, treatises explained the underlying premises of the law that the more practical texts aimed on putting into action.

Traditionally, treatises are assumed to have played a background role in the teaching of English Common Law. They were "eclipse[d]...by the more practical literature" and did not enjoy the "prominent position in English law that they did in the other European systems". Only two Latin treatises were produced in the middle ages in England, and only one gained any traction. The first, known as Glanvill (and likely produced by a royal justice named Glanvill), was assembled in the twelfth century and contained writs and "an account of the procedures which they initiated". The second, known as Bracton, was produced approximately sixty years later (1250s), using the plea rolls of previous generations and surveying the entirety of Common Law. Bracton was emended and translated into Anglo-Norman French at the end of the thirteenth century (this text was called the Britton and it is to this text that we shall soon turn), but has been assumed to have had limited use despite its relatively wide circulation (c. 50 manuscripts survive). Assumptions of its limited use are based on the text’s early composition, which resulted in a discussion of only the rudimentary elements of Common Law, and the fact that Edward III’s legal reforms quickly rendered moot much of the information in the treatise. Despite these fallbacks, Bracton remained the only comprehensive legal treatise for medieval students of common law: the next comprehensive treatise on English Common Law, Blackstone’s Commentaries on the Laws of England, appeared a shocking five hundred years after the composition of Bracton.

Because Bracton was the first and last of its genre in the middle ages, and because it is dwarfed in the material record by formularies year books, modern legal scholars have transitioned focused on the ad hoc, apprenticeship style of legal learning in London. Students, scholars say, must have learned the law by attending lectures, and sitting in on the procedures in open court. Essentially, they must have learned through a combination of oral prac-

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5 Baker, 214.  
6 Baker, 214.  
7 Baker, 200-1. For more on the attribution of this treatise to Glanville see Josiah Russell’s "Ranulf de Glanville."  
8 Baker, 201.  
9 For more on the composition of Blackstone’s Commentaries on the Laws of England see I.G. Doolittle "Sir William Blackstone.".  
tices that developed and centralized, leading to the development of the Inns of Court.

England certainly had a uniquely fluid legal system based on an incredibly complicated and constantly changing corpus of precedents. This legal system naturally necessitated a correspondingly fluid education system, one that was perhaps more conducive to oral instruction than written instruction. However, we have perhaps been too willing to subscribe wholesale to the idea that, without *Bracton*, there must have been an "absence of systematic exposition of the law," and that that the absence could only be filled by oral instruction. Indeed, earlier in his own work, Baker himself acknowledges a possible alternative, one that has been almost unanimously overlooked in the study of English legal history: the *Britton*.

As briefly mentioned above, the *Britton* is an Anglo-Norman translation and modification of the *Bracton*. Nichols' modern edition divides the text into six books, and the text is notable for the fact that it is presented in the voice of the king (the text begins with a formal address from Edward to his subjects: "Edward, par la grace Deu, Roi de Engleterre.....a touz ses feaus et sugez de Engleterre et de Hyrelaunde pes et grace de sauvaicioun"). Very little is known about its composition: the title "*Britton*" is the only indicator of the author behind the work, and scholars have, for centuries, sought different gentlemen named "Britton" in contemporary English society. As early as the 16th century, Sir Edward Coke attributed the *Britton* to John Britton (de Breton), bishop of Hereford. However, it is unlikely that this attribution is accurate because the bishop died in 1275, long before many statutes included in the *Britton* were enacted. At least five other mentions of

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11 Book I "Of the Authority of Justices and other officers, and of personal please, including pleas of the Crown"; Book II "Of Disseisins and their Remedies"; Book III "Of Intrusions and Their Remedies"; Book IV "Of Pleas relating to Advowsons and the Property of Churches; and of Attaints"; Book V "Of Please of Dower, and Entry"; and Book VI "Of Proprietary Actions."

12 Nichols, 1.

13 This assertion is based on the fact that in some copies of the printed *History of Matthew of Westminster* there is a passage reading "Anno gratiae 1275. Obiit hoc anno Johannes Bretoun, Episcopus Herefordiensis, qui, admodum peritus in juries Anglicanis, librum de eis conscript qui vocatur le Bretoun." However, this entry in the *History of Matthew of Westminster* is likely to be a later (false) addition since it does not appear in the first edition of the printed text (1567), and is missing in many of the oldest manuscript copies (Nichols, Vol. 1 xix).
a "Britton/Breton" occur in documents from the late 13th century.\textsuperscript{14} However, it is possible (and perhaps likely) that the name Britton may not have had anything to do with the original author: Britton (title of the Anglo-Norman treatise) and Bracton (title of the Latin treatise), share a common origin, and the name Bracton can be found variously spelled "Britton, Briton, and Breton." It is therefore possible that the author of the Britton merely transported the name from the text he was modifying and translating.

Aside from discussion of the authorship and origin of the Britton, very little has been studied concerning the text itself.\textsuperscript{15} Most significantly, there has been no focused study on the nature and significance of the expansions and elaborations in the Anglo-Norman treatise (both in comparison to the Latin Bracton but also as the text developed over time), and no investigation has been made into the use and role of the text in the fourteenth and fifteenth centuries. In regards to the former, Nichols only makes the general claim that expansions in the Britton consistently reflect the reforms undertaken by Edward III, and that the text reads more like a text book than the Bracton.\textsuperscript{16} In regards to the latter, scholars generally make safe (and untested) assumptions about the use of the text based on the fact that it was written in Anglo-Norman: Baker, for example, assumes that in Edward I's time students would have been less likely to read the Bracton in Latin than the Britton in Anglo-Norman, and that the Britton would have been preferred "background reading" for students of Common Law.\textsuperscript{17} He does not, however, back this up by any research, or trace the text through time to discover how long and for what reasons the Britton was used.

\textsuperscript{14} Nichols, editor of the Britton mentions three: a "John le Breton" appointed as Justice for the county of Norfolk in 1300; a "Sir John le Breton (or de Breton)" to whom London was entrusted between 1286 and 1298; and a "Johannes le Breton, dominus de Sporle" who signs a letter to Pope Boniface in Edward I's 29th year as king. (Nichols, xxi-xii); Simon Baldwin, Yale Professor of Law identified two others: "Johannes de Barton de Riton" - in commission at York; and "Sir John de Bretaign" who was assigned to serve on a parliamentary commission to process petitions in Gascony (Baldwin, ix).

\textsuperscript{15} Obsession with the Britton's composition is likely the result of an older period of scholarship, in which important texts were in part identified via their important authors. In the case of the Britton, a constantly evolving text, the quest for an author becomes particularly counter-productive.

\textsuperscript{16} Nichols, xxviii.

\textsuperscript{17} Baker, 202.
This paper addresses this gap, and argues that while Baker was correct in his educated guess about the use of Britton for background reading in Edward I's time, the Britton continued to be used as background reading--and perhaps even increased in popularity--throughout the fourteenth century. If, as I will prove, the Britton continued to be standard and well-read long throughout the fourteenth century, the question is not "how to account for the gap" in treatises, but "why was this a satisfactory treatise for so long," "how, where, and for whom was it produced?" and "how does this change our understanding about the relationship between oral and written instruction in the English Common Law system?"

I would argue that a treatise laying out the fundamental principles of English Common Law continues to have traction despite the accumulation and development of individual laws precisely because it is an intellectual grid upon which to superimpose later developments, and therefore it’s relative simplicity is an asset, not a weakness.18 This premise is supported by manuscript evidence indicating that the Britton was produced in great quantity and in close proximity, resulting in significant amounts of textual complication, likely at the center of London and in the midst of the bustling confusion of the new Inns of Court. In this regard, the Britton was closer to the Year Books in textual history. If the Britton is closer to the Year Books in textual history, then it follows that the Britton was closer to the way we conceive of Year Books in use. This has significant effects on the way we typically imagine the Inns of Court: while legal learning must certainly have relied on hands-on experience in the courts and oral learning from the experts, my research suggests that there was also a palpable degree of dependence on text-based learning of the basics.

Nichols catalogues twenty-one complete manuscript copies and five fragmentary copies of the Britton.19 However, he limits himself to the "our [English] principal Public Libraries"20 and the list cer-

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18 This is a view shared by Nichols, first editor of the text: "If much of the work is obsolete it is in the same way as much of Coke, and even Blackstone, is obsolete, not because the general maxims have changed, but because the details have been altered by Statues or one portion of the Common Law has grown at the expense of another." Nichols, xxvii.

19 Manuscripts listed from xlviii-liii.

20 by which he seems to mean the British Library, Lambeth Palace Library, Cambridge University Library, Bodleian Library, Merton College Library, Cambridge Corpus Christi College Li-
tainly could be made more comprehensive. For example, all three manuscripts in this study are not mentioned by Nichols. However, the twenty-one manuscripts listed by Nichols still suggest some interesting trends in the development of the tradition and the use of the *Britton*. First, the *Britton* seems to be significantly more popular in the early and middle fourteenth century than it was in the late thirteenth century (when it was composed) and the late fourteenth century. Only 1/21 manuscripts documented by Nichols originates from the late thirteenth century (Lambeth Library, MS 403), 8/21 originate from the “early” 14th century, 9/21 from the 14th century generally, and 3 from the late fourteenth century. According to this distribution of manuscripts, when the *Britton* was first composed it had a slow start, but within 10-25 years, at the turn of the century, it quickly gained momentum. While it most certainly could have been read for background reading in Edward I’s time, the manuscript show that it likely was read even more widely under Edward II and III.

The format of *Britton* manuscripts corroborates this observation. Folio-sized manuscripts all originate from the early fourteenth century (6 manuscripts), quarto-sized manuscripts dominate throughout the fourteenth century (14 manuscripts), and one octavo-sized manuscript originates from the late fourteenth century. Larger format manuscripts from the early fourteenth century include legal tracts, treatises and commentaries other than the *Britton*. While some quarto-sized manuscript include other texts, the majority contain only *Britton*. It seems that over time the *Britton* evolved from a scholarly reference work to a smaller—and thus cheaper—privately owned book. This book, containing only the *Britton*, was perhaps used not just for background reading, but as "spark notes" to a larger and more complex system encountered in the actual work place. Indeed, the *Britton* may have become more popular as the law became more complex, in its new life as

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21 This would be a surprisingly small number were it complete: *Bracton* survives in circa 50 manuscript copies.
22 Nichols dated these manuscripts, and investigation of each would be necessary before corroborating or disproving his dating.
23 Note of Folio as outdated sizing method, and note on Nichols’ use of "small" and "large" folio subdivisions.
24 Cambridge University Library MS. Dd. vii. 6, Bodleian Library, Douce MS. 98, Lansdowne MS .575, Merton College Library, MS. Q. 2. 16, Harleian MS. 869, Corpus Christi College, Cambridge, MS. 258.
25 Harleian MS. 3937.
"spark notes" in contrast with its original life as "scholarly reference book".

The manuscript at the heart of my research originates from the fourteenth century, and from a centralized production center in London. I will argue that this manuscript is typical for the copying of Britton in the fourteenth-century, and that it testifies to the ubiquitous presence of the text in fourteenth-century scriptoria (and therefore fourteenth-century legal centers). The two supplementary manuscripts used to triangulate it are also from this period. Thus, with Beinecke MS Osborn 185 Item 11 (henceforth the Beinecke Britton), Yale Law MssG B77 no.1 (henceforth the Yale Law Britton), and a private collector’s copy of the text (henceforth Gordon MS 70), we can create a window into the unexplored period of this text’s unquestionable popularity in the 50-100 years after its original composition.

The Beinecke Britton is a fourteenth-century copy of the Britton measuring 22.5 x 146mm (what Nichols would have consider a "quarto"). The text is fragmentary, starting in Book II Chapter 18 of Nichols’ modern edition and ending in Book IV Chapter XX of the same. In the manuscript, this same section of text is considered Book III Chapter 1 through Book IV Chapter 20 (we will return to this difference below). Given the information from Nichols’ manuscript descriptions, it is highly likely that the Beinecke Britton contained only this text.26 The vellum is medium quality, with no significant blemishes but without the thinness, suppleness, or color of high-grade vellum. The rubrication is standard for the period: titles and chapter numbers are in red, and initial letters are in red with blue flourishes alternating with initials in blue with red flourishes. The scribal hand is also what one would expect: a standard, fourteenth-century secretary book hand. Only two features slightly elevate this copy of the text: a beautiful, four-line initial indicating the beginning of Book IV (fol. 21v) and a table of consanguinity in the chapter “Of the writes of Cosinage”(46r). The very “standardness” of the Beinecke Britton places it in a particular book-production context: one in which many copies of the same text were being so regularly and rapidly produced a standardized format developed.

There are many distinctive textual features in the Beinecke Britton that further support this general conclusion. For example, as

26 Indeed, it most likely looked like Yale Law Rare Book’s copy of the Britton, MssG B 77 no. 1; the Yale Law Britton survives complete with original wooded boards and clasp, contains a complete copy of the Britton text, and was bound on its own.
well as standard catchphrases at the end of each quire, the Beineke Britton has quire marks in the lower-right corner of the first four vellum pages of each quire of eight. These quire marks consist of a letter designating the order of the quire, and a number designating the order of the folios within the quire (so quire 1 folio 1 would have been A1, although this manuscript starts with the eighth quire, quire J). While one would expect a manuscript to have one or the other system for assembling unbound quires -- the book-binder and the scribe were rarely the same person-- the presence of both is unusual. The presence of quire marks is particularly unusual, because scribes regularly copied texts into already-folded quires, and therefore catch-phrases provided enough information for future binders. The presence of the quire marks suggests to me that there was a particular need for an aid to discerning the order of this text, possibly because the scribe was copying the same page numerous times for different books, and had to assemble the individual leaves into a quire at a later date. By the time of the assembly into quires, even the scribe would need a "cheat sheet" of sorts to make sure the right pages ended up in the right order.

No matter the specifics, such attention to assembly in what is otherwise a codicologically straight-forward manuscript indicates a large production center in which multiple copies of the same text were being produced, or where so many books of all descriptions were being produced that tasks were distributed amongst many individuals instead of being the responsibility of a mere few. A further indicator that the scribe was either rushed or had seen many copies of the text is that his eyes were regularly glazing over. There are a significant number of eye-skips in the Beinecke's Britton. On folio 4r (corresponding to Book III chapter 16 (MSS) or Book II chapter 19 (printed edition)), there are two significant eye skips in the first two sentences alone.

As well as indicators on the scribal level for a large scriptorium, there are indicators of the same in the manuscript's rubrication. A minor but significant detail on folio 3v suggests that multiple copies of texts, still wet with ink, were in proximity with one another: a smudge that has (as yet unidentified) shape and structure appears in the lower right corner of the vellum (see fig. 1). Similar impressions have been identified in other manuscripts as
the red from rubricated initials in unbound quires that are accidentally placed on top of works-in-progress.27

A major and significant series of mistakes, however, testifies beyond a doubt to the high number of Britton manuscripts in circulation during the fifteenth-century, and the flurry of activity that must have accompanied the production of these texts: the Beinecke Britton's text is based off one exemplar, and it's chapter numbers and titles are based off a different exemplar.

The Beinecke Britton's text was copied from an exemplar in which portions from book three and book four of the Britton correspond to a portion of book two, the entirety of book three, and a portion of book four in the modern printed edition of the text (and both other medieval copies of the Britton examined by this author). Thus, on a macro level, there is already significant disparity between what this copy of the Britton sees as significant textual subdivisions and what the dominant thread of Britton manuscripts considered significant textual subdivisions. The Beinecke Britton's idiosyncrasy is carried through to the breakdown of chapters within each book. The scribe copying the Beinecke's Britton left 6 spaces for rubrication at the beginning of the following sections of text in the first surviving quire of the manuscript (using the printed edition for description of the textual units):

Textual division 1: Book II chapter 18 (beginning "Ratifïé le bref"; 2v)
Textual division 2: Book II chapter 19 (beginning "A ceo qe dit est"; 4r)
Textual division 3: Book II chapter 16 (beginning "Title de fraunce tenement"; 4v)
Textual division 4: Book II chapter 17 (beginning "En plusours maneres est cest"; 5r)
Textual division 5: Book II chapter 21 (beginning "Et cum let parties..."; 5v)
Textual division 6: Book II chapter 22 (beginning "Et cum il serrount"; 7r)
Textual division 7: Book II chapter 20 (beginning "Et plussours maneres sunt"; 7v).

We can assume that the scribe was looking at an exemplar with seven chapter titles and numbers, likely the chapter titles that

27 See, for example, Elizabeth Bryan's discussion of such smudges in London-produced Brut Chronicles, another text with extremely high circulation in fourteenth- and fifteenth-century England, in " Rauner Codex MS 003183."
corresponded with the text (*Des excepciouns a la persone le pleintif; De Excepcioun al Accioun, De Title de Fraunc Tenement, De Excepciouns al Bref, De chalenge de Jurours, De Jugementz, and De Assises tournez en Jureez*), and a set of consecutive numbers unique to that manuscript, but quite possibly running from 16-22.\(^{28}\) We can also suppose that he expected his rubricator to follow this paradigm. This would not have been an unreasonable assumption: despite the fact that the Beinecke Britton's exemplar scrambled text, it did so in a particular pattern,\(^ {29}\) and no chapter was actually left out in its entirety. Therefore, the Beinecke Britton was a viable alternative to the main tradition of the text.

However, the Beinecke Britton's rubricator obviously approached this same manuscript with very different exemplar than the one used by the scribe, an exemplar that, incidentally, seems to have corresponded with our modern expectation of the text. For a breakdown of the chapter titles in the first quire of the Beinecke's Britton (with corresponding chapter numbers from the modern printed edition (P.E.) in parenthesis) see below:

Ch. 15. "Dexception contre le playnntif" (P.E. Chapter 18) 2v
Ch. 16. "Title de franc tenement" (Chapter 16) 4r
Ch. 17. "Vncore de title de franc tenement" (Chapter 16) vel [alternate title in margin, has been chopped and therefore is unidentified] 4v
Ch. 18. "Excepcion n au bref" (Chapter 17) 5r
Ch. 19. "Exception al accion" (Chapter 19) [inserted in middle of text bloc, with not scribal space for rubrication] 5v
Ch. 20. "Dassise tourne en jjuree" (Chapter 20) 5v
Ch. 20. [Ch. 21] "De chalenges de les iurors" (Chapter 21) [inserted in margin immediately after "Dassise tourne en jjuree"] 6r
Ch. 22. "De Juggement" [Chapter 22] 7r.

There are several things to notice in this initial breakdown. First, the rubricator took a section of text that the scribe had subdivided into seven chunks and turned it into a text with eight subdivisions. Despite this discrepancy, both scribe and rubricator were interacting with the same text, corresponding to chapters 16-22 of the Britton (book II or III, depending on the manuscript or

\(^{28}\) Incidentally, we can tell from these chapter titles that Osborn MS 184 Item 11 represents a corrupted Britton tradition because the three *De excepciouns* chapters - apparently intended as a set - have here been scrambled and interspersed with unrelated chapters.

\(^{29}\) Units of two (18, 19 and 16, 17 and 21, 22) were rearranged, and one chapter (chapter 20) fell to the end of the quire.
printed edition). Furthermore, although the rubricator frequently mismatched title and text (see for example, MSS Chapter 16 which has the text "A ceo qe dit" (P.E. Chapter 19) but the title "Title de franc tenelement" (P.E. Chapter 16)), his rubrication actually gets the enumeration of the titles in Quire I back on track for Quire II. The rubricator obviously knew he had to get from chapter 15 to chapter 22 (the last chunk of text in the quire) in order for the next quire (chapters 23-27) to be straight-forward and accurate.

Most importantly, however, the confused rubrication in this quire shows that the rubricator was carried away by how he expected the text to unfold according to his exemplar. Aside from the text corresponding to the modern edition’s Book II chapter 18, which he correctly identified as the first section of text in this quire, the rubricator seems to have steamrolled through the remaining chapter divisions, trying to move chronologically through his exemplar with the titles for chapters 16, 17, 19, 20, 21, and 22 forced onto an uncooperative text. In doing so, the rubricator actually made the situation a lot worse than it needed to be. He could have easily tweaked the numbering and kept an esoteric title order if he had realized that the text was complete but scrambled. Instead, he created the mess outlined in the table, below. In this table, titles are compared with the text they correspond to in the manuscript. Both title and text, however, are described by their placement in the modern printed edition so that the mismatches between title and text are easily identified.

<table>
<thead>
<tr>
<th>Title (As rubricated)</th>
<th>Text (as divided by scribe)</th>
<th>Folio</th>
<th>MSS ch #</th>
</tr>
</thead>
<tbody>
<tr>
<td>Book II chapter 18</td>
<td>Book II chapter 18</td>
<td>2v</td>
<td>15</td>
</tr>
<tr>
<td>Book II chapter 16</td>
<td>Book II chapter 19</td>
<td>4r</td>
<td>16</td>
</tr>
<tr>
<td>Book II chapter 16</td>
<td>Book II chapter 16</td>
<td>4v</td>
<td>17</td>
</tr>
<tr>
<td>Book II chapter 17</td>
<td>Book II chapter 17</td>
<td>5r</td>
<td>18</td>
</tr>
<tr>
<td>Book II chapter 19</td>
<td><em>no text division - only rubrication</em></td>
<td>5v</td>
<td>19</td>
</tr>
<tr>
<td>Book II chapter 20</td>
<td>Book II chapter 21</td>
<td>5v</td>
<td>20</td>
</tr>
<tr>
<td>Book II chapter 21</td>
<td><em>no text division - only rubrication</em></td>
<td>6r</td>
<td>20 (21)</td>
</tr>
<tr>
<td>Book II chapter 21</td>
<td>Book II chapter 22</td>
<td>7r</td>
<td>22</td>
</tr>
<tr>
<td>Book II chapter 21: &quot;De Juggement vncore&quot;</td>
<td>Book II chapter 20</td>
<td>7v</td>
<td>--</td>
</tr>
</tbody>
</table>

As you can see, instead of renumbering the titles but placing the titles with the correct text, he added two titles where the scribe had not planned on rubrication (5v and 6r; see image 2), and did
not insert a title (although he did add rubrication to keep up appearances) where the scribe had planned for a title on folio 7v. He also wrote in titles multiple times, as on folio 4v, where he was forced to write "vncore de title de franc tenement" because he realized, too-late, that he had overenthusiastically written this title in the wrong place on 4r; see image 3, and 4. In all cases, this confusion originated from the rubricator’s attempt to write in "Chapter 16" after MSS chapter 15 (folio 2v) and continue according to the enumeration in his exemplar instead of the words on the written page.

Image 2: 5v; concerned by his lack of orientation in the text, and worried he will not be able to fit in all the titles he needs to, the rubricator adds chapter titles and numbers where the scribe did not intend for either.

Image 3: folio 4r: The Rubricator places "Title de franc tenement XVI" where he expects it to be (after chapter 15) but where it does not correspond to the actual text (which is of chapter 19).

Image 4: The Rubricator recognizes the text for Chapter 16 on folio 4v, and has to reduplicate the title with "Vncore de title de franc tenement."
This series of mistakes is not limited to this quire. For example, on folio 37r, Book IV chapter 13’s title and number appear in the margin of the manuscript without a corresponding 2-line initial, exactly like on folio 5v. And on folio 40v, there is a gap for a 2-line initial and title but neither is present (like 7v, but with no fake title). Furthermore, on folios 41v and 42r, the scribe reversed Book IV chapters 18 and 19 (as he scrambled much of the text from folios 1v-8v). However, in this example the rubricator switched the chapters back by identifying the correct title for each chunk of text, reversing the numbers associated with the title, and putting "b" and "a" next to the corresponding chapters to guide the reader (see images 5, 6, and 7). Considered together, this is clear evidence that two very different copies of the Britton were used to make the Beinecke Britton.

Image 5: full spread of folios 41v and 42r
Determined that the Beinecke Britton was produced using two exemplars has wide-reaching significance. This text has to have been produced in a bustling center with significant demand for the product. Most importantly, significant numbers of the text must have already been in circulation for a single production center to have multiple copies of the same text. Such a production center could either point to a large scriptorium that had multiple copies of a popular text (and then got confused about which was being used for each manuscript), or it could point to the texts not being made in a scriptorium, but on commission from scribes selling their services on the streets near Westminster.30

30 This second scenario would tie into current perceptions of the manuscript culture surrounding Westminster garnered from the study Piers Plowman manuscripts. For more on this vibrant community of clerical copyists see Kathryn Kerby-Fulton and Steven Justice’s “Langlandian Reading Circles and the Civil Service in London.”
Regardless of its production in a scriptorium or on the streets, the plethera of exemplars in circulation during the fourteenth century -- and the energy and frequency with which they were being copied-- is corroborated by evidence within the Beinecke’s manuscript and in other contemporary manuscripts of the Britton. First, the rubrication problems explored above, as my references suggest, are contained within quires and never bridge quires. After the quagmire of Quire I, for example, Quire II continues with no problems: Chapters 23-27 (despite the fact that the manuscripts thinks of them as Book III and the Printed Edition thinks of them as book II) follow in precise order, and with no confusion between text and rubrication. All the parallels to Quire 1 cited above (folios 37r, 40v, and 41v-42r) appear in Quire VI. A third slew of problematic text appears in Quire IX, where the chapter numbers bounce from Book IV chapter 34 (folio 52r) to Book IV chapter 50 (folio 52v), to Book IV chapter 25 (twice; occurring on folio 53v and 55v). However, in Quire IX, the text picks up without any problem at Book IV Chapter 36, and runs smoothly to where the surviving text ends.

The Beinecke Britton could easily have inherited this quire break down of textual confusion from its exemplar. However, whether it inherited the confusion from its exemplar or created it, the consolidation of textual issues to isolated quires suggests a bulk operation in which quires were being copied independently from each other. Only in this case would there be so many opportunities to reset the clock with a new production unit.

Evidence corroborating the messy and thus ample and widespread production of the Britton in 14th-century England can be found in a second manuscript, Gordon MS 70 (from a private collection in New York). Gordon MS 70 is an almost-complete copy of the Britton text,31 with a number of significant cancellations, and with an extremely complex compilation history. Due to limited time with the manuscript, I will focus on the complex compilation history of this codex. I will argue that complex compilation of Gordon MS 70 is the flip side of the same coin that produced the textual miscommunication between text and rubrication in the Beinecke Britton. Both manuscripts are the product of a textual history involving many copies of the same text being produced. In the former (Beinecke copy), the many copies resulted in two dif-

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31 Book I runs from folios 4r-34v; Book II from 35r-64v and Book III from 64v-92r where it breaks off in the middle of Chapter 29. The rest of Book III and the entirety of Book IV are missing, although we know from the table of contents that this was once a complete manuscript.
different exemplars being used for the same copy of the *Britton*. In the later (Gordon MS 70), the rush to produce so many copies of one text resulted in many hands patching together what now appears to be an impossibly complex codex.

Putting aside the early-modern flysheets and limp, vellum binding to focus on the early 14th-century manuscript, Gordon MS 70 features an extremely bizarre quire formation: a quire of four missing its first folio, a quire of eight, a quire of eight that is noticeably smaller in dimension from the rest of the book, a quire of six, a bifolium containing a quire of eight and a quire of twelve, a bifolium containing a quire of twelve, a quire of ten, a quire of eight, and a final quire of twelve. See image 8 (below) for a visual representation of this layout.

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32 This quire of four originally included a complete table of contents, but the first page has been lost.

33 It is clear that this is not a quire of 14 because the external bifolium is larger than the quire of 12 folded within it, and because there is a catch phrase of folio 61v (the last of the quire of 12) that matches the text beginning of folio 62r (the last folio of the external bifolium).
This collation is unusual for many reasons: books produced in England in this period normally have regular quires of eight. Books produced in medieval Europe tend to have consistently sized quires. Even if the quire structure is irregular, bookmakers normally strove to regularize the size of each individual folio. Most strikingly, however, it is extremely rare to encase several quires with a bifolium but have the text run continuously through. Furthermore, this copy of the *Britton* includes numerous cancellations from text being misplaced, and a startling variety of scribal hands. The scribal hands change both in the middle of in-
In some cases, blank space has been left at the end of a quire, suggesting that portions of the text were farmed out to different copyists and then assembled later on (see, for example, folio 34v-35r, image 9).

**Image 9: Gordon MS 70 folios 34v-35r.**

In all respects, this looks like a patch-work quilt of the *Britton* text. While it may never be possible to decode the exact pressures that would produce such an unlikely codex, the important takeaway in this context is that this is the type of confusion that could create a codicologically clean but textually complex copy of the *Britton*, exactly what we see in the Beinecke manuscript. The Beinecke *Britton* and Gordon MS 70 both testify to varied and extensive textual production.

Further evidence indicating the popularity and ubiquity of the *Britton* and therefore the written law treatise in fourteenth-century England is found in a third copy of the *Britton*, also housed at Yale--this time in the Rare Books collection at the law

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34 Most notably between the end of Book I and the beginning of Book II.
school. MssG B77 no. 1 (henceforth the Yale Law Britton) is strikingly similar to the Beinecke Britton in several ways. The manuscripts are almost exactly the same size (the Beinecke MSS measures 15 x 21.6mm and the Yale Law MSS measures 15 x 21.4 mm); both manuscripts have almost the same number of lines per folio (the Beinecke MSS has 33 per folio and the Yale Law MSS has 34 per folio); both manuscripts use the same program of decorated initials (red and blue paraph marks alternating within the main text, and two-line decorated initials in alternating blue with red flourishes and red with blue flourishes); even the flourishing of the decorated initials is remarkably similar: see figure 10 in which a decorated initial “C” from the Beinecke Britton is compared with a decorated initial “C” in the Yale Law Britton. Both feature a three-leaf clover, and three half-circles in a pyramid extending out from the left-hand curve of the “C”.

![Fig. 10: Yale Law MSS f.73v and Beinecke MSS f.25r](image)

Not all elements of the manuscripts match up. In the case of the decorated initials (fig. 10), the Beinecke Britton’s flourishing includes leaves underneath the clover where the Yale Law Britton does not. Furthermore, the Yale Law Britton consistently has double horizontal rulings on the left side of the text block where the Beinecke has none; the Yale Law Britton’s text block is slightly narrower (9.3 x 16.5 mm instead of the Beinecke Britton’s 10.5 x 16.4); and the scribal hands are different. However, these variations do not undermine the similarities. The Beinecke Britton and the Yale Law Britton, contemporary in time with one another, are conceivably close enough in style that they could have come from the same production center. And if they did not come from the same production center, both manuscripts were produced with such an ingrained understanding of what a Britton would look like that the producers knew exactly what norms to conform to in their copying practice. Either way, the similarity in the structure and form of these books testifies to the extreme popularity and
wide circulation of this text in the mid fourteenth century. A text has been copied many times, and for a similar audience, to achieve this degree of conformity.

Interestingly, despite its perfect collation (18 quires of 8), professional hand, decorated initials and color-coded paraphs, the Yale Law *Britton* has a different (but potentially related) set of rubrication problems from those found in the Beinecke *Britton*. Namely, the rubricator did not copy in any titles (or any chapter numbers), despite the fact that the scribe obviously left space for both. Indeed, in certain places, the scribe even added titles himself (folio 5r "De Hyres" and folio 69v "de exception | al action", for example). When a scribe leaves space for rubrication and the rubrication was never applied, one generally assumes that funds for the manuscript ran dry mid-production. However, this cannot be the case with the Yale Law *Britton*, for the rubricator obviously went through the manuscript in great detail adding all other colored features.

Although it is a reach, I believe we could posit the following solution to this conundrum: If, as the Beinecke *Britton* suggests, there was a scriptorium, near Westminster, in which copies of the *Britton* were being churned out, and in which at least two widely divergent versions of the *Britton* text were circulating, it is possible that what we see in the Yale Law *Britton* is the opposite use of exemplars and a scribe giving up instead of trying to reconcile the texts. The Yale Law *Britton* has almost no chapter order corruption worth mentioning. Most importantly in this context, the section in the Yale Law *Britton* that corresponds to the first surviving quire of the Beinecke *Britton* is absolutely straight forward, running from Book II chapter 16 (folio 65v) through Book II chapter 22 (folio 63v) without incident. What could have happened,

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35 These quires were counted out and marked twice in the manuscript: once in ink on the verso of the last folio of each quire, and one in pencil on the retro of the first folio of each quire.

36 Admittedly, because there are no titles or numbers, it is difficult to tell when the first chapter begins (King Edward’s introduction includes numerous subdivisions each marked by a 2-line decorated initial) and therefore it somewhat difficult to orient yourself as a reader in the first quire, but by the end of the first quire and into the second (corresponding to modern-day chapters 6, 7 and 8 on folios 8r through 9r) the decorated initials hit their stride and there is very little confusion.

37 Although there is an unexplained 3.5 line break after chapter 21 which suggests that the scribe thought there was a significant textual division at this point in the text.
therefore, is that the scribe was working with what we would consider an "uncorrupted" Britton tradition and, in contrast with the Beinecke Britton, the rubricator was working with what we would consider the "corrupted" Britton tradition. In this scenario, the rubricator decided against trying to make sense of the differences between his exemplar and the text he had in hand, and chose to only put in the decorated initials for orientation. Even if this were not the case, the lack of rubrication in the Yale Law Britton gives further evidence of confusion in the transmission of the titles of the Britton, one that could easily arise from the popularity of the text.

Thus far, I have somewhat conflated the regularity and quantity of Britton production with an assumption of its popularity and use. To a certain extent this is justified: these manuscripts are neither pretty enough nor cheap enough to be bought in large quantities for recreational purposes. However, to conclude my discussion of the manuscripts under review, I would like briefly mention that all three manuscripts show signs of extensive use. The Beinecke Britton shows signs of extensive re-writing of the running titles (in this case, book numbers), presumably for easy identification of key passages. A nota bene can be seen on folio 48v, and 61v, 62v and 63v all have evidence of annotation that was later scraped off (presumably to make the manuscript more attractive for sale). Gordon MS 70’s text was extensively reworked at some point in the life of the manuscript, and later readers added titles and numbers to different chapters (this manuscript features no rubrication). Perhaps most charmingly, Gordon MS 70 includes two flaps sewn into the manuscript at "folio 56r" and between 82v and 83r (see fig. 11). Both flaps have been sewn in at crucial parts of the text, and include cross-references to different laws at earlier points in the manuscript.
The Yale Law *Britton* features perhaps the most regular annotations, in two hands. One hand returned to the text and added the missing titles to the chapters that were of most interest to him. For example, on folio 10r he added "* burgesors" next to the absent title of modern-day Book 1 Chapter 11: "De Bourgeysours". He did the same on folios 22r (with a summary of the chapter contents) and 41r. This annotator was particularly interested at folio 41r, which corresponds to Book I ch. 31 of the printed edition, and details all the laws around measurements. He took notes throughout this whole chapter. A second, perhaps earlier hand left notes in shorthand in grey ink, for example of folio 13r at the beginning of modern-day chapter 16 "De Larcyns". Independent of the specifics, these signs of readership indicate that all three manuscripts were highly used, and therefore that the *Britton* is not important just for its high rates of production, but because of the regularity with which it was used by fourteenth- and fifteenth-century readers.

There is only a one place in fourteenth-century England that could have sustained the kind of production rates suggested by the three manuscript copies of the *Britton* examined in this paper: London. Oxford and Cambridge had flourishing book production centers for students, but the books that emerged from those centers rarely had such standardized rubrication patterns, and flourished initials. Furthermore, Common Law was not taught at either of the universities, so there would not have been the

38 Nichols, 1: 42.
39 Nichols, 1: 97.
40 Nichols, 1: 185.
necessary demand for a text like the *Britton*. In contrast, London had plenty of students and lawyers to supply, and it had the infrastructure to sustain this quality and quantity of book production. If we return, then, to the tripartite division of legal writing discussed at the opening of this paper, we can re-cast the role of the treatise in fourteenth-century legal teaching. Just as Formularies and Year Books were so ubiquitous that they produced complex manuscript traditions and almost unregulated texts, so too was the *Britton*. The legal treatise, far from being marginalized in the study and practice of Common Law, was converted into a handy, vernacular reference book. The English did not fail to produce the scholarship enshrined in the tomes of continental Europe; they transferred the information of those tomes to a new format. English Common Law was taught via a "Common" treatise: one with broad appeal, high usability, and the linguistic register of the courts.

**Works Cited**

**Primary Sources:**

New Haven, Beinecke Library, Osborn MS 184 Item 11.

New Haven, Yale Law Rare Books Library, MssG B 77 no. 1.

New York, NY, Private Collection, Gordon MS 70.

**Secondary Sources:**


The Legal History and Rare Books Special Interest Section: Celebrating Twenty-Five Years of Excellence

Mark W. Podvia

The May 1989 issue of AALL Newsletter included the following announcement:

A new SIS for Legal History and Rare Books is currently being formed. The requisite number of signatures have been collected to submit the petition before the Executive Board. The organizational meeting of the SIS will be held at 7:00 p.m. on Monday, June 19 in Reno.

Those interested in the new SIS were directed to contact Dan Wade at Yale Law Library. He later recalled that while the idea to start the SIS was his, the late Morris Cohen “was most enthusiastic, and was the real mover and shaker.” Other early supporters included the late Nick Triffin, Naomi Ronen, David Warrington and Michael Chiorazzi. The late Erwin Surrency, who was recently inducted into the AALL Hall of Fame, was the first Chair of the SIS.

The bylaws adopted by the new SIS included the following objectives:

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1 Mark Podvia is Head of Public Services and Special Collections and Instruction Librarian at the West Virginia University College of Law Library.

Except where otherwise indicated, all references are to either LH&RB or to Unbound: An Annual Review of Legal History and Rare Books.

1 The LH&RB SIS was approved by the Executive Board on June 17, 1989.
1) To provide a forum for the exchange of ideas and information on legal history and rare books librarianship;
2) To represent its members’ interests and concerns within AALL.

The SIS newsletter, LH&RB, was first published in January 1991. Janet Sinder was editor of the new publication, a position she would hold for three years.² It was she who came up with the newsletter’s title, LH&RB.³ In an e-mail to the author, Janet reported that the publication was originally laid out “manually by pasting it together and then having copies made on colored paper.”

The first articles published in the newsletter were Blackstone’s Commentaries and Rare Book Prices by Jordan D. (Joe) Luttrell, Rare Books and Other People’s Money by Michael J. Lynch, Recent Developments in English Legal History: A Tudor Mystery Solved? by Byron Cooper, and Reprinting of Monographs: Historical Background and Selection Criteria by Paul A. Rothman. The publication also included columns by Chair Mike Chiorazzi and Editor Sinder, notes and recent publications,” and the SIS Bylaws.

The newsletter then included advertising by antiquarian and used book dealers. Janet later recalled that the advertising was “so popular that we made a lot of money for the SIS.” Rates were $150.00 for a full page, $100.00 for a half page and $75.00 for a quarter page.

The LH&RB SIS offered two programs at the 1991 AALL Annual Meeting in New Orleans. Mike Chiorazzi moderated The Historical Development of the Louisiana Legal System, which featured Warren Billings, Professor of History at the University of New Orleans and Historian of the Louisiana Supreme Court, David Combe, Professor of Law and Law Librarian at Tulane University School of Law, and Ray Rabalais, Professor of Law at Loyola University School of Law. The second program was Bridges to the Past: Looking After Older Legal Materials (Rare and Historical), cospon-

² Then-chair Mike Chiorazzi wrote that Janet took the job as newsletter editor “without realizing what she was getting herself into.” After holding the job for more than 13 years, the current editor can relate to that statement.
³ The title is simply LH&RB although the publication has occasionally been referenced as LH&RB Newsletter. Janet later described the title as being “not very original,” but the current editor has always liked it.
sored with the Technical Services SIS and the Academic Law Libraries SIS.

A reception at Meyer Boswell Books was one of the features at the 1992 Annual Meeting in San Francisco. The SIS sponsored two programs that year, *Crime and Punishment in Early California* and *Ephemera: To Collect or Not.* That year’s business meeting included a “Meeting after the Meeting” where an SIS response to the *Report and Recommendations of the Special Committee on Preservation Needs of Law Libraries* was discussed.

1992-93 brought a situation that has sometimes been a problem for the small SIS: Several program proposals were submitted to the AALL Education Committee but none were accepted. Chair Cynthia Arkin wrote that “the rejections bring up what appears to be a problem that won’t go away.”

Certainly, as academics (which most of us are), and in particular as people interested in legal history and rare books, we are in an ever-shrinking minority within AALL. And, when the Education Committee is faced with diminished space at a meeting site, it is easy to figure out why our proposals are not accepted. On the other hand, members of the Legal History and Rare Books SIS, who are for the most part interested and active in AALL, cannot help becoming discouraged from active participation when our proposals are rejected year after year. All the pep talks in the world about “being active” won’t work when the very activity being encouraged is repeatedly rejected.

Cynthia encouraged SIS members to get involved with the Education Committee “to help make our voice heard where it counts.”

While the SIS did not have any programs at the 1993 meeting in Boston, it did co-host a reception, along with the Academic SIS, at Harvard University. There members enjoyed “gastronomical delights” as well as “intellectual and aesthetic treats.” The SIS also had a table in the exhibit hall.

1993 ended Janet Sinder’s term as editor of *LH&RB.* Her final issue as editor included Gretchen Feltes’ review of Fred Shapiro’s

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4 The later program was cosponsored with the Acquisitions Committee, the Preservation Committee and the Contemporary Social Problems SIS.
Oxford Book of American Legal Quotations. It was the publication’s first book review. The issue also included Bishop Edward Stillingfleet’s Ecclesiastical Cases by Joel Fishman. Joel has since been one of LH&RB’s most prolific contributors. Dan Wade took over as editor of volume 4 of LH&RB.


Chair Mary Cooper Gilliam had to resign as SIS chair midway through her 1994-95 term; Byron Cooper took over as both SIS Chair and acting newsletter editor. His “From the Chair” column in LH&RB included a plea for an editor. The 1995 AALL Annual Meeting in Pittsburgh included one SIS program: Judges’ Lives: Judicial Biography in America, moderated by Warren Billings. The 1996 meeting in Indianapolis featured two SIS sponsored programs: The Impact of Roman Law on the Civil Law Tradition, co-sponsored with the Foreign and International Law SIS and coordinated by Dan Wade, and Secrets in the Stacks: Rare Books in Small to Medium-Sized Libraries coordinated by Gretchen Feltes. Another LH&RB program, Glanville’s World: The Rise of English Common Law was offered at the 1997 Annual Meeting in Baltimore.

Daniel Smith, of Lawbook Exchange, took over as newsletter editor beginning with Volume 6 in 1996. He held that position through 1998. LH&RB thereafter entered a brief period of inactivity, temporarily ending plans to make it available online.

An effort to reinvigorate the SIS begin in 2000 under the leadership of Chair Joel Fishman, Vice Chair Katherine Hedrin and Secretary Lucia Diamond. Kurt Metzmeier took on the newly created position of SIS Webmaster, posting the SIS website on May 10, 2001. Shortly thereafter the SIS newsletter, LH&RB, like the mythical Phoenix, returned to life with Mark Podvia as Editor, assisted by Mark Lambert, Laura Bedard and Kurt Metzmeier. An Archives Committee was organized to examine what the SIS could do in that area.

Two SIS programs were offered at the 2001 AALL Annual Meeting Philadelphia. Joel Fishman, along with Professor Herbert A. Johnson of the University of South Carolina Law School, presented Celebrating John Marshall: The Two-Hundredth Anniversary of
his Elevation to Chief Justice of the United States Supreme Court. Mark Lambert organized a program titled Legal Historical Materials in a Nutshell: An Introduction to Legal Archives and Manuscripts.

A major initiative during the 2001-2002 year was the development of a strategic plan for the SIS. The SIS again sponsored two programs at the Annual Meeting. Kurt Metzmeier and Katherine Topulos spoke on Legal History from the Reference Desk: Connecting the Past to Today’s Information Needs while Warren Billings and Karen Beck spoke on Towards a Research Agenda for Legal History: Some Modest Proposals.

In 2003 the SIS had two programs at the Annual Meeting: The Collision of Native American and Anglo-American Legal Concepts: A Legacy of the Louisiana Purchase, Creating and Maintaining Legal History Collections: Collections Development and Analysis Issues for the Law Librarian and Researching and Writing Institutional History. The SIS also made a $500 contribution to the George A. Straight Minority Scholarship, Chair Kurt Metzmeier noting that it was “a large contribution from a small SIS.”

The SIS had only one program approved for the 2004 Annual Meeting: Creating and Maintaining Legal History Collections. However, the LH&RB Roundtable that year featured an excellent presentation by Dr. Morris Cohen, Joseph Story and the Encyclopaedia Americana. It was also that year that Michele Pope began efforts to organize an Archivist Caucus within the LH&RB SIS.

The AALL Centennial was celebrated at the 2006 Annual Meeting, however the LH&RB SIS got into the celebration early. An article from the Spring/Summer 2004 LH&RB, The Victorian-Era Law Office: How to Furnish you Workplace for Under $100 by Mark Podvia was selected for republication in the Fall 2004 issue of Law Library Journal as the first Centennial Feature Article. It was, so far as is known, the first LH&RB article to be selected for republication. That issue of the newsletter also included an index covering all the earlier editions of LH&RB. It was also the first issue of the newsletter to be distributed electronically.

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5 Those of us in the SIS knew that the three programs that were not approved would have been excellent—largely because of Laura Ray’s wonderful leadership of our Education Committee—but we were unable to convince higher powers.
6 Her efforts ultimately did not succeed, but the possibility of such a caucus still remains...
The late Morris Cohen authored a series in *LH&RB* titled *From My Commonplace Book* that began in the Fall of 2004 with volume 11. It was one of the most popular features ever published in the newsletter.

The 2005 Annual Meeting in San Antonio featured three LH&RB SIS programs. They were: *Deadwood: The Power of Film to Teach Foundations in Native American Treaty Law and United States Territorial Law*, *Los Archivos de las Indias: Judicial and Legislative Information on the Spanish Colonial Period in the United States and Values, Video, and Vignettes: Using Video Oral History Techniques to Document the Unwritten Histories of AALL*. Unfortunately the first two programs were scheduled for the same time slot.8

At the 2006 Annual Meeting in St. Louis, LH&RB marked the AALL Centennial at our Roundtable. *The 1906 World*, presented by Carol Billings, Beth Chamberlain, Stacy Etheredge, Lucinda Harrison-Cox, and Kurt Metzmeier and Mark Podvia, reviewed 1906 law practice, world events, literature, clothing, sports, and industry.

The SIS co-sponsored, along with the AALL Centennial Committee, the program *Promoting the Past to Assure the Future: The Lure of Legal History*. The SIS also sponsored two programs of its own at the 2006 meeting. *Colonial Virginia’s Legal History* was presented by Joel Fishman, Warren Billings, and David Konig. *Forging Connections with Library Friends Groups* was presented by Mark Podvia, Carol Billings, and Jennie Meade.9

The SIS sponsored or co-sponsored a number of excellent programs at the July 2007 Annual Meeting in New Orleans. These included *Taking Up the Gauntlet: The Duel in Southern Legal History*, *Rome: The Power of Film to Teach Foundations of Roman and Civil Law*, and *Huey Long and the Press: Louisiana’s Contribution to Modern Constitutional Law*. The SIS roundtable that year was *Celebrating the 400th Anniversary of Cowell’s Interpreter*.

Several SIS members got out of the exhibit hall during the 2007 meeting to perform public service work. Three organizations were aided: Habitat for Humanity, the Louisiana State Museum and the Second Harvest of Greater New Orleans and Acadiana. Such public service programs continued for several years thereafter.

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7 Cosponsored by the Micrographics/Audio-Visual SIS.
8 What were they thinking?
9 Karen Beck envisioned and coordinated the program.
Also in 2007, it was announced that the SIS, together with Gale Cengage Learning, would co-sponsor the Morris L. Cohen Student Essay Contest. The competition would be open to all students of librarianship, law, and history and the first round of submissions was to be solicited after the 2008 Annual Meeting.\textsuperscript{10}

Finally, 2007 provided the SIS with its official mascot, Hughes-Humphreys the Bison. Kurt Metzmeier had submitted an excellent article, \textit{James Hughes: Kentucky’s First Nominative Reporter} for publication in \textit{LH&R}. His article was accompanied by several scans from the book, including an illustration of an American Bison by artist David Humphreys. At some point during the transmission of the scans, the bison managed to “migrate” onto the title page scan. Fortunately the error was caught before the issue was uploaded to the web, however it was obvious that the buffalo was trying to get our attention and volunteer for the position of SIS mascot. The editor’s motion that Hughes-Humphreys be named as SIS mascot was approved at the 2007 business meeting.

The 2008 Annual Meeting was held in Portland, Oregon, a city that boasts more microbreweries than any other city in America. It seemed appropriate that the SIS celebrate this with a special program: \textit{Beer and the Law: A Legal History of Beer, Brewing and Government Regulation from the German Purity Law to the Microbrew Movement}. Other programs in Portland were \textit{Law Library Journal at 100: The Evolution of a Publication, Oregon’s Death With Dignity Act (DWDA): A Legal History and Explore the New World of Legal History Research – Be Prepared to Wiki!} The SIS also co-sponsored a full-day workshop, \textit{Yikes! What’s In This Box? Managing Archive Collections}. The SIS Roundtable in Portland was titled \textit{Evolution of a Legal Research & Legal History Web Site: From Funding Through Implementation}.

LHRB’s first brochure, which featured our new mascot, debuted at the 2008 Annual Meeting in Portland, Oregon. It was the work of work of the LHRB Publications Committee—Stacy Etheredge and Glen-Peter Ahlers—along with AALL’s Director of Publications Julia O’Donnell.

Keeping with the beer theme, it seemed appropriate that the SIS should reinstitute the SIS Reception at a Portland microbrewery.

\textsuperscript{10} The SIS extended thanks to Stephen Wasserstein of Gale Cengage Learning, and to Fred Shapiro, librarian consultant to Gale, for proposing the competition.
The Lucky Lab Brewpub hosted the event, which was organized by Laura Ray. The LH&RB Reception has since become an annual event.

The Legal History and Rare Book SIS began producing a second publication in 2008. Unbound: An Annual Review of Legal History and Rare Books was designed to republish the many scholarly articles and book reviews contained in LH&RB. The publication was made available on Hein Online, making this material more accessible for scholarly use. Mark Podvia served as Editor-in-Chief of the new publication, Jennie Meade and Kurt Metzmeier to on the role of Articles Editors with Kurt also serving as Webmaster. Joel Fishman served as Book Review Editor of the publication while Sarah Yates served as Special Collections Cataloging Editor. The first issue of Unbound was dedicated to Morris Cohen, “Librarian, Historian, Scholar, Mentor, Friend.”

After many years in the planning, the highlight of LHRB’s 2008-2009 year was the debut of the Morris L. Cohen Student Essay Competition, jointly sponsored by our SIS and Gale Cengage Learning. Our first award winner, Benjamin Yousey-Hindes, a doctoral candidate at Stanford, presented his winning paper, A Case Study of Canon Law in the Age of the Quinque Compilations Antiquae: The Trial for Balaruc, at the 2009 Annual Meeting.

The LH&RB SIS has two formal programs at the 2009 Annual Meeting in Washington, D.C. Stacy Etheredge moderated Lincoln, the Law, and Libraries, while Dr. James Starrs of George Washington University presented “Digging” Legal History: Using Exhumation and Innovative Forensic Science Techniques to Verify Historical Legal Events. The 2009 Reception was held at the George Washington University Law Library.


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11 Lucky Lab brews several excellent beers, including a British-style IPA, Dog Day, ABV: 6.4% IBUs: 82.
12 The program was coordinated and moderated by Jennie Meade.
The winner of the 2009-2010 Morris Cohen Competition was Justin Simard, a J.D./Ph.D. candidate at the University of Pennsylvania. His paper was “The Citadel Must Open Its Gates to the People:” Judicial Reform at the 1821 New York Constitutional Convention. The Runner-up was The City and the River: The Thames in the Liber Albus by Ian Burke. The winners were honored at the LH&RB Reception.

In October 2010 LH&RB published its first-ever Hallowe’en issue. It featured articles on the witchcraft collection at George Washington University’s Jacob Burns Law Library, on haunted courthouses by Kurt Metzmeier (with Nancy Vinsel and Roberto Campos), and the West Virginia case of State v. Shue by Mark Podvia.

Morris Cohen passed away on December 18, 2010. The 2010 issue of Unbound was dedicated in his memory. The issue included the compiled columns of From My Commonplace Book that Morris had written for LH&RB.

At the AALL Annual Meeting in Philadelphia in 2011 the SIS sponsored three formal programs: Old Into New: Collaborative Law Library Digital Collections, We the People: Constitutional National Treasures in Philadelphia Archives and “Digging” Legal History in Philadelphia: The Meriwether Lewis Project. An additional SIS proposal, Contemporary State Constitutional Conventions: Proposals for Pennsylvania and Beyond, was selected by the Government Documents SIS as one of their programs.

The winner of the 2011 Morris Cohen Student Essay Contest was Jed Glickstein, a J.D. candidate at Yale University. His paper was After Midnight: The Circuit Judges and the Repeal of the Judiciary Act of 1801. He presented his paper at our LH&RB Roundtable.

The 2011 LH&RB Reception in Philadelphia was held at Philadelphia Rare Books and Manuscripts. They were wonderful hosts!

LH&RB sponsored, cosponsored, or produced independently four programs in at the 2012 AALL Annual Meeting in Boston: The

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13 Mr. Burke’s paper appeared in Volume 3 of Unbound, it having been determined that Runner-up papers would be given the opportunity to be published there. Winning papers were considered for publication in Law Library Journal.

14 The last of these was again presented by Dr. James Starrs.

The winner of the fourth annual Morris L. Cohen Student Essay Competition, chaired by Rob Mead and Marguerite Most, was John Beerbower, a student at the University of Virginia School of Law. His essay was Ex Parte McCardle and the Attorney General’s Duty to Defend Acts of Congress. The Runner-up was Zoey Orol, a student at New York University School of Law. She presented her paper, Reading the Early American Legal Profession: A Study of the First American Law Review at the LH&RB Luncheon.

LH&RB Boston Reception was held at the Harvard Law Library Caspersen Room. The reception was hosted by Karen Beck, and a wonderful time was had by all.

The 2012 issue of Unbound was dedicated to Laura Bedard, a former LH&RB SIS Chair and a dear friend. She passed away unexpectedly on May 7, 2012.

New restrictions on SIS programming at the annual meeting thereafter disproportionately impacted programming by small SISs such as LH&RB. Its educational efforts were dramatically reduced. The reduction would have been even greater would it not have been for creative avenues such as using committee meetings for programming. The SIS was permitting to sponsor on one program at the 2013 Annual Meeting in Seattle: Sharing the Legacy of the Internment of Japanese Americans: How Law Libraries Can Help Preserve and Provide Access to Stories of Advocacy and Justice. However, our Education Committee supported two independent program proposals: Wine and the Law: An Overview of Wine and Winemaking from Ancient Babylon to the Modern Washington State Wine Industry and Beyond Digitization: Designing and Marketing a Collaborative Online Experience Using the Tokyo War Crimes Trial Papers. Chair Mike Widener organized an excellent SIS Reception at Seattle’s Palomino Restaurant.

Sarah Levine-Gronningsater, a Ph.D. candidate at the University of Chicago was the winner of the fifth annual Morris L. Cohen Student Essay Competition. Her essay was titled Louis Napol-

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15 Appropriately then-Chair Sarah Yates was the descendant of a convicted Salem witch.
16 The final program in the four-part series of “Digging” Legal History programs with Dr. Starrs.
on’s Secret Service: Gradual Emancipation, Antislavery Legal Culture, and the Origins of the Lemmon Slave Case 1852. She was unable to attend the annual meeting, so Runner-up Matthew Axtell, a Ph.D. candidate at Princeton University, presented his excellent essay, Customs of the River: Legal Change and Shifting Hydrology in the 19th-Century Steamboat Economy.

In an agreement with the Technical Services SIS, the LH&RB SIS took over sponsorship of the Rare Book Cataloging Roundtable. The move was designed to eliminate scheduling problems for both SISs. A new Rare Book Cataloging Roundtable Committee was stated in 2013-2014 to organize the Roundtable each year.

Our long-serving webmaster, Kurt Metzmeier, successfully migrated the LHRB website to AALL’s new platform in 2013. Laurel Davis was appointed co-webmaster for 2013-14, and took over from Kurt beginning with the 2014-2015 year.

LH&RB has continued to grow and expand over the years. The newsletter is usually published three times each year. In addition to articles on rare books and various aspects of legal history and book reviews, LH&RB includes columns by the Chair and Editor, and information on exhibits, acquisitions, and member news. It could not be published without the assistance of the following individuals who currently serve as editors: Kasia Solon Cristobal, Joel Fishman, Jennie Meade, Kurt Metzmeier, Stewart Plein, Linda Tesar, Mike Widener and Sarah Yeates. In addition, the following SIS members previously served as editors: Karen Beck, Daniel Blackaby, C. Frederick Le Baron, Anne Mar, Amy Taylor and Patricia Turpening.

An example of the dedication that the editors have towards LH&RB can be seen from this phone conversation:

Me: Hello, law library.
Book Review Editor Joel Fishman: Hi Mark! It’s Joel.
Me: Joel! How are you doing?
Joel: Fine. I just wanted to let you know that I will be getting a couple book reviews to you.
Me: Wonderful—thank you!

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17 The newsletter really expanded with the Spring 2013 issue. At 115 pages, it was the longest issue in LH&RB history. Some law reviews are not that long.
Joel: I'll get them to you as soon as I get home from the hospital. They are wheeling me into surgery now.
Me: Joel!!

We celebrated the 25th Anniversary of SIS in San Antonio in 2014. The SIS marked the occasion with two outstanding programs: *The Accidental Archivist: Creating Archives on a Shoestring Budget* and *The Civil Rights Act of 1964: Celebrating Its 50th Anniversary*. Professor Sanford Levinson, a leading Constitutional law expert, spoke at the latter program.

The SIS also hosted its first-ever Legal History Meeting. Professor Michael Ariens of St. Mary’s School of Law, author of *Lone Star Law: A Legal History of Texas*, was the speaker. The SIS Reception was held at Mexican Manhattan on the Riverwalk and a 16th century “mystery guest,” later revealed to be none other than Sir Francis Bacon, put in an appearance at the SIS table in the exhibit hall. Chair Jennie Meade found edible “bookworms” for us to give away to visitors at the table; we also marked our anniversary by giving away a free one-year SIS membership.

Bonnie Shucha, Assistant Director of Public Services at the University of Wisconsin Law Library, was the winner of the 2014 Morris L. Cohen Student Essay Competition. She presented her paper, *White Slavery in the Northwoods: Early Sex Trafficking and the Reformation of Law in the Late Nineteenth Century*, at the meeting. The Runner-up was Emily Ulrich, a graduate student in the Medieval Studies Program at Yale. Her paper was “Commoning the English Common Law Treatise: Investigating Three Fourteenth-Century Copies of the Britton.”

At twenty-five, the Legal History and Rare Books SIS remains a “small but mighty” SIS. We have approximately 200 members, yet we continue to provide top-quality programs at the Annual Meeting, sometimes finding creative ways to do so. We are in the seventh year of sponsoring a highly-regarded essay competition for law and library students and graduate students in history and related subjects. We publish both an online newsletter and an online annual both of which garner attention beyond our SIS.

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18 Bacon believed in “the preservative and insulating properties of snow,” and reportedly died in 1626 of a severe chill after stuffing a dead chicken with snow in an attempt to prove his theory. The ghost of the frozen plucked chicken has since been seen at Pond Square, Highgate, England.
Perhaps more importantly, as friends and colleagues the members of the SIS work to support each other. Post a question to the SIS Listserv or call an SIS member and you will receive help.

I will end this on a personal note: some of my favorite people in the world are members of this SIS. Karen Beck, Jennie Meade, Joel Fishman, Mike Widener, Warren Billings, Laura Ray, Kurt Metzmeier, Sabrina Sondhi, Rob Mead, Kasia Solon Cristobal, Stacy Etheredge, Sarah Yates, and many others (forgive me if I missed you)...it has been such a joy getting to know you and work with you!

May our little SIS enjoy many more excellent programs and essays and articles and books and continued good friendship in the next twenty-five years!

**Legal History and Rare Books-SIS Chairs**

1989-1990, Erwin Surrency  
1990-1991, Michael G. Chiorazzi  
1991-1992, Nicholas Triffin  
1992-1993, Cynthia Arkin  
1993-1994, Daniel L. Wade  
1994-1995, Mary Cooper Gilliam  
1995-1996, Byron Cooper  
1996-1997, Mark Folmsbee  
1997-1998, Gretchen Feltes  
1998-1999, Laura Anne Bedard  
1999-2000, Daniel Smith  
2000-2001, Joel Fishman  
2001-2002, Katherine Hedin  
2002-2003, Kurt Metzmeier  
2003-2004, Mark Podvia  
2004-2005, Robert Mead  
2005-2006, Laura Ray  
2006-2007, Laura Ray  
2007-2008, Karen S. Beck  
2008-2009, Karen S. Beck  
2009-2010, Stacy Etheredge  
2010-2011, Stacy Etheredge  
2011-2012, Sarah Yates  
2012-2013, Michael Widener  
2013-2014, Jennie Meade  
2014-present, Sabrina Sondhi
Bob’s World

The Story of Bob, the WVU Law School Mascot (1907-1910)

Stewart Plein*

The West Virginia University College of Law mascot from 1907-1910 was the beloved pet and constant companion of William P. Willey, one of WVU’s first law professors and founder of the West Virginia Law Review (1894). Bob, a medium sized dog with black and tan markings, was more than one man’s best friend. Bob was known and loved by every law student at the WVU College of Law. Considered by both faculty and students as the Law School’s mascot, Bob faithfully attended every class and lecture with his master until his tragic death from poisoning on January 16, 1910. In recognition of his passing the junior law class published a four page tribute to Bob in the 1911 Monticola, WVU’s yearbook. This loving tribute referred to Bob as “one of the boys,” and “Professor Willey’s gentlemanly dog.”

Classrooms were spacious in Woodburn Hall, WVU’s flagship building and home to the College of Law. Bookcases lined the walls and the professor’s desk was elevated on a raised platform, providing a full view of the classroom and students. Bob took his seat on the platform while his master lectured. The following quote from the law department tribute to Bob states: “He was as regular in his attendance upon the lectures as Professor Willey,

* Stewart Plein is Rare Book Librarian at the West Virginia & Regional History Center.
himself, for they were inseparable. He occupied a place on the platform, it was said that he had become so familiar with the law that he did not always pay close attention, but would betimes lapse into a nap.” From time to time, Bob would take a walk among the students during lectures. Strolling between the rows of chairs he received loving pats from all and after making his rounds, returned to his seat, settling beside his master’s desk on the platform.

Bob, and the world he knew during his years as the school mascot, was also a very rich time in the early history of the College of Law. Although only two professors presided over students, St. George Tucker Brooke, and William P. Willey, their impact has been large and lasting. As the College grew, attorney Charles Hogg, and an instructor, Uriah Barnes, were added to the faculty.

Professor Willey’s tenure at the College of Law began long before Bob’s arrival. William Patrick Willey arrived in 1883 as a young man to fill the position of Professor of Equity, Jurisprudence and History after resigning his position as Editor of the Wheeling Daily Register, a newspaper in Wheeling, West Virginia. An 1862 graduate of Dickinson College, Willey’s college days were filled with the threat of war. The *American Civil War in Cumberland County* website, http://cumberlandcivilwar.com/william-p-willeys-april-1861-letters/, describes the challenges Willey faced during his time at Dickinson from letters he wrote to his father, the future senator of West Virginia. Sentiments were rising and a committee from town took it upon themselves to insist that Dickinson College president, Dr. Herman Merills Johnson, demand Southern students like Willey take an oath of allegiance or leave. In a letter to his father, Willey said, “I fear nothing yet,” but the threat seems to have been effective; the following week Willey and a friend were the only Southern students remaining on campus.

Though his final days at Dickinson were filled with unease and talk of war, Willey remained and graduated in 1862. After graduation he practiced law in Baltimore and the following year, he entered the bar in Monongalia County, WV. These were tumultuous years, for in the intervening time between Willey’s graduation from Dickinson and his successful application to the bar, West Virginia became a state on June 20, 1863. Willey was now a new attorney in a new state and as the son of Waitman T. Willey, an early advocate for West Virginia statehood and now a West Virginia senator; much would have been expected of William.

Instrumental in bringing statehood to West Virginia, Waitman T. Willey attended the First Wheeling Convention held May 13,
1861. Delegates from twenty-seven western Virginia counties assembled at Washington Hall in Wheeling to consider the Ordinance of Secession. The "Restored Government of Virginia," the Unionist government of Virginia during the Civil War, elected Willey to the U.S. Senate to fill the vacancy of Senator James M. Mason. On May 29, 1862, Willey presented the petition to Congress for the creation of West Virginia. After West Virginia achieved statehood Willey served the state as U. S. Senator (1863–1871). In later years, having lived through these experiences with his senator father, William wrote of the rise to statehood in his book, An Inside View of the Formation of the State of West Virginia, 1901.

In his career as a professor at West Virginia University, William met every expectation that he may have faced as a young graduate, serving the College of Law with distinction after joining the faculty in 1883. As the law department grew, Willey stepped down as Professor of History to fully concentrate on law. As founder of the West Virginia Law Review, (originally called The Bar) the fourth oldest in the nation, Willey brought students editors to the journal. His many accomplishments also included early advocacy for women as students in the law. Willey served as judge in the student organization, the Practice Court, an early predecessor of Moot Court. He also authored a textbook, Procedure in the Common Law, Actions in Equity, and in the Extraordinary Remedies, Exemplified by the Pleadings, 1894.

After many years of active teaching, Willey was awarded Emeritus status when he retired in 1912. Upon his retirement, the 1912 yearbook recognized his years of service saying, “Professor Willey, long a favorite with successive classes lost none of his prestige with the present class... More students of the law have sat at the feet of Professor Willey than has been the case in regard to any other instructor in the State...The memory of Professor Willey will linger long in our recollections...”

Along with Willey, St. George Tucker Brooke holds a preeminent position as one of the first law professors at WVU. In fact, Brooke was the sole professor when the law department, as it was known before its designation as a University College in 1878, was formed. Winner of the Confederate Medal of Honor for bravery on the battlefield, Brooke was up to the challenge of teaching, moving from an active practice in Charlestown, WV, when he was elected the Chair of Equity and Jurisprudence at WVU, a position he held for 31 years.

Brooke authored the first textbook specifically designed to meet the needs of the WVU law students, Notes on Common Law Plead-
After a long illness, Brooke retired in 1909. With his absence, the University hired attorney Charles Edgar Hogg as Dean, and he served in this position from 1906 – 1914. Hogg began his study of the law in 1874, becoming a member of the Mason County Bar. Hogg was admitted to the Bar of the U.S. Supreme Court in 1888 and continued to practice in that court throughout his career.

During his time as Dean, Hogg brought in the young Uriah Barnes to assist with instruction. Barnes brief tenure at the College of Law is noteworthy. First among his achievements is the compilation of all state statutes as the editor of the West Virginia Code of 1916. While this was recognized as a great effort, perhaps his greatest accomplishment was the monumental compilation of federal statutes that was to be known as Barnes Federal Code. According to Atkinson’s Bench and Bar, Barnes “conceived the idea of publishing all the Federal Laws in one handy volume. Upon its publication, Barnes Federal Code instantly became a classic legal reference; a groundbreaking work used in “every State in the Union and abroad.” When not involved in instructional duties or compiling code, Barnes also worked on pending cases for the WV Supreme Court of Appeals.

In his 1906 – 1907 report to Daniel Boardman Purinton, WVU’s president, Dean Hogg expressed his great desire that the law school move into the new wing of Woodburn Hall currently under construction. Among the reasons given for this request included the constant disruption caused by the music department located directly above the law classrooms. Lecturers frequently complained they could barely be heard above the din.

The year 1906 also marked the introduction of the Moot Court to the law school’s roster of student activities. Hogg complained that he must vacate his office for the proceedings and in his report he requests of President Purinton a room specifically designated for the Moot Court. Hogg served the College well as Dean and he is credited with raising the standing of WVU’s law school to one of the best in the nation. A prolific author, Hogg’s texts include Equity Principles, Equity Procedure, Hogg’s Treatise and Forms, and Hogg’s Pleading and Forms, among many others. Beyond his stellar career as educator and administrator, one of Hogg’s greatest achievements stems from his legal practice as an attorney, argu-
ing the Virginia/West Virginia Debt Suit before the Supreme Court.

It is through these anecdotes and memories that we can examine the lives of the faculty and students who have gone before us. The path we take between the College of Law in the present day and the College of the past is shown to us, not so much by deeds and actions, but by the way we can relate to them as people like ourselves when times are good or bad. One of these times occurred after Bob’s death, when Professor Willey shared the sad news with his class:

I loved that dog, because he was worthy of love. And the more I compare him with men, the more I love and revere the memory of Bob. And the man who gave Bob poison will go to a worse place than Bob has gone. I hope and believe I will meet Bob somewhere in the great beyond; but I do not want to meet the man who murdered him – we could not live in the same place . . . Good bye, Bob, I do not know where you have gone, but I will look for you, and search for you among the mysteries of the hereafter.”

These were the people and places of Bob’s world. Always by his owner’s side, Bob, the Law School mascot, was ever ready to sit in on a class or pose for a photo. The tradition of photographing each class had begun in the early years of Willey’s professorship. Among the students it was known that “Professor Willey maintained a hall of fame (with) pictures suitably framed of all (the) classes that have passed through the portals of the College of Law for years back,” and Bob is featured prominently in many of them.

These old class photographs line the hallways at the College of Law to this day. We are drawn into Bob’s world when we see these photographs. With Bob as our guide, we can see the law school faculty, students and the University through his eyes. From his first appearance in the Monticola, WVU’s yearbook, in the 1907 Delta Chi Law Fraternity photograph, to his last in the loving tribute printed in the 1911 annual, no dog has filled the role of College Mascot since Bob’s passing.

Bibliography


Hogg, Charles Edgar, Report to President Purinton, 1906-1907. West Virginia and Regional History Center, West Virginia University. A&M 690.


Law class photo, 1908, Bob is seated beside Prof. Willey. Dean Charles Hogg is seated beside Willey, hat resting on his knee, while Uriah Barnes sits to the left of Hogg.
Books Reviewed in this Issue:


Ernst, Daniel R. Tocqueville’s Nightmare: The Administrative State Emerges in America, 1900-1940.

Ginsburg, Tom, Pier Giuseppe Montaneri and Francesco Parisi, eds. Classics in Comparative Law.


Levack, Brian P., ed. The Oxford Handbook of Witchcraft in Early Modern Europe and Colonial America.


Newmyer, R. Kent. The Treason Trial of Aaron Burr: Law, Politics and the Character Wars of the New Nation.

White, G. Edward. Law in American History. Volume 1: From the Colonial Years Through the Civil War.

This is the first volume of an anticipated two volume work. The first volume continually refers to the second, and given that it is now fourteen years after its original publication, it is not without frustration.¹ Richard Mowery Andrews wrote most of it while he served as senior Mellon Fellow at the Society of Fellows in the Humanities and senior lecturer at Columbia University. He states in his preface that his prior work has been in the history of the French Revolution, his doctoral thesis from Oxford being Political Elites and Social Conflicts in the Sections of Revolutionary Paris, 1792—Year III (1970). It was to be in volume II (entitled “The Action of Criminal Justice” that he would trace the “continuities and changes in crimes, criminals, judgments, and punishments of the period 1735-1789”) and discuss the transition from the criminal justice system of the Ancien Regime to that of the period of the Revolution. Andrews directs his work to those “who are curious about the workings, crisis, and ending of a major legal and political culture,” as well as those who are interested in Old Regime Paris.²

It is difficult to ascertain in the first volume that Andrews focuses on the period of 1735-1789. Operating on the planes of legal, social, and political history, he seems to concentrate on the period from 1670 (Criminal Ordinance of 1670) to 1789. His work is distinguished by the sheer quantity of its numbers and statistics, e.g., There were 903 streets in inner Paris; a galley oar was 39 feet, four inches long and weighed 286 pounds; in 1786, one in 50 Parisians was in the Hôpital-Général, Paris’ combined prison, insane asylum, and poorhouse, which provide illustrative examples. The discussion centers on the two principle courts of Paris, the Châtelet and the Parlement, the composition of the judiciary and its professional culture, punishment, procedure, and concludes with three illustrative court cases.

¹ “Royal criminal statutes and their jurisprudence were integral to the system. But for the sake of symmetry between the two volumes, and of greater clarity in the second, they are discussed mainly in Volume 2. That volume is concentrated on the social worlds of Parisian crime and criminals, evolutions in punishment, death sentences, and executions, and finally on crises and creativity in criminal justice during the final years of the Old Regime.” P. xiii.
² Ibid.
As an introduction to his work, Andrews begins with a description of Paris, burdened with over a million inhabitants at this time, and a graphic description of the area around the Châtelet and the Palais de Justice. He characterizes the French capital as a leading city of criminality. During the eighteenth century people, massively undernourished and unskilled and illiterate, and thus unemployed or underemployed, streamed in from the provinces, and were compelled to turn to petty crime and begging which was a heinous crime during this period. During the eighteenth century, between 15-20% of the female population was engaged in public prostitution, i.e., soliciting on the streets, two-thirds of whom were immigrants, and over the 30 year period of 1723-1752, a thousand beggars and vagabonds a year, mostly immigrants, were incarcerated. Clearly, overpopulation and the instability of the seasonal labor requirements of the textile and building industry contributed greatly to crime.

To deal with these criminals and those native to Paris, there was an entrenched professional class devoted to meting out justice. There were approximately 6000 judicial officers in Paris in the eighteenth century, 1000 magistrates (judges, advocates, or prosecutors), and 5000 clerks, summon-servers, guards, and police officers. In addition to these, by the mid-eighteenth century there were 518 barristers (who could plead cases, both verbally and in writing) and 405 solicitors (who would prepare written briefs). There was a man of the law for every 85 Parisians. This hierarchy of royal officialdom transcended the hierarchy of estate (class) or wealth. The principle government officials of the land, chancel-

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3 "That is surely the most stench-ridden place in the world. There one finds a tribunal called the Grand-Châtelet, then dingy arches and the congestion of a dirty market, then the depository [the Paris morgue] for rotting corpses that are found in the River or murdered in the environs of the city. Add to that a prison, a meat market, a slaughter pen; it all forms a complete enclave, fouled, covered in mire, and set at the entry of the Pont-au-Change…. Do you wish to go from that bridge to the Rue St. Denis? Carriages must detour by a narrow street with an open sewer; and near that sewer is the rue “Pied-de-Boeuf, which leads into small, fetid alleys that are soaked in animal blood, half of which rots into the pavement, while the other half flows into the River. A pestilent vapor covers the place, never dissipating, when one emerges onto the Pont Notre-Dame, in the rue du la Planche-Mibrary, one is forced to hold one’s breath and hurry past, so suffocating is the odor of these streets.” Louis Sébastien Mercier, *Le tableau de Paris*, 12 vols. (Amsterdam, 1783-8), vol. 5, pp.101-2. P.14.


5 Pp. 27-9.
lords, ministers, and secretaries of state, all came from the magisterial ranks.

Part I discusses the courts and their judges. After briefly describing the complex system of the royal courts, Andrews explains in fuller detail the Châtelet and the Parlement. The Châtelet’s jurisdiction included the city and faubourgs of Paris, and it had civil and criminal authority over no less than three-quarters of a million people, and at the end of the Old Regime over a million. The court was staffed by four superior magistrates, the lieutenants, and 56 judges (increasing to 64 in 1774). There were four advocates and a chief prosecutor with eight deputies.

Of the Châelet’s five chambers, the Criminal chamber tried all criminal cases, those that were, petit criminal, petty crimes not appealable to the Parlement, and grand criminal, dealing with more serious crimes that were automatically appealable to the Parlement. The Lieutenant Criminal was responsible for the Criminal Chamber. For serious crimes he personally questioned the defendants and heard witnesses during the early phase, i.e., the preparatory instruction. He would then appoint a judge to the next phases of the trial, but presided during the judgment of the defendants and voted on the verdict. The judges of the court were divided into four groups, colonnes (columns) which rotated between the chambers on a monthly basis, thereby not allowing for expertise on criminal cases, for example, but it was felt that the rotation allowed the judges not to be overburdened with the stress of passing out harsh sentences. The hierarchy in a colonne was based on seniority, and the most senior judge, the doyen, assigned judges to cases and determined whether new judges were qualified. 6

The judges worked very hard (In 1762 the Criminal Chamber delivered over 600 provisional or final verdicts.), and were not particularly well remunerated given they had to buy their office. A judgeship in the Parlement of Paris in 1750 cost the equivalent of $143,000 in 1990’s American dollars. A judgeship in the Châtelet might cost one-fifth that much, and was paid back in salary at the rate of 3% of the purchase price per year. Ironically the average tenure of a judge was thirty-three years so they would get their purchase price back. 8 The authority and exclusiveness of their position were the magistrates reward along with freedom from certain taxes.

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6 Pp. 56-64.
7 P. 64.
8 Pp. 65-76.
The Parlement of Paris, housed in the Palais de Justice, was the supreme court of civil, criminal and administrative law in Old Regime Paris. It was the appellate court for the Châtelet and 138 other local courts. By 1780 it was the supreme court for a population of some 9.75 million. It also served as a court of first instance for prominent persons and major institutions. The Court had two main chambers for civil and criminal law, the latter being named the Tournelle, because judges (parlementaires) from other chambers served there only by turns. The Tournelle definitively judged most defendants in grand criminal within its jurisdiction, most of whom had already been convicted by a lower court. It was staffed by 66 judges coming from the Grand (Civil) Chamber divided into two groups serving for six months, as well as a small number of judges from the lower Chamber, the Chamber des Enquêtes. As the judges of the Châtelet, the judges of the Tournelle carried tremendous case loads. In 1787, for example, they decided final verdicts on almost 850 defendants in 522 cases.9

Andrews employs the term “themistocracy” (derived from the name of the Greek goddess for justice, Themis) for the criminal justice system of the Old Regime, as well as the magistrates that fostered it. As seen above, the themistocrats were solid functionaries of the state, esteemed for their profession and not for their wealth. They were dependant on wealthy families and hence above corruption, and they were banned from engaging in commerce.10 Most of the young judges came from fathers who were judicial officers, and in many cases grandfathers or great-grandfathers who were, as well.11 They furthered their family’s position through marriage to a woman of a similar professional family. For the most part, themistocrats remained separate from nobles, the bourgeois, and common folk, for they remained a separate elite “hereditary magistracy.”12 None the less, there was an evolutionary trend for at least some high magistrates to be be-

9 Pp. 77-98.
10 “The ban defined themistocracy as a sacrifice, an honor, and a calling—the true meanings of vocation. It also served to distinguish, as much as law and custom can distinguish, themistocrats from those whom they judged. Most of their professional lives were spent in hearing, trying, judging, and punishing those motivated by either avarice or need, in civil and criminal justice. The magistrates were insulated from both of these conditions.” P. 102.
11 “For most individual judges, the Châtelet was a career. But for many families the Châtelet was a generational stage in the rise to supreme magistracy or high administration.” P. 117.
12 P. 141.
stowed with nobility (the noblesse de robe) after 1644. Châtelet judgeships were not ennobled until 1768 and this only after long 40 year tenures in office, albeit many of those coming into the profession were from the nobility. With respect to the Parlement, Andrews takes issue with historians who make too much of the nobility of the parlementaires as a cause for the creation of the Assembly of Notables of 1787 or the Estates-General in 1789. Rather he thinks, for the most part, they adhered to a professional consciousness.13

The reader’s favorite chapter in the book is on the themistocrats’ professional culture and their education. He wonders what all of today’s lawyers are missing by being bereft of years of Latin study, a classical education, and immersion in humanistic studies.14 A would-be judge of the eighteenth century spent six years learning Latin (the study of Greek diminishing in the eighteenth century) and the humanities, two years studying philosophy (logic, ethics, physics, and metaphysics) to receive a Master of Arts

13 “Their collective behavior suggests ambitions more substantial than title. Aristocracy conferred static privileges and general prestige; but only service in high offices of state conferred simultaneously—authority, prestige, and privileges. That service gave a family membership—through work, marriages, and kinship affiliations with professionally comparable families—in a large, brilliant and mutually sustaining community of the empowered and the ennobled, generation after generation.” P. 173.

14 “After six years studying the humanities in a college de plein exercice, none but the dullest scholar could have emerged from the rhetoric class who was not an extremely competent Latinist. To borrow a contemporary educational concept in the teaching of languages, the seventeenth- and eighteenth-century student was subject to a process of total immersion. For at least four hours a day throughout their adolescence future members of the liberal professional elite studied the language and literature of Ancient Rome, often to the exclusion of everything else. They did so too in such a manner that by the end of the course they could not only read and write Latin fluently but could speak the language as well. They were to all intents and purposes (in the class-room at any rate) children of Rome rather than France, who spoke and composed in the grand Ciceronian manner and knew the history of the late Republic and Augustan era in far greater detail than that of their own recent past. In this respect the educational experience of Richelieu and Robespierre was indistinguishable “. L.W.B. Brockliss, French Higher Education in the Seventeenth and Eighteenth Centuries: A Cultural History (Oxford: Clarendon Press, 1987). p. 178. P. 241.
degree (the prerequisite for the study of medicine, theology, and law), three more years studying law, and then more or less a year at the bar as an apprentice. The first two years of law study was directed to Roman law and to a lesser extent canon law,\textsuperscript{15} while the third year was devoted primarily to French law with an additional course in either Roman or canon law. Law study ended with an oral examination in French law and the student presenting theses or propositions, which he had to defend before a group of faculty. Before taking the examination to qualify to become a Châtelet judge, references or witnesses had to attest to the religious, moral, and intellectual ability of the candidate. The attribute most often cited by the references was heredity of service in magisterial or other civil office.\textsuperscript{16} Self-discipline, submissiveness and obedience to one’s father and other elders was highly prized.\textsuperscript{17} Judicial hierarchy was based on seniority, and the young were expected to learn from the more experienced.

\textsuperscript{15} “The 1700 edict prescribed the sequence of instruction and the texts. In the first year, they studied Justinian’s Institutes of Roman law with an examination. In the second year the texts were the Digest (a collection of commentaries by Roman jurists), and selections from the Decretals (a thirteenth-century compilation of Church law), with further examination for the degree of bachelor of law.” P. 247.

\textsuperscript{16} “In appointing Jacques-Hypolite-Jules Michau de Montblin (age 19), for example, Louis XVI declared: ‘Since talent, zeal and devotion to our service and the public welfare are heredity qualities in his family, We are convinced that he will following the footsteps of the Magistrates who compose his family and in him the virtues, courage, industriousness, and capacity of mind that distinguished his father’s performance of the important offices of magistracy in which he died will be revived.’” Archives Nationales de France V I 454 (Dec. 31, 1771). P256.

\textsuperscript{17} “The qualities of mind and temperament required of a prospective judge were discipline, stamina and energy, a liking and capacity for sustained intellectual work, skill in verbal and written expression, knowledge of religious doctrine, humanistic culture, and the law, measured conviviality and urbanity, and a pronounced sense of duty to both family and the public welfare. Duty included promoting collegiality and solidarity within the corporation, which were also imperatives in juristic literature....The virtues and attributes composed an austere personality, one that was analytical, introspective, ascetic yet ardent, profoundly loyal, and nomistic in thought and behavior. That corporate personality was the artifact of a professional and intellectual culture, not of a particular estate or social class.” P. 263.
The examination at the end of legal study began with the candidate having to present a commentary on a law that had been given to him three days earlier. Then he was presented with three compendious volumes, one on Roman law, one on canon law, and the last a collection of royal ordinances. The examiner opened the volume to a random page where the candidate had to explicate the passage. About 1,000 licentiates passed the test and graduated each year during the eighteenth century.

The study of law was meant to not only impart information, but to shape the mind, i.e. to teach the candidate “to think like a lawyer,” and more importantly to impart the sense that the profession of law was a vocation and had intrinsic worth in and of itself. The student was to develop a sense of calling. Honor and dedication were all important; work was essential. There was a strong sense of the prescribed role of the judge.

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18 Pp. 250-1.
19 “The vocation had to be its own principal reward, a reward essentially spiritual and moral. When the magistrate’s primary love was of vocation, of its duties and majesty, he obtained complete satisfaction from performance of the vocation. Thus, paradoxically, what could appear as renunciation and enslavement to task was, in fact, plenitude of personal being.” P. 266. The vocation appears not be dissimilar to that of today’s librarian.
20 “Merit was developed from within oneself; it was not gained from birth, rank, or office. Inner being required a lifetime of cultivation, through learning, introspection, piety, and devotion to duty. Honor, dignity, and power would issue from that cultivation, but they could not be its goals.” P. 268.
21 “More than 900 men served as magistrates of the Parlement of Paris between 1715 and 1771. Only 10 had to be removed from office for debauchery and profligacy, mental instability, or professional misconduct. That was about 1 percent of the eighteenth century Parlement themistocracy. Most of those removed were expelled, after a few years in office, on the initiative of their families and peers, and then ostracized with a modest pension, interned in a maison de force, or exiled by royal order. None of the 130 Châtelet judges provoked such an action against himself.” P. 270.
22 “A magistrate, of whatever rank or estate, deserved his office not because of inheritance or purchase but because he successfully performed the office. Patrimony, education, and privilege readied him for his duty, but the work and self-vindication were ultimately his alone.” P. 272.
23 “Old Regime French criminal law required both knowledge and discipline from every magistrate: knowledge of criminal statutes
Part II describes the punishments prevalent in the criminal justice system of the eighteenth century in vivid detail. Andrews argues persuasively that the “dark legend”\textsuperscript{24} of later times which claimed that the punishments of the Old Regime were extremely unjust and cruel is unfounded. He writes sympathetically about the judicial sentences which on their face seem barbaric. He sees shaming, not the causing of physical suffering, to be at the essence of the system. This was done through public display of punishments, and what the author terms “legal infamy,” stripping all criminals of “honor and probity” that rendered them ineligible for offices, commissions, and responsibilities which might require them.

The Criminal Ordinance of 1670 listed a hierarchy of punishments: The following list goes from the least to the most severe: “Nondefaming (not causing legal infamy): alms,\textsuperscript{25} warning or injunction, interdiction or suspension from office or commission, whipping in custody of the court (for minors); Defaming: fine, severe reprimand, forced witnessing of punishment (usually of capital punishment), promenading on a donkey; Afflictive: banishment from the jurisdiction of the court for three, five, or nine years, exhibition in the iron collar, exhibition in the stocks, public and abject apology, suspension from the gallows by a chest strap

\begin{itemize}
  \item and of the accurate classification of each crime; obedience to strict procedures for investigation and trial; comprehension of the fixed but subtle criteria for proof of guilt; ability to apply those criteria to the completed evidence of the case at the end of trial; and, if the defendant was found guilty, the capacity to make rule-governed selection of penalty within the range of penalties applicable to the crime.” P. 274.
  \item \textsuperscript{24} “It is an imagery of painful, bloody chastisements of the body, of whippings, brandings, mutilations, and executions, whereby the state publicly inscribed its sovereign power, its despotism of, on the flesh of malefactors, and thus ruled by terror.” P. 283.
  \item \textsuperscript{25} “Alms was a fine assessed by the court; the money went to the charitable institutions of the Church, the Hôpital-Général, or to pay for the feeding of prisoners. Fines usually accompanied sentences of “admonition”...whereby the court warned the defendant of his harmful or delictual action and forbade him to repeat it. That sentence was defined as follows by the royal Council, in a ruling of January 11, 1741: ‘In our language, Admonition signifies no more than a term of charity and shame, not a penal expression; according to the Canonists it derives from the Evangelist’s exhortation for men to warn each other fraternally.’ ” \textit{Archives Nationales de France} ADIII 27b. P. 311.
\end{itemize}
(for minors), public whipping, public branding, galleys for three, five or nine years (for men), incarceration in a hospital-general for three, five, or nine years (women and men), interrogative torture without retention of other evidence, amputation or splitting of the tongue; Capital: public dragging (of the felon's corpse) on a frame and condemnation of his memory, banishment from the realm for life, interrogative torture with retention of other evidence, death: decapitation, hanging, dismemberment (drawing and quartering by horses), breaking on the Saint Andrew's Cross and exposure on the wheel, burning at the stake, death by any of the above means, preceded by amputation of the hand or mutilation of the body.”

The judges had some discretion in choosing the specific punishment for a crime.

In Part III, the author discusses the procedure established by the Criminal Ordinance of 1670 which was in effect until 1789. It provided a complete system of investigation and judgment. The author refers to the Ordinance as a constitution for the criminal justice system. It was in a long line of Old Regime codes, but was more comprehensive and precise. It covered all aspects of investigation, trial, and judgment, and seemingly covered many atypical circumstances. It governed all the courts of France and its rule prevailed over local customary law terminating independent authority of seigneurial courts. Thus it may be seen as being as significant to French legal history as the judicial revolution of 1789 or the Napoleonic criminal codes of 1808 or 1810.

Generally, denunciation of crimes were made to prosecutors who requested inquiry to the judge. The system was inquisitorial, not prosecutorial. Preparatory instruction, or formation was the

27 It extended to “procedures for prosecuting or receiving testimony from deaf mutes (Title XVIII), trying rebellious guilds, villages or towns (Title XXI), prosecuting in memoriam an accused person who had died subsequent to the crime (Title XXII), converting civil cases into criminal cases and vice versa (Title XX).” P. 417.
29 “Prosecutors could not interrogate defendants. They could not be present when judges heard testimony. They were barred from the confrontation, and trial review, and (except at the Châtelet) judgment. They translated complaints and denunciations into accusations, recommended witnesses for summonses, presented evidence and arguments for conviction, recommended sentences, and appealed against acquittals or inadequate penalties if they so decided. Virtually all of their trial actions were written, not verbal. They worked in concert with judges and under their authority.
formal beginning of the trial, and its purpose was the investigation of the crime. The instructing judge visited the site of the crime, its victims, and collected evidence. Interestingly, defense counsel was not permitted for capital crimes. The next stage of the trial, definitive instruction, resembled a modern criminal trial. A fixed sequence of steps was prescribed: 1) verification of the testimony of the witnesses, 2) confrontation of the witnesses by the defendant, 3) the prosecutor's final written recommendations, and 4) the plaintiff's written statement. As witness testimony was the most important source of evidence, perjury was a capital offense.

A panel of judges, seven in the Châtelet, ten in the Tournelle, then reviewed the prosecutor's recommendations, the plaintiff's statement, and the defendant's written response if there was one. If the judges determined that there was not sufficient evidence to render a verdict, they could grant three forms of interlocutory sentence: 1) proof of justificative circumstances, suspension of

The most important responsibility of prosecutors commenced after judgment; it was to ensure that all decrees, sentences, and judgments were executed with exactitude by subaltern personnel. Judges could summon ecclesiastical cooperation, in the form of monitoires during preparatory instruction of cases subject to capital and afflictive penalties. They could do so, however, only if the number and quality of witnesses heard were inadequate to advance the case, if their depositions were vague or contradictory, or if no plausible or identifiable suspects had emerged from the depositions. In those circumstances, the instructing judge could ask the bishop of the diocese to order parish priests to exhort their parishioners, from the pulpit, to reveal any knowledge they had of the crime, under threat of excommunication for withholding such knowledge. Permitting defense counsel would have introduced obscurantism, prevarication, and mendacity into the proceedings. "Justificative circumstances' were those that supported a case for innocence, diminished culpability, or penal immunity. They were either alleged by defendants or emerged from review of the trial. The most convincing were alibi, doubtful or mistaken identity, evidence that the crime was an accident or response to aggression and provocation (in homicide and injury cases), proof that the crime in question was beyond the capacities of the defendant, proof that he was not in possession of the implements of the crime when it was committed or that another person had been
judgment for a period of time in hope of obtaining further evidence (plus amplement informé), the most widely used, and 3) investigative torture, the question. The sentence of plus amplement informé, widely used in the Châtelet, but only in a minority of cases in the Parlement, was applied in capital cases to save the defendant from torture, and on the other hand it allowed the judge to dispense some punishment to those “probably” guilty.

There were two forms of question, question préparatoire used to elicit confessions, and question préalable, imposed to force the disclosure of accomplices. The question was rarely used and was abolished in 1780. It could be “without reserve of evidence” or “with reserve of evidence.” In the former, if the suspect did not confess or retract his confession after torture, the evidence was nullified and he could not be convicted. In the latter, if he did not confess, the evidence could be retained and he could be subject to plus amplement informé. There were two torture techniques, stretching by leg braces and the more rarely used forced ingestion of water (up to two gallons). Court records reveal that there were few confessions resulting from torture in the eighteenth century.

The definitive judgment proceeded by the reporting judge summarizing the case and recommending a sentence, and a panel of judges (10 in the Parlement) then voting on the sentence. There were two forms of acquittal, absolution or complete innocence, which was rare, where the defendant could sue the plaintiff, and renvoi hors de cour or mis hors de cours, dismissal for insufficient evidence where the defendant could not sue the plaintiff. Conviction required sentencing to a specific penalty, although there was usually a choice in that penalty, and it was to be carried out as soon as possible. The 1670 ordinance tended to cause criminal cases to be appealed to the Tournelle. Andrews relies on the

.convicted of the crime (presumably by a different court), insanity, or mental disability.” P. 436.

34 “During the eighteenth century, plus amplement informé was made into an alternative to both full acquittal and formal conviction, becoming a disguised penalty, intermediate between banishment and long incarcerations in the galleys or hôpitaux”. P. 437.

35 “During the eighteenth century, the incidence of plus amplement informé with prison reflected two developments: magisterial repudiation of torture as an investigative device; desire for a form of short-term penal incarceration alternative to formal capital and afflictive penalties.” P. 441.

36 Pp. 441-72.
mathematical model of Roger Blumberg of the Columbia University Heyman Center for the Humanities to demonstrate that the panel of judges of the Tournelle generally chose the less severe penalty. Generally, the Tournelle of the Parlement echoed the sentences of the Châtelet. The Tournelle especially ameliorated death sentences from the provincial courts. In fact, all sentences were less severe than has been generally believed.

37 “The judgments by the Tournelle were generally harmonious with those by the Châtelet in 1736 and 1787 [the sample years]. The majority of Châtelet sentences were to median penalties—banishment or incarcerations for three and five years and plus amplement informé with prison terms. Those were 50.4 percent of the total judgments appealed in 1736 and 68.4 percent in 1787. In the Tournelle, they were respectively 50 percent in 1736 and 59.9 percent in 1787. The incidence of severe penalties in the Châtelet—galleys or the hôpital for life, death—was low in 1736 and 1787, and comparable to the Tournelle for both years. In 1736, the Parlement confirmed 51 percent of judgments by the Châtelet, ameliorated 41.7 percent, and aggravated only 7.7 percent.” P. 481.

38 “Penal discretion—which has been decried as arbitrary and oppressive by Enlightenment, Revolutionary, and modern critics of Old Regime criminal law—benefited defendants, especially those convicted of offenses subject to the death penalty. The benefit was systematic in nature. It resulted from two factors: (1) appellate decision by several judges and the necessity of a two-vote majority for the most severe sentence opined to prevail; (2) the necessity that the most benign sentence opined prevail, when that majority did not occur. That system accommodated, even subtly promoted, changes in magisterial attitudes toward punishment, such as the pronounced shift away from corporal penalties toward carceral penalties that occurred during the final decades of the Old Regime.” P. 493.

39 “The three Parlements (the Tournelle and that at Rennes and Toulouse) resembled each other in their appellate judgments, which may be summarized as follows: high rates of acquittal or release under plus amplement informé without prison (25% to 35%); low incidence of defaming and corporal punishments as main penalty (5% to 10%); moderate and stable incidence of banishment for terms (15% to 20%); highest incidence of carceral penalties (25% to 40%); low incidence of the death penalty (6% to 11%). Those were the sentences executed. Their simple reality contradicts most representations of Old Regime penology.” Pp. 491-2.
Andrews illustrates the procedure required in the Ordinance of 1670 in Part IV where he presents the trial record of three cases, one involving assault on police officers, one on the theft of two silver forks from a tavern, and the third on murder in the course of robbery. He has chosen these from the 100 case records he has reviewed from the 1,200 cases adjudicated by the Châtelet and Parlement in the years 1748-9, 1761-2, 1780-1, and 1785-87. The author has selected the cases because they are banal, i.e., typical. Included in the examples are the full depositions by witnesses and the dialogues between magistrates and defendants. In presenting the cases he demonstrates the importance of the testimony of the witnesses, and that the rules of procedure are strictly followed. While Andrews argues throughout the book that the criminal justice system of the eighteenth century is not as severe as Foucault and other post Revolution critics suggest, two of the examples he has chosen seem to be marked by excessive punishments at least to this modern reader. The woman who stole the forks confessed, and after the Châtelet checked for branding which would have indicated recidivism, it sentenced her to whipping, the brand, and three years of banishment; in the third case a panel of judges at Châtelet voted eight to five for plus amplement informé and one year in prison for the suspect, and one year liberty for the suspected accomplices, but when it was appealed to the Parlement by the prosecutor, its judges found the defendant, an apparent recidivist, guilty of premeditated murder and sentenced him to breaking on the wheel, issuing a retentum, a secret instruction, that he should be strangled only after three long inehours of exposure. With respect to the accomplices they sentenced him to question préalable. He did not confess under torture by leg braces, yet one of the suspected accomplices was still imprisoned per plus amplement informé, while the other was sentenced to plus amplement informé, but not imprisoned but assigned to a house in Paris for a year.

Andrews has thus found that the Old Regime for almost two hundred years between the 1530’s and the 1750’s developed a complete criminal law system with “definitions and penalties for serious offenses; mandatory codes for trial and judgment; definition of the jurisdictional powers of various royal and seigneurial courts; and a magistracy constituted, invested, and regulated by the monarchy.” This criminal justice system especially of the

40 “Thefts accounted for approximately three-fourths of the crimes prosecuted in grand criminal by the Chalelet and the Parlement from 1735 through 1789.” P. 536.
41 P. 595 “Old Regime France was governed by a rule of law, but without a formal and fundamental constitution. The deep cause
latter part of the Old Regime (from 1670 to 1789) promoted an elite of legal professionals, who were fostered by the dynasticism of a few families and not individual talent, and who maintained a sense of identity through vocation.\footnote{42} The author suggests in his conclusion that the Valois and Bourbon monarchs driven by their ever increasing need for revenues for their militaristic endeavors, by selling judicial offices to these families, yielded state power to them. This produced a constitutionalist political evolution which allowed the \textit{parlementaires} to believe that they were the protectors of fundamental rights and the law. This foreshadowed the French Revolution and the assumption of power by the people, which brought the end to both monarchy and themistocracy, and created the ideology of legal professional careers open to talent. Thus the legal system of the Old Regime led to the cultural unification of the country and the French rule of law that prevails today.\footnote{43}

Beyond discussing the criminal justice system and its actors, the book reveals fascinating vignettes of life in Paris during the Old Regime from the fate of dead paupers,\footnote{44} to the plight of the young man who ran away with his beloved without her parental consent,\footnote{45} to the life of a prisoner on the galleys,\footnote{46} to the service per-

\footnote{42} “The themistocracy was a meritocracy essentially of families, not of individuals. Individual magistrates were socioprofessional actors, and thus subjects of their own experience, but they acted as agents of family and office.” P. 276.
\footnote{43} Pp. 593-9.
\footnote{44} “Here (Clamart, the pauper’s cemetery) there are neither pyramids, tombs, inscriptions, nor mausoleums. The place is naked. This soil, greasy from burials is where young surgeons come in the night, climbing the walls and carrying off cadavers to subject them to their inexperienced scalpels. Thus after the death of the pauper he is still robbed of his body, and the strange dominion exercised over him does not end until he has lost the last traces of human resemblance”. (Mercier, \textit{Le tableau de Paris}, vol. I, pp. 268-9.) footnote 31, P. 16.
\footnote{45} “A man who persuaded a young woman to leave home or to marry against the will of her parents faced the noose, or if he was noble, the beheading sword.” P.47. The poor priest who married them was deemed complicit and could be sent to the galleys as punishment.
\footnote{46} “The action of rowing was a masterpiece of disciplined kinesis. Each man occupied only 18 inches on the bench. Literally shoul-
formed by poor women of the Salpêtrière, the women’s prison at the Hôpital-Générale, to the rebellious adolescents incarcerated by their parents, to a scene where the Lieutenant of Police tries to shoulder, they moved backward and forward in unison, with their arms always extended in a straight line....For the fifty-two oars to strike water at the same moment, all 260 oarsmen had to pull and recover in continuous, exact unison; a bench of oarsmen out of rhythm, or that missed stroke, easily smashed into the oar behind.... The normal cadence was one full stroke every 3 seconds, or twenty strokes per minute. Galériens were trained, and forced, to maintain such rates for more than an hour. In a calm sea and without sails, that cadence gave a speed of 5 nautical miles per hour". P. 323.

47 “The administration rented certain of them out to important families for their funeral corteges, following the hearse, chanting prayers and incantations to make easier the path of the deceased to heaven where the poor were apparently more esteemed than the rich’....The administration attempted to place them in Parisian ateliers and households, even to marry them to artisans and workers. It awarded a trousseau and 300 livres of dowry to each young woman who did contract an honest marriage.” Hufton, The Poor, pp. 146-7. P. 348.

48 “Children, whether boys aged under 25 or girls, of artisans and poor inhabitants of the city and faubourgs of Paris, inhabitants exercising a trade or with some employment, who mistreat their fathers or mothers, who refuse to work out of debauchery or laziness, and girls who have debauched themselves or who are in evident danger of doing so, will be locked up in places designated for that purpose....The boys and girls will hear mass every Sunday and Holy Day, pray to God for a quarter hour every morning and evening, be carefully instructed in the catechism, and listen to readings from books of piety during their work. They will be made to work, as long as possible and at the hardest labors that their strength and conditions of detention can permit; should their behavior suggest that they wish to reform, they will be taught trades suitable to their sex and their aptitudes, trades by which they can earn a living, and they will be treated with degrees of gentleness commensurate with the proof of their reformation....Laziness and other faults will be punished by reducing their soup ration, increasing their work, confinement (in cells), and other penalties used in the Hôpital, as the directors deem appropriate. [italics authors] 1684 edict, Isambert, Decrusy, and Jourdan, eds. Recueil général des anciennes lois françaises, depuis l’an 430 jusqu’à la révolution de 1789, vol. 20, pp. 442-4. Pp. 351-352.
prostitutes, and finally to the use of retenta, secret instructions for the sake of a criminal’s soul. Because the work is so broad there certainly are books that touch on one subject or another in greater depth, e.g., Shennan, J.H., *The Parlement of Paris* (Phoenix Mill: Sutton, 1998) and Langbein, John, *Torture and the Law of Proof: Europe and England in the Ancien Régime* (Chicago: the University of Chicago Press, 2006).

The author includes a few pictures, but certainly more would be appreciated; the maps are mainly unintelligible to this reader, and there are numerous tables which present evidence more clearly. In the front of the book he includes a brief section of principle sources and abbreviations which serves as a bibliography, though a fuller bibliography would be helpful, and there is an index. The writer has tried to demonstrate, especially through his

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49 “Contemporaries have given us more than one scandalous description of those audiences: After being penned in a waiting room of the tribunal.... up to a hundred at a time were led into the audience hall. Immediately, there ensued a vicious exchange of crude insults, even blows and projectiles, with their lovers, the ‘accomplices of their debauchery,’ who filled the hall or with spectators, who provoked them from the galleries. ’It is incredible that the preparations for a public and stigmatic correction in justice should be a type of crapulous, orgiastic festival,’ as [police commissioner] Des Essarts wrote indignantly....Silence fell as soon as the magistrate entered; kneeling, the accused heard their sentences read by the lieutenant general and then left the hall one by one, on their way to the Hôpital.” Benabou, La prostitution, p.62. P. 352.

50 “In practice, executions by the full duration of breaking and exposure were rare within the jurisdiction of the Parlement of Paris during the eighteenth century. The Parlement and the Châtelet (when it pronounced that sentence without appeal), usually issued secret instructions, or retenta, for the executioner to strangle the victim rapidly with a leather garotte (le moulinet), after striking a few blows with the rod or after a specified time on the wheel. Retenta were issued primarily for a spiritual reason: Because the pain of breaking and the wheel was so intense, it easily provoked blasphemous curses that sabotaged the ministrations of the priest. Every execution, no matter the method, was considered both an extinction of physical life and a salvational opportunity for a soul. The man who died uttering blasphemy was damned....Burnings were only exceptionally in vivo. Retenta were customary; the executioner garroted the victim at the stake, inside the pile of wood and beyond sight of the crowd, before the fire was started. P. 385.
footnotes (omitting the most gruesome passages of torture and execution) the rich copiousness of the data the author has collected. Certainly throughout the book Andrews has an argument to make, namely that post Revolution legal historians have judged the eighteenth century criminal justice system too harshly, but the true value of the book lies in the clarity and analysis he brings to his complex data. The work with its shortcomings, mainly that to date, the intended volume II has not appeared, is really essential for all law schools maintaining a foreign law collection and all colleges with an early modern European history library collection, though the work will be a challenging read for the undergraduate.

Daniel Wade
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Yale Law Library

Sir John Baker is one of the best-known authors in English legal history of the past two generations. Over his forty-year career (1971-present), he has written extensively on English legal history as most of our readers of this review know. As Downing Professor of the Laws of England and Literary Director of the Selden Society for thirty years, Baker’s contributions are legendary.

His *Introduction to English Legal History* has gone through four editions and is the standard general introduction to the topic; he has published multiple volumes in the Selden Society Series; and he is the general editor of the ongoing series of the *Oxford History of the Laws of England*, a masterpiece work of English legal history that replaces Holdsworth’s *History of English Law* and that will remain the major historical set for the next generations (including the volume he wrote on 15th-16th centuries). In addition, historians of English law owe him a debt of gratitude for the extensive microfiche collection of thousands of microfiche of English legal materials that can be found in various libraries throughout the world.

In recognizing Baker’s contributions, Cambridge University Press has now published a three volume work consisting of eighty-four articles, lectures, chapters from books, papers, book reviews that Baker has written in his career. The topics include the Legal Profession (6 papers), the Inns of Court and Chancery (8 papers), Legal Education (9 papers), Courts and Jurisdiction (5 papers), Legal Literature (15 papers), Legal Antiquities (4 papers), Public Law and Individual Status (4 papers), Criminal Justice (7 papers), Private Law (15 papers), and General (10 papers). Papers presented here for the first time include “John Selden and English Legal History,” “The Judicial Collar of SS,” Equity and Public Law in England,” “Dower of Personalty 1250-1450,” “‘Authentic Testimony’? Fact and Law in Legal Records,” and “Why should Undergraduates Study Legal History?”

In an introduction, Baker provides a biographical sketch of his life. His first sentence is: “I never planned to become a legal historian.” (p.1) He studied first chemistry, then archeology, and then law. He joined Inner Temple in 1963, and serendipity, George W. Keeton of the University College of London, offered him an assistant lectureship on graduation with no formal application, and then suggested he write a “doctoral thesis in his spare time.” (p.1)
He began his studies in English law in elementary school looking at rubbing brasses, monuments, and coats of arms; later, in Science Sixth, he transcribed the English manorial court rolls of the manor of Roxwell in the Essex Record Office; and began to read old court reports in this third year of college when he attended lectures of Professor S. Milsom on English legal history. The experience led him into teaching and “a publisher persuaded the young assistant lecturer to write an elementary textbook on the subject [Introduction to English Legal History], an absurdly ambitious undertaking explicable only the rashness and self-confidence of youth, and by the unawareness of the fact–artfully concealed by the publisher–that a far more important textbook was in preparation at the same time.” (p.3) In applying for a teaching position at Cambridge, he again lost out, but was offered the position of librarian of the Squire Law Library without any specific training as a librarian! (p.3). It proved a “worthwhile experience” (we should all be so lucky.) As librarian he cataloged the manuscript collection that was later published in 1996. Baker discusses his own approach to legal research, “to dig up the available sources first and see what kinds of questions they raise or might answer.” (pp.4-5) Not only did he read books and manuscript materials in the Public Record Office, he was fortunate enough to purchase seventeenth-century English law reports for a few pounds each.

“There is a world of difference between having books at one’s constant beck and call, at any time of the day or night, and having to order them up in libraries, especially if the libraries are not in walking distance.” (p.5) He emphasizes the need to edit unpublished materials that he recommends “that every legal historian should edit something–preferably something which has never been printed before–though there is a case for re-editing some of the black-letter texts as well.” (pp.8-9)

He discusses how he started working on early court reports that were published as Selden Society publications (Spelman’s Reports, Dyer’s Notebooks, Readings and Moots, Caryll’s Reports). He laments over the failure to adequately catalog the Harleian Manuscripts (p.15).

In his paper on “Why the History of English Law Has Not Been Finished,” Baker suggests that there are the equivalent of 150 volumes of still unedited year books (p.1558), while little work has been done on plea rolls, moots and other records. His comments on the use of the plea rolls in cautionary and instructive: “They are of course quite repulsive [made of sheepskin and stinking] to the touch, for all but the most dedicated enthusiasts, but
the joy of discovery can be enhanced by the physical challenges. Our plea-roll scholar needs a strong arm, a flexible neck and back, and immunity to dust and soot, a working knowledge of Victorian knots, an ability to speed-read abbreviated Latin (if possible, upside down), and above all a due sense that not every word of a record is true or factually meaningful. This may be an unappetizing job description, but the repellant outward features of the rolls disguise an almost inexhaustibly rich factual and intellectual content. Much of our legal history is still locked up in our more comfortable modern equivalent of Hell down in the Surrey marshes. The next generation must not lose the keys.” (p.1555)

The bibliography of his publications runs 20 pages long (pp.1578-97) including a listing of 120 biographies written for the new Oxford Dictionary of National Biography in 2004 alone. An index of almost fifty pages (1599-1648) provides a useful access to the papers published topically.

For those of us, who do not or cannot work in primary source materials of this nature, we all should be thankful to scholars like John Baker for his intelligence, acumen, eruditeness, and ability to roll up his sleeves and tackle this work. It is fitting that Queen Elizabeth II knighted him for his extensive work contributing to our understanding of English legal history.

Cambridge University Press should be congratulated for bringing this diverse group of writings together into one corpus and charging a reasonable price for it. This work is recommended for all academic law libraries that have legal history collections.

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Tocqueville’s Nightmare is an intellectual legal history that focuses on the history of legal intellectuals. The general story told by Daniel Ernst is a history of the American administrative state from 1910-1940. This general story is generated by particular stories, stories that involve an intense study of the work of a relatively few lawmen. For American legal historians, and for at least some lawyers, these men remain well known: Charles Evans Hughes, a New York lawyer and twice a member of the Supreme Court (first as an Associate Justice (1910-1916) and later as Chief Justice (1930-1941)), Felix Frankfurter, Professor at Harvard Law School during the time of this study (he later served as Associate Justice of the Supreme Court), Roscoe Pound, Dean of the Harvard Law School from 1916-1936, and Jerome Frank, a lawyer tied to Franklin Delano Roosevelt’s New Deal and one of the prominent figures of American legal realism. Ernst also discusses the work of Ernst Freund, an emigrant from Germany and legal academic whose approach to the administrative state (the German Rechtsstaat) was rejected in favor of a particularly American model. Ernst’s history of legal intellectuals may be intuited by the titles of his five numbered chapters: all but one is named after one of those lawyers listed above.

The theme of Ernst’s book is how American lawyers and American lawmakers accommodated the rise of the administrative state. As Ernst states in his Introduction, Tocqueville praised the American system of government for avoiding an “insufferable despotism.” By 1940, Ernst argues, Americans largely accepted a system of administrative governance. More importantly, that system did not give rise to despotism, but “had confounded Tocqueville’s expectations.” How had it done so? Ernst argues that the American understanding of the rule of law involved “an appeal from government officials to independent, common-law courts.” The wherewithal of Americans to appeal n order or dictate of a government bureaucrat to the neutral and independent courts ensured a government of laws and not of men. Ernst traces the manner in which this understanding of the rule of law was slightly altered. The courts lacked the manpower to oversee bureaucratic governance, but unchecked bureaucratic governance might generate Tocqueville’s nightmare, the tyranny of the majority. To avoid either paralysis or petty tyranny, the American administrative state was given a “legalistic cast.” Legalization was “the key to understanding the twentieth-century origins of the administrative
state in America.” Legalization in part required government commissions to conduct hearings, gather evidence, explain their reasoning, and avoid *ex parte* communications. In general, administrative agencies were required to play fair, to follow generalized court-based notions of due process. Courts continued to oversee the actions of administrators, but “increasingly, court review was procedural rather than substantive.”

Ernst begins with a chapter explaining why Freund’s *Rechtsaat* model was shelved in favor of this American model. He ends in 1940 with an explanation of how a “day in commission” supplanted the traditional “day in court” model in the common law. This relatively short book begins by contrasting the approaches of Freund and Frankfurter, offers two chapters in which Hughes is the central character (first as lawyer and governor, and second as Chief Justice), discusses the failed effort to include an “anti-bureaucracy” clause in New York’s constitution, and ends with the “debate” between Pound and Frank regarding reform of administrative law making.

Part of the value of *Tocqueville’s Nightmare* is found in its explanation of how and why so many lawyers, who were trained and expert in the court-centered common-law model, were willing and ready (despite opposition by other lawyers) by 1940 to accept administrative governance. The shift to administrative governance redirected much of the energy expended by lawyers, but it seems unlikely lawyers accepted the administrative state because it would expand the practice of law.

Ernst’s decision to analyze the legal progressives who created the foundation for the modern administrative state in the United States is sound. His pointillist work (the number of archives rummaged about is impressive) takes the reader from the particular to the general, and the result is satisfying overall.

Ernst includes a number of photographs, figures and cartoons. This is uncommon, and a welcome addition. The inclusion of photographs of the protagonists and political cartoons is a nice touch. More importantly, Ernst uses two murals found in the Library of Congress to emphasize the theme of his study. Again, the photographs reinforce the book’s study of the history of legal intellectuals.

One brief complaint concerns the title. *Tocqueville’s Nightmare* is inaccurate, as Ernst acknowledges. He concludes that the American administrative state has been neither Tocqueville’s nightmare nor a cure for the ills of legislative mismanagement or judicial in-
dolence or bias. Possibly the title was intended to grab the indifferent reader. Finally, I enjoyed the historical exegesis. But I doubt this history has much to say to us regarding our present circumstances, particularly disagreements regarding the role of legislative enactments since 2009.

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This four-volume set of 76 articles and chapters, reprinted from prominent and widely-held journals and scholarly monographs, aims to present works that the editors deem “foundational,” according to the first page of their introduction to all four volumes, appearing in Volume I. They define foundational as “essays that have helped to define and advance the study of comparative law in the twentieth and twenty-first centuries” (*Classics*, “Introduction” at ix). The editors have divided up these writings on the field of comparative law into four areas, each of which forms a subtitle for one of the four volumes, as follows: Volume I: Methodology; Volume II: Institutions; Volume III: Private Law; Volume IV: Public Law.

An additional purpose of the editors is to arrange the articles over the four volumes in a movement from the general to the more specific. The dates of the articles also follow a more or less chronological narrative within each volume’s general topic and then chapter subtopics, ranging from 1903 (Sir Frederick Pollock’s “The History of Comparative Jurisprudence” from the *Journal of the Society of Comparative Legislation*, written two years after the First International Congress of Comparative Law in Paris, 1901) through 2010.

The editors’ Introduction provides the only commentary on the selection of authors and perspectives, and the brief summaries do an adequate job of placing these authors in dialogue with one another at many points, placing, for example, a chapter from Alan Watson’s *Legal Transplants: An Approach to Comparative Law* up against Pierre Legrand’s counter-argument that transplanted concepts and received civil codes grow into very different organisms once they take root in the soil of a different culture. (This metaphor is mine; Legrand’s essay, “The Impossibility of ‘Legal Transplants,’ appeared in the *Maastricht Journal of European and Comparative Law*, vol. 4, 1997, 111-124,). The Editors admit that not everyone agrees that there is a role for comparative law; it has been pronounced dead or too loosely defined (*Classics*, “Introduction” at ix).

Overall, this collection may serve well and a useful compendium of journal articles and chapters for smaller libraries that may be lacking some of the titles represented. As a general rule, my own library, in its collection policy, states that collections of previously
published material will not be purchased. However, it is worth noting that the editors believe they are doing more than providing a convenience to appropriate libraries; they seem to aim at creating a subjective, but not an arbitrary, library of essays that tells a kind of tale about the development of comparative law. Does the collection live up to this slightly more ambitious purpose? In my opinion it falls short of that while still being a collection of essays important to scholars initially situated in the English speaking common law tradition. What are the shortcomings?

First, while one can always point to omissions and such a collection, as the editors indicate, can never be exhaustive, I find no chapter from the late H. Patrick Glenn, whose Legal Traditions of the World: Sustainable Diversity in Law (Oxford: Oxford University Press, 2014) went through five editions until his untimely death in October of this year. While not without generating controversy as to content and style, Professor Glenn spoke from his position as Peter M. Laing Professor of Law at the bilingual and bi-jural McGill Faculty of Law and enlarged the conversation about all legal traditions by including many religious and indigenous systems in his survey. He might have been placed alongside Teemu Roskola (“Legal Orientalism,” Michigan Law Review, vol. 101, 2002, 179-234). They could have added one more female scholar to the sole representative of women in the collection: Cristina Costantini. The latter’s 2010 article “Comparative Law as Comparative Jurisprudence” in the 2010 Comparative Law Review does at least engage with the writings of Patrick Glenn in her interdisciplinary article (cited as vol. 1, p.1; online access not available at Directory of Open Access Journals on the date of this review; this reference is to page 3 of another version found at http://elaw.nigeria.com/articles/The%20Keepers%20of%20Traditions%20The%20English%20Common%20Lawye.pdf If Mary Ann Glendon of Harvard is too traditional, perhaps Catherine Valcke might have been a good addition to Volume I on Methodology if only because in “Comparative Law as Comparative Jurisprudence: The Comparability of Legal Systems” (American Journal of Comparative Law, Vol. 52, 2004, 713-740) she actually identifies a role for comparative law as comparative jurisprudence: law as both unified and plural. (Valcke, p. 739).

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The definition of a “Blaine Amendment” is core to the author’s argument. Most legal scholars and historians classify “Blaine Amendments” as the state-based constitutional provisions patterned after a failed Federal constitutional amendment originally proposed in 1875 by U.S. Congressman James G. Blaine. The provisions exist in most states, and prohibit tax money from being used to support religious schools. In his thesis, the author argues that history shows the “Blaine Amendments” are broader than the post-Civil War anti-Catholic prejudices now commonly seen as reasons for their adoption.

To make his point, the author wades into the intersection of many areas of law and policy, including comparative state constitutional law, education, legal history, religion, school choice, and taxes. The catalyst for his study was the U. S. Supreme Court decision denying a publicly funded college scholarship for religious-based training in Washington State, *Locke v. Davey*, 540 U.S. 712 (2004).

The main court decision in *Locke* is 11 pages long and the dissenting opinions are 10 more pages. However, only one footnote in the court’s majority opinion mentions Blaine Amendments, and classifies the Washington State Constitution provision at issue as “not a Blaine Amendment” (*Locke*, at 723 n. 7). As a result, the court side-steps examining whether anti-religious sentiment was the main factor in this or any other Blaine Amendment, which could have resulted in such state laws being found unconstitutional under the U.S. Constitution. In *Locke*, the court upholds Washington’s ban on government aid to religious schools (in this case, via denying a scholarship for the study of theology).

As his thesis title indicates, the author of *Freedom of Religion* also reviews two prior religious school-funding cases in favor of government aid, *Mitchell v. Helms*, 530 U.S. 388 (2000) and *Zelman v. Simmons-Harris*, 536 U.S. 639 (2004). In addition, he examines the “Blaine Amendments,” the state constitutional provisions related to the government supporting—or prohibitions against sup-
porting—religious-based education. He is particularly interested in the words “sect” or “sectarian” as they relate to government aid to schools, and charts such wording in 30 state constitutions (see his “Appendix A: Blaine Clauses in Current State Constitutions,” Freedom, pp. 155-174). He is aware that “many state constitutions contain other clauses that may affect the flow of tax dollars into religious institutions,” but those are “not counted in this research as a ‘Blaine Amendment’” (Freedom, p. 155 n. 618).

The author of this long somewhat rambling discussion of the Locke decision is at his best when analyzing the provisions within the 29 briefs filed (Freedom, pp. 57-96). He is clearest in pointing out the policy and other arguments among the various states and amici on both sides of the issues.

His analysis of the state constitutional provisions in his later chapters is weaker, and suffers from only looking at the phrase “sectarian school” rather than examining such factors as nonestablishment of religion, funding of religious education, funding of religious activity, the use of coercion to support religion, or other factors. (These useful and much easier to distinguish categories are in “Chart of State Constitutional Limitations on Religion,” in WILLIAM W. BASSETT, W. COLE DURHAM, J R. & ROBERT T. SMITH, 1 RELIGIOUS ORGANIZATIONS AND THE LAW § 2:50 [Thomson Reuters 2013], which I would recommend over Johnson’s thesis). (Full disclosure: I work at BYU where two of this treatise’s authors (Durham & Smith) are directors of the International Center for Law and Religion Studies at BYU’s J. Reuben Clark Law School).

I applaud the author of Freedom of Religion for working to juggle the various components of his legal history study. The topic is both narrow (state constitutional provisions dealing with taxes and publicly funded religious schools) as well as an important piece of much broader issues in society (religious freedom, church/state relations, federalism, and taxation). I was disappointed to find the text virtually unchanged (including the same typos) from his original thesis to this published version, and also think the original thesis title better describes the book’s content, as I felt misled by the Freedom of Religion main title. Large academic libraries with education policy collections should consider this work, while law libraries would do better looking elsewhere for legal analysis concerning state Blaine amendments.

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Since we were children we have all heard stories about witches—individuals, particularly women, who practiced magic or sorcery. We are all familiar with the three witches whose prophesy caused Macbeth to murder Scotland’s King Duncan, of the witch who attempted to cook and eat Hansel and Gretel, and of the Wicked Witch of the West who battled Dorothy over a pair of ruby slippers.

Yet witches are more than characters of fiction. Beginning in the fifteenth century and continuing until the 1700s, thousands of individuals, the vast majority of them female, were accused and tried for the practice of witchcraft. The Oxford Handbook of Witchcraft in Early Modern Europe and Colonial America, a well-researched and well-written tome, tells the story of this tragic period.

The book is divided into three parts. The first portion examines the beliefs of witches. Chapters in this section range from popular witch beliefs and magical practices and demonologies to images of witches and witchcraft as described in literature. The second section of the book discusses the prosecution of witches in Germany, France, the Netherlands, Italy, Spain, England, Scotland, Poland, Hungary, Russia, Scandinavia and the American colonies. This section also includes an explanation of the rise of witchcraft prosecution in the fifteenth century, a time of famine and epidemics, and the end of such prosecutions by the eighteenth century.

The final portion of the book looks at various themes of witchcraft research—witchcraft and gender, demonic possession and exorcism, and witchcraft as it relates to religious reform, economics, politics, science and medicine. Of particular interest is a detailed chapter on witchcraft and the law.

The books one weakness is in its coverage of witchcraft trials in British North America. A mere 19 pages are devoted to witchcraft trials in the British colonies, with most coverage focused on New England. Trials in Maryland and Virginia—along with Pennsylvania’s one reported witchcraft trial—are largely ignored. While witchcraft hysteria did not affect the middle and southern colo-
nies to the same degree as New England, the trials that did occur do warrant mention.

The editor, Brian P. Levack is the John E. Green Regents Professor in History at the University of Texas at Austin. He hold a B.A. from Fordham University and a Ph.D. from Yale. His books include *The Devil Within: Possession and Exorcism in the Christian West*, *Witch-Hunting in Scotland: Law, Politics and Religion*, and *The Witch-Hunt in Early Modern Europe*. He has also edited numerous books including *New Perspectives on Witchcraft, Magic and Demonology: A Six-Volume Anthology of Articles* and *The Witchcraft Sourcebook*. The individual chapters are written by equally-qualified scholars in the field.

This excellent book belongs in every academic library, and should be read by anyone with an interest in witchcraft or in Mediæval history.

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Professor William Nelson has now published his second volume on the history of common law in colonial America concentrating on the Middle Colonies (New York, New Jersey, Pennsylvania, and Delaware) and the two Carolinas. His earlier volume dealt chiefly with Massachusetts and the Northeast and Virginia in the early seventeenth century. Now, he moves to the later seventeenth and early eighteenth centuries. With the reign of Charles II (1660-85) Nelson identifies three policies that Charles followed in granting colonial lands in the New World. First, he gave lands to his friends and close confidants, imposed significant legal restrictions upon the grantees, and imposed the need to use the common law (2-3). Nelson’s main theme is to demonstrate the role of the common law in both groups of colonies. All of the colonies experienced different developments based on legal, social, political and economic conditions that the colonists experienced.

In succeeding chapters he describes the development of the colony in regard to its development of the common law. His analysis is based on wide reading of both print and manuscript sources of court cases. In Chapter 1, the Dutch and Puritan law in New Netherlands provides a study of the Dutch legal system before the takeover by the English following the first Anglo-Dutch War in 1664. The Dutch used civil law, had a centralized judiciary and government, and its procedure differed by not using juries, magistrates had a wider discretion in deciding cases, and litigation was more unstructured when judges heard cases. The courts heard wide variety of cases similar to other colonies, but also were involved with more personal matters than the common law courts. Puritan law survived in Southampton in Long Island, Staten Island, and the Connecticut-Westchester border as a “rude, untechnical, common law legal system reflecting New England values and ideals” (28).

With the takeover of New York by the English, Nelson shows how the colony evolved with two different court systems existing in the mid-century with a sophisticated system on Manhattan Island and Hudson Valley based on Dutch customary law and colonists in Long Island, Staten Island, and Westchester applying English common law. The governors through their reliance upon lawyers, but the results did not produce a strong government (31). The institution of the Duke of York’s Laws in the mid-1660s created a
court of assizes with the governor as presiding judge, thereby concentrating the court system in the highest officials in the colonial government. However, it was not effective in eliminating the various practices of those local courts that did not come under the higher court's authority.

Finally, in late seventeenth into the early eighteen centuries, New York City instituted a new Mayor’s Court that became within a decade based on English common law in the early 1680s. The court did in fact maintain some Dutch policies, but they did go away. A new court of sessions created in 1683 began to hear criminal cases separate from the Mayor’s Court. The working relationship between the government, local merchants, and lawyers who represented them led to a strong centralized government in New York. Legislation in the 1680s and 1690s led to a strong local government. The creation of the first bar association in 1709 ensured the lawyers had a monopoly over the major cases heard in court. By the 1720s New York resembled all of the other colonies possessing procedures that anyone coming into the colony would understand, the common law displaced Dutch law, and the difference between Dutch and common law legal records reflected an English view of how law operated which differed from Dutch law so that it “restricted the power of government in general and central government in particular.” (59) English courts were limited, central jurisdiction unlike the broader approach that Dutch courts had taken.

In South Carolina, eight of Charles II’s ministers and confidents started South Carolina with a “Fundamental Constitution” drawn up by John Locke who worked for Anthony Ashley Cooper, Earl of Shaftsbury as one of the Appellants. The aim of the colony was to make money for the proprietors. The importance of trade and commerce led to a plantation economy based on rice and indigo through the use of slave labor obtained from the West Indies. Nelson sees a sophisticated legal system develop around Charleston for the elite merchants, but the government failed in its Indian policies for several decades. Courts following common law practices were in place within a few years of its creation. A strong legal profession developed after 1699, while the common law courts and newly-developed chancery courts worked well until the late 1720s when the colony became a royal colony. Nelson surveys civil and criminal cases during the period as well as the law of slavery which he concludes was closer to the British West Indies than the colonies to the north of it (82). The legal system functioned more smoothly than most other systems to the north (83). But North Carolina did not exhibit the cohesiveness that South Carolina had because it was a “weak and dysfunctional” colony
(84). It did not have a widespread social network, never developed a group of well-trained, professional attorneys to maintain the rule of law, and the courts did not develop distinctly from the governor and council until early eighteenth century. The political dispute between the governors and court in the 1720s led to the judicial collapse of the court system by the end of the decade.

Pennsylvania was founded as refuge for Quakers and for religious toleration under William Penn. The strong central government led by Penn and his governors with its close relationship to the Quaker elite of the colony. Penn created a colony based on the common law with its protection of property and right to trial by jury were central beliefs. A complex court system was established, lawyers practiced in the colony. Nelson observes that “It is something of a paradox that Pennsylvania, whose government was one of the most centralized and hierarchical in the thirteen colonies, was founded by Quakers, who believed in individual autonomy and equality” (100-01),

Nelson has done significant research in the colonial archives of all of the colonies drawing widely on both print and non-print manuscript sources. His research is impeccable and an important contribution to the history of Anglo-American common law. His long career as an American legal historian specializing in colonial America is reflected in these wide-ranging studies. It is expected that the subsequent two volumes on the eighteenth century will similarly expound a sophisticated view of colonial legal history that all students of the colonial history will find necessary as a basis of all future research.

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The year 1807 is perhaps best-remembered for the case of United States v. Aaron Burr, a case that could be called the nation’s first Trial of the Century. Former Vice President Burr, facing charges of treason, was tried by government lawyers with President Thomas Jefferson participating in a decidedly hands-on role. Presiding over the trial was Jefferson’s cousin—and hated political enemy—Chief Justice John Marshall, who sat as the trial judge of the circuit court in Richmond.

The seven-month trial resulted in Burr’s acquittal. It also answered questions about what actually constituted treason and helped to establish the role of the judicial branch.

The question as to whether Burr was actually guilty of trying to separate the western territories from the United State remains unanswered; his intentions varied from witness to witness. However, whether he did or did not commit acts of treason, he does not cut a favorable figure.

Jefferson, eager to see the man who nearly defeated him for the Presidency found guilty, plotted behind the scenes in ways that would today most assuredly result in a Congressional investigation. For all his virtues, in this matter Jefferson does not present a positive face. Of the three primary participants, only Chief Justice Marshall—striving to establish an independent judiciary—cuts a favorable figure.

The book introduces readers to the lawyers in the case, several of whom were among the finest attorneys in the young nation. Marylander Luther Martin and Virginians Edmund Randolph, Charles Lee, John Wickham, Benjamin Botts and John Baker represented the defendant. George Hay, Alexander MacRae and William Wirt presented the case for the government.

The author, R. Kent Newmyer, is Professor of Law and History at the University of Connecticut School of Law. Among his other works are *Supreme Court Justice Joseph Story: Statesman of the Old Republic* and *John Marshall and the Heroic Age of the Supreme Court*. 
U.S. v. Burr is among the most important cases of the young American republic. This thoroughly researched and well-written book should be in every academic library. It would also serve as an excellent text for a course in American legal history.

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Professor White is one of the America’s leading legal historians, the author of fifteen books well known to this readership, most notably *The American Judicial Tradition, Patterns of American Legal Thought, The Marshall Court and Cultural Change, Tort Law in America* and biographies of Earl Warren and Oliver Wendell Holmes, Jr. Now, he has written the first of a three-volume history on American legal history for which volume 1 is now published covering from the first years of coloniztion to the end of the Civil War.

In his introduction, White explains his historiographical view on writing legal history, how he defines the title of the book, and outlines the ten chapters as part of a public-private law dichotomy. Chapter one is an overview of colonial years, emphasizing the developments between the Amerindians and the colonists that has been overlooked by many historians. If the seventeenth century was primarily based on indigenous, the eighteenth century witnessed the “Anglicization” of the colonies.

Based on the agricultural conditions of the second half of the eighteenth century (chapter 2), White identifies four areas of discussion: land use, including not only the activity of living and working on land but also its ownership, sale, and lease; the forms of labor within agricultural households (slavery to freeholders); family relations; and trade and commerce (intrastate, interstate, and foreign trade).

Chapters 3 and 4 deal with the movement towards independence from 1763 to 1776, and then 1776 to 1788 respectively. White does not see a straight development from end of the French and Indian Wars to the Revolution in light of political and constitutional developments. “Both chapters emphasize the role of ideas about governance and sovereignty in the creation of an independent American nation whose form of government eventually took the form of a constitutional confederated republic.” (109) The developments that occurred in the decades before 1800 were “better to see them as contemporaries of the framing period saw them, as shifting, contingent, pragmatic responses to the British colonies in America having cut its ties with its sovereign without a clear idea of what to do next.” (192)
As the federal government development after 1789, White turns to the rise of the Supreme Court from 1789 to the end of Marshall's tenure on the court in 1836 (ch. 5). Starting with an "insignificant institution" (193), White provides a summary of the court fairly similar to other historical accounts with short analysis of major cases as part of his narrative. He spends fifteen pages on Marbury v. Madison (205-20), but only three on McCulloch v. Maryland and four on Gibbons v. Ogden, but he present a cogent argument on how the court grew over these decades and Marshall's importance upon it. He gives Marshall his due credit for the rise of the court as a coequal institution, recognizes the court stayed near the center of the political spectrum, but still a political force "striking the right balance between competing visions of American society." (244)

Turning to law and entrepreneurialship, 1800-1850 (ch. 6), White discusses the transformation of America in the antebellum period around three developments: transportation and how the law was used to create franchises for transportation (turnpikes, bridges, canals, steamboats, and railroads), for the expansion of the population westwards; the acquisition and distribution of public lands that allowed the country to expand to the Pacific Coast between 1803 and 1853; and the rise of the legal profession that he views as an entrepreneurial development "that the growth of the legal profession was intimately affected by the other ventures." (247) At the same time, he leaves the development of private law (contracts, property, commercial law, and torts) to the next volume in order to contrast better what became before all of the changes that occurred after the Civil War (246-7)

Chapters 7 and 8 deal with the mid-century political and constitutional issues surrounding slavery and the movement towards civil war. Chapter 7 provides a political and constitutional history of the post-Marshall decades, while chapter 8 covers the constitutional conflict in the Supreme Court. The court's decision to favor slavery means "[t]he path was chartered by the recognition that law in America could not serve as a mechanism for transcending, or resolving, disputes about slavery because it had been enlisted on one side of those disputes. If law could not resolve the dispute, the only remaining options were force or the Union's dissolution." (381)

Chapters 9 and 10 deal with the political history of the war followed by the legal issues, respectively. Again, White cautions the reader on how to read the history of the war and the entire period covered by the narrative of the work. The fact that there are different views draws the conclusion that "none of the observers
would have been wrong or right. We make sense of American legal history the best way we can. That is all we can do.” (484)

White adds extensive footnotes and a good index, though the bibliographical references have to be found in the footnotes. White writes an excellent first volume to his trilogy. Although longer than other introductory works, notably Friedman’s *History of American Law* or Hall and Karsten’s *The Magic Mirror*, his style of writing and ability to interweave facts with observations makes this work a wonderful interpretative read on our early legal history. I look forward to his succeeding volumes and believe the readership will gain much from reading this fine work along with succeeding volumes as an important contribution to American legal history.

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