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DEDICATION

In 2016 Dr. Joel Fishman retired from Duquesne University/Allegheny County Law Library. He had served there for many years, retiring as Associate Director for Lawyer Services.

Joel is a prolific author with more than 250 publications to his credit. These include more than 75 books/pamphlets, 75 articles, and 80 book reviews in various library, history, and legal periodicals, including this one. He has served as the Book Review Editor for Unbound since it began publication. In addition, he is a past Chair of the American Association of Law Libraries Legal History & Rare Books Special Interest Section.

By direction of the LHRB Executive Board and with the enthusiastic support of the editor, we dedicate this issue of Unbound to Dr. Joel Fishman. We hope that we will continue to see his articles and book reviews in this and other publications for many years to come.
The Development of *Recusatio Iudicis* and the Rise of *Aequitas*

Adam Giancola

In his discussion of the characteristics of the ideal judge, the fourteenth century Neapolitan jurist Lucas de Penna famously wrote:

> Nullus enim constitundus est judex, nisi sit peritus in jure. Etiam promotus ob defectum scientiae removendus est... nam populus, qui non habuit scientiam, ductus est in captivitatem... nihil autem tam indignum et impiissimum est quam ignorari jura et leges a magistratibus, qui in re publica praesunt... scientia est donum Dei.\(^1\)

According to Lucas, a judge who proved himself incapable of administering justice was to be mercilessly removed in order to eliminate the harm he might impose to the general public. To this end, Lucas saw refusal as a right that belonged to both parties, *ex justa causa*, to guarantee the impartiality of judgment. From this perspective, the right to refuse a judge was not exclusively given to

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\(^1\) C. X, 31, 33, no. 38.
protect the interests of litigants, but also to ensure that a judg-
ment was not divorced from the idea of justice.²

The process of refusing a judge, defined in the canon law as ‘re-
cusatio iudiciis,’ has a long history in the Romano-canonical tradi-
tion.³ While recusatio has primarily been studied as a procedural
tool used by litigants to limit the partiality (and potential corrup-
tion) of judges, its development has less frequently been considered
as a form of equitable relief administered in order to protect the
parties and to ensure fairness at court. This paper examines this
particular aspect of recusatio in the canonical tradition.

Part I provides a brief discussion of the historical foundations un-
derlying the concept of recusatio under the Roman law. Part II then
examines the emergence of the concept of recusatio iudiciis in the
canonical tradition, and describes the gradual steps taken by the
canonists to increase the number of grounds for refusal under the
decretal collections. Part III specifically looks at the development of
recusatio iudiciis during the outburst of ordines—or procedural
treatises—throughout the thirteenth century. In looking at the
works of Tancred and Hostiensis, for example, one sees a tendency
by the canonists to characterize recusatio iudiciis as a function of
equity and fairness. Part IV continues this discussion by looking
specifically at William Durantis’ Speculum Iudicale, which repre-
sented an attempt to systematize a vast quantity of legal procedure
into a single corpus. Durantis’ presentation of recusatio iudicii re-
veals to an even greater extent an understanding that the refusal
of a judge should operate in the service of both equity and fairness.
The paper then concludes.

² C. X, 31, 66, no. 1. “Nam licet in rescripto principis exprimatur, u judex recusari
non possit, nihilominus ex justa causa poterit recusari. Recusatio enim species est
defensionis, quam, cum sit de jure naturae, princeps in suo rescripto etiam ex-
presse tollere nequit.” See generally: Walter Ullman, The Medieval Idea of Law,
As Represented by Lucas de Penna: A Study in Fourteenth-Century Legal Schol-
³ For a background on the history and development of the principle, see: Linda
Fowler, “Recusatio Iudicis in Civilian and Canonist Thought,” Studia Gratiana
I. Historical Foundations

Linda Fowler has written extensively on the subject of the historical development of recusatio. Fowler found that the Roman ideal of the “professional, state-appointed judge” went hand-in-hand with the concern that suspect judges be promptly removed. Recusal was a matter of public utility, and could be used not only to protect the rights of litigants, but also to frustrate an opponent at court. While the process of appeal was guaranteed by the ius gentium to offset injuries committed during or after the trial, recusatio took place even before the trial began. To succeed in the latter, litigants had to prove that a judge was suspect and unfit to stand trial despite the fact that no injury had yet occurred. In light of this distinction, the Roman legislations governing recusatio ensured that the judge could not be removed easily. In 527, the Emperor Justinian’s edict proclaimed that any litigant that wished to refuse his judge ordinary was required to go before the emperor for approval. If consent was granted, the suspect judge would be required to hand over the case to an alternative judge. In the Novels, Justinian decreed that a litigant would be given twenty days after the libellus (petition for recusal) was issued, so long as the action took place before the litis contestatio (the contestation of the suit).

The fundamental characteristic of recusatio under the Roman law was that the civilists never considered it a natural right. This fact notwithstanding, the law did allow for defendants to make objections, referred to under the law as “prescriptiones” or “exceptiones.” Over time, the jurists came to distinguish between the various actions of litigants, and listed “actions” as the weapons of the

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4 Fowler, Recusatio Iudicis, 719. For a discussion of the place of judges in the Italian peninsula during the Middle Ages, see: Carlo Calisse, Storia Del Diritto Italiano (Firenze: G. Barbèra, 1891).
5 Fowler, Recusatio Iudicis, 720.
6 Digest 1.1.3.
7 Codex 3.1.12.
8 Novels 53 c. 3. The issue of the time between the twenty-day period and the beginning of the litis contestatio was resolved in the Corpus Iuris Civilis.
9 Fowler, Recusatio Iudicis, 780.
plaintiff, and “prescriptions” or “exemptions” as the weapons particular to the defendant. From its birth, recusatio emerged in the Roman law as a tool to be used primarily by defendants.10

II. Recusatio Iudicis in the Canonical Tradition

Under the pontificate of Gelasius I (d. 496), the concept of the pope as iudex ordinarius omnium (universal judge ordinary) was formally recognized. This gave Christians the universal and unrestricted right to appeal to the pope directly, and this right could be invoked at any stage of the dispute, with or without the initiation of proceedings at the local court.11 At the invocation of an appeal, the pope would appoint two or more local judges to investigate the complaint of the aggrieved party. These officials would either terminate the case, or bring the parties to an amicable settlement.12

This notion of the pope as “universal judge ordinary” was reaffirmed during the pontificates of Gregory VIII (d. 1085), Alexander III (1159-1181), and Innocent III (1198-1216).13 While the concept pertained primarily to the process of appeals, it also laid the groundwork for the right of litigants to recuse a suspect judge. By canon law, the pope was the universal ordinary precisely because he was the holder of plenitudo potestatis (the plenitude of power), and thus had the ultimate jurisdiction to delegate a case to an alternate judge if a litigant brought forth a justified complaint.14 The principle defining the pope as the “universal ordinary” became cen-

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10 Linda Fowler-Magerl, Ordines Iudiciarii and Libelli De Ordine Iudiciorum: From the Middle of the Twelfth to the End of the Fifteenth Century (Turnhout, Belgium: Brepols, 1994), 42.
tral to the jurisprudence governing judicial defenses, and was inserted into the glossa ordinaria of the Decretals\textsuperscript{15} in addition to the commentaries of the most prominent decretalists of the thirteenth century, including Goffredus de Trano,\textsuperscript{16} Innocent IV,\textsuperscript{17} Hostiensis\textsuperscript{18} and William Durantis.\textsuperscript{19}

The sources for recusatio in the canonical tradition are innumerable. Both Burchard of Worms and Ivo of Chartres reproduced canons granting litigants the right to choose their own judges if the local bishop was found to be suspect. Other canons repeated the norm that a litigant could appeal to the apostolic see if a judge was deemed questionable.\textsuperscript{20} Gratian had also identified the right to recuse a suspect judge throughout his Decretum (ca. 1140). In a letter between Pope Nicholas I and Emperor Michael III, the principle was established that no person should be judged by their enemy, even if the judge was an ecclesiastical official. This canon re-affirmed an enduring standard in Romano-canonical procedure: that a defendant should not be judged by his enemies at trial, regardless of whether they served as witnesses or adjudicators.\textsuperscript{21}

Later on in the Decretum, Gratian discusses the qualities of a corrupt judge, and suggests that this includes anyone who is affected in their judgment, either by friendship, enmity, or consanguinity. The corresponding gloss suggests that a judge can be recused for being both a non-capital and capital enemy, since the standard of proof required for recusing a judge is higher than that of recusing a witness. The gloss reports that since there are a multitude of judges available in any given case, and only a small number of witnesses, the standard of proof for the former should be higher. This

\textsuperscript{15} Bernard of Parma: ‘Illud generale est quod ad papam potest appellari omisso medio propter plenitudinem potestatis, ii.q.vi. Quoties ad Romanum (c.26) et in pluribus alis capitulis ibidem: quia per simplicem queralem potest papa adiri, cum ipse sit iudex ordinarius singulorum, ix.q.iii. Cuncta et c. Per principalem’: ad 2.28.66 s.v. post huiusmodi; cf. also the Notabilia to 5.33.23.
\textsuperscript{17} Apparatus ad 2.2.17.
\textsuperscript{19} William Durantis, Speculum Iudicale t. 2.3, de appellatione, § 4. (Lyons, 1543).
\textsuperscript{20} Burchardus of Worms, Decretum 1.63.
\textsuperscript{21} C. 3 a. 5 c. 15.
distinction between judge and witness suggests an important delinea
tion of roles in the canonical trial procedure. Whereas a wit
tness is required to speak about things de visu et auditu (from what
was seen or heard), the judge obtains knowledge about the facts of
a case secundum allegata et probata (according to what was alleged
and proven). Since witnesses by their inclusion in the trial re
ported facts on the basis of conscientiam (private knowledge), the
risk that a judge might do the same gave the canonists adequate
reasons to expand the grounds upon which a litigant might seek a
recusal.

Gratian also saw lordship as an impediment to a correct judgment.
In his discussion of suspect accusers and witnesses, he includes
a letter from Pope Calixtus to the bishops of Gaul, citing the relation-
ship between a lord and vassal as sufficient grounds for
recusal. In the accompanying gloss, it is reported that the lord of
an adversary is prohibited from giving judgment. In addition, a lit-
igant may call for recusal if he discovers that the advocate of his
adversary has a relationship with the judge. Repeating the distinc-
tion stated above, the gloss concludes with the point that while
witnesses are subject to many of the same grounds for recusal, a
lesser cause is sufficient for repelling a judge. In the gloss to Gra-
tian’s Decretum, the scope of the right to recusal was expanded
even to include instances where a judge was appointed directly by
the pope. Citing the Decretals, the gloss suggests that as long as a
just cause emerges, lawful exemptions may be reserved for anyone.
Under a subsequent distinction, Gratian references the Council of
Milevis, which affirmed the right of even the lowliest cleric to call
upon neighbouring bishops for judgment if he doubted the credi-
bility of the judgment of his own bishop.

Despite these rulings, the Decretum does not refrain from listing
some of the possible restrictions placed on the scope of recusal in

22 c. 79, q. 2, C 10.
23 For a discussion of the maxim, see K. Norr, Zur Stellung des Richters im
gelehrtm Prozess der Fruhzeit, Munchener Universitatsschriften, Reihe der ju
24 In his discussion of accusers and witnesses, he prohibits relatives and members
of the same household from bearing witness.
25 C.12 q.4 c. 2
26 Decretals 1.29.17.
the hands of litigants. As Fowler reports, one of its canons maintains that a cleric may not remove a bishop *pro dubia suspicione* until after the sentence; other canons however allowed for litigants to petition their bishop to delegate an alternative judge before the proceedings took place.27 Despite these apparent contradictions, the treatment of recusal in the *Decretum* and its ordinary gloss suggests a concern with the practical implications of allowing litigants to recuse their judges. While the right was preserved, Gratian was also concerned with the problem of litigants forcing their adversaries to travel great distances to appear before a delegated judge.28 To this end, the emergence of *recusatio* as a tool for litigants was firmly grounded in the *Decretum*, but subject to its own set of restrictions and considerations.

*Expanding the Grounds for Recusal: The Decretal Collections*

A decade before William Durantis finished his compilation of judicial procedure in the *Speculum Iudicale*, his teacher Bernard of Parma (d. 1266) provided a gloss on the kinds of impediments that could disqualify a suspect judge. He divided these impediments into three categories: those of nature, of law, and of custom.29 Impediments of nature referred to the status of the judge, and were agreed upon by virtually all the jurists.30 By the end of the thirteenth century, these disqualifications came to be extensive, and usually included the excommunicated, the infamous, the sick, the deaf, the dumb, the illiterate, Jews, slaves, perjurers, and those under the age of eighteen.31 Women were also generally excluded from the office.32 Unlike impediments of nature, disqualifications determined on the basis of law and custom were far less certain, and gave rise to a series of disputes among the canonists, both in the decretal collections and in the *ordines*. It was in these texts that the grounds for *recusatio* were expanded and reformed.

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27 C. 8 q. 4 c. 1
28 C. 3 q. 6 c. 2
29 Ad c. 41, X, *de officio et potestate iudici delegati*, I, 29 s.v. *aetatem eandem*.
30 The exception to this was William of Drogheda, who dissented from a number of these conditions. Hostiensis notably exempted on the issue that the deaf and dumb should be disqualified. Hostiensis, *Summa* t. de off. et pot. iud. del. § 3.
31 Glossa ordinaria, s.v. *aetatem eandem* ad c. 41, X, *de officio et potestate iudicis delegat*. I, 29.
In the years after the publication of Gratian’s *Decretum*, the grounds for recusal underwent a systematic expansion. Under Pope Eugenius III (1145-1153), laymen were prohibited from serving as judges in ecclesiastical affairs. Alexander III furthered these developments by also placing the onus for *recusatio* on the judge, and required that a delegate admit any reasonable exception for his own removal, including the exemption found in the *Decretum* prohibiting lords from judging their vassals.

Pope Lucius III (1181-1185) took a step further in his expansion of the conditions for *recusatio*. He required that a judge delegate receive any justified call of suspicion. Upon an action of recusal, two arbiters chosen by the parties were responsible for upholding or rejecting a litigant’s objection. During this period, the delegate was suspended from further judgment, but could compel the arbiters to make their decision within a set period of time and to consult a third arbiter if they were unable to reach an agreement. This formula would generally remain the practice of *recusatio*, with one alteration introduced under Boniface VIII (1294-1303) requiring that a separate judge (rather than the two arbiters) be used to assess the merits of the challenge. In addition, even when judges were delegated directly by the pope and could not be appealed to a higher court by papal rescript (*appellatione remota*), Lucius ruled that this did not preclude an action of recusal.

Following in the footsteps of Lucius, Innocent III also adopted a number of rulings expanding the right of recusal, thus reflecting the high standard of proof needed to establish judicial impartiality. He argued that even a delegate who had previously been a party in...
a separate but identical case should be removed. In addition, Innocent mandated that any delegate called upon by necessity to act as a witness in his own case should be disqualified.

One of the most enlightening developments to come out of the papal decretals was the rule concerning consanguinity as a ground for recusal. The decretal Postremo (X. 2.28.36) grew out of a case where it was discovered that a judge delegate was related to one of the parties by consanguinity. Despite the letter’s clear disqualification of the judge, the decretal raised the issue of the degree to which consanguinity should be applied as a disqualification. While the Fourth Lateran Council (1215) reduced the degree of consanguinity to four degrees for the valid contraction of a marriage, the gloss to the decretal indicates that this rule did not sufficiently resolve the issue of the removal of a judge. It was not the degree between two parties that disqualified a judge, but “how far [the] affectio of the family extends, since it is affection which here destroys impartiality.”

The gloss concludes with the mandate that in cases of doubt, it is better to recuse a judge “whose family or feudal position might normally give rise to pre-judgment.”

Taken together, the papal decretals reflect a growing insistence that a judge should err on the side of caution. Recusatio was by definition an exceptional remedy that could be used by the litigant if he saw fit. It was invoked by the will of the litigant and the presence of one or more of the grounds for recusal did not automatically nullify the judgment. Given this reality, the manner in which a litigant proceeded with an action of recusal or appeal tended to depend upon the response of the judge. An appeal from injury or

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39 C. 18, X, de iudiciis, II, I. “…Cum propter causam suam similem nimis favorabils videtur alteri parti.”

40 C. 40, X, de testibus et attestationibus, II.

41 Hostiensis, Summa Aurea, t. de recusationis iudiciis delegationes. § 3. “Johannes Andreae also included under this title the case where the judge had been created the presumptive heir of one party, either in whole or in part. Durantis added that it covered stepsons and daughters as well.” Helmholz, “Canonists,” 394-5.

42 Glossa Ordinaria ad X 2.28.36 s.v. consanguineus. “…Cum remaneat affectio, potest recusari usque ad illum gradum in quo posset ei succedere. Nam familiarissatis affectio veritatem impedire solet…”


44 Helmholz, “Canonists,” 401.
suspicion needed only to be probable and performed in writing.\textsuperscript{45} If however a judge refused the appeal, a litigant would be obligated to prove the validity of his complaint before an appeal judge. On the other hand, if a litigant offered to prove his suspicion before the judge ordinary and was refused, he would still only be required to prove a probable injury, leaving the appeal and the subsequent burden of proof to be later ascertained at the appellant court. Ultimately \textit{recusatio} was a right given to litigants on the basis of a suspicion of impartiality rather than a full-fledged determination, but its effects only came into existence when the cause of suspicion was proven.\textsuperscript{46}

In addition to developing a clearer definition of \textit{recusatio}, the growth of exceptions recognized by the papal decretals also brought forth a rise in abuses. Stanley Chodorow’s study on dishonest litigation in the church courts sheds light on many of the problems faced by ecclesiastical officials during this period.\textsuperscript{47} Gratian had already addressed the issue of appeals obtained by \textit{falsa sugges
tione} in his \textit{Decretum}, but the issue was formally taken up by Pope Celestine III at the close of the twelfth century. He wrote that if a bishop suspects a person has put forward an appeal either to avoid a judge, disturb another’s right, delay a judgment, or prejudice a case, he may “restrict the term allowed for prosecuting the appeal to twenty days.”\textsuperscript{48} From then on, appeals made to the pope would be required to bear a stamp of approval from the local bishop.\textsuperscript{49}

The specific problem of *recusatio iudicis*, which was formally recognized under Pope Lucius III, reflects the insistence on the part of the church to combat frauds connected with a litigant’s choice of court. Lucius’ letters indicate that litigants were not allowed to choose a court simply to prejudice the final verdict. His letter “Ad hec sumus” specifically condemns the actions of litigants who continuously avoid the verdict of judges ordinary by repeatedly committing their cases to judges delegate.\(^50\) An additional letter condemns the use of remote judges in order to prevent adversaries and their witnesses from attending the trial. A variety of cases under Celestine III dealt with this same problem.\(^51\)

**III. Recusatio under the Ordines and the Concept of Aequitas**

Beyond the grounds for *recusatio* expressed in the papal decretals and the early canonical tradition, the later-twelfth century canonists had also continued to emphasize the role of *recusatio* in ecclesiastical trial procedure, but dually noted the restrictions necessary for curbing its abuse. In England, Henry de Bracton adopted many of the grounds put forth by the Decretals.\(^52\) On the continent, the jurist Huguccio famously adopted the Roman distinction between recusal and appeal in his *Summa* to the *Decretum*, suggesting that an appeal could be drawn up at any time during or after the trial, while *recusatio* was to be initiated some time before the

\(^{50}\) JL 15208; X 1.3.10.

\(^{51}\) JL, 5.4.22 “Cum ecclesiam de N, per presentationem patroni et institutionem diocesani episcopi canonice fuisset adventus (the appellant) et eam aliquamdiu pacifice possedisset, H. clericus apostolicas litteras ad venerabilem fratrem nostrum. Helyensem episcopum et dilectum filium nostrum abbatem de Croilandae tacita veritae impetravit, quibus eum ad locum per octo diebus ab ecclesia ipsa remotum a delegatis fecit citari iudicibus.”

trial began. This narrow view of recusal would come to be challenged by the jurists of the following century.

At the start of the thirteenth century, a number of canonists began compiling *ordines* for the canon law, recording not only the substantive components found in the *Decretum* and the *Decretals*, but also the procedural law required for expedient practice. The jurist Tancred of Bologna was one of the first jurists of the century to clearly delineate the role of the judge, witness, accuser and advocate in his *Ordo Iudicarius*. He defined *recusatio* strictly as an exemption, and paved the way for many of the procedural innovations that would come to fruition throughout the course of the thirteenth century.

One of the key developments for *recusatio* came through the efforts of Hostiensis (Henry of Segusio), a prominent Bolognese canonist of the thirteenth century. Clarence Gallagher S.J. has written at length about Hostiensis and his principal work, the *Summa Aurea*. Among his many contributions, Gallagher noted the importance that Hostiensis attached to canonical equity (*aequitas canonica*). The *Dictionnaire de Droit Canonique* defines canonical equity as “a superior justice to the positive law, which on account of the spiritual general or particular well-being mitigates the severity of law.” In this regard, canonical equity (and equity more generally) arises to address the problem of abstraction often found in the legal guidelines of a society. While the rules for the promotion of the common good are important hallmarks of a just society, they are often too general to address the innumerable circumstances

53 C. 2 q. 6 c. 16 ad v. *suspectos*: “in principio cause vel ante et tunc non proprie dicitur appellatio, sed recusatio sive proclamatio.”
54 Fowler-Magerl, *Ordines Iudiciarii*, 42.
that may fall under the law. Isidore of Seville notes that the concept of *aequitas* is etymologically related to equality, in which equal treatment is given to those equally deserving. For this reason, G. Evans suggests that *aequitas* acts to extend the law in practice (*extensio legis*). In other words, equity realizes in practice the ideal of justice. At the same time, canonical equity should not be confused with non-legal devices used by religious bodies to resolve legal questions. It emerges from the written and practiced law of judges, administrators, and jurists.

For Hostiensis, equity played a significant role in protecting the rights of litigants at trial; the clearest example was the guarantee of impartial justice and a fair trial, extended to even the lowliest excommunicate. Gratian had suggested that the neutrality of the courts did not preclude the need for fairness, but Hostiensis was the first to speak about *recusatio* as a way of preserving *aequitas canonica*. For instance, in defining the judicial office, Hostiensis acknowledged the practical concerns of a judge who ought not decide a matter for gain but could at the same time reasonably demand that his expenses be paid. This suggests that Hostiensis drew a clear distinction between the actions and intentions of an officiate. He included in his list of thirteen judicial disqualifications the bribery of a judge through the transfer of gifts, but added the caveat that remuneration could still exist, so long as it was not connected with the expectation of a favourable judgment. For Hostiensis, the fault did not lie in the fact that money had ex-

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58 S. Isidorus Hispalensis Episcopus, *etym.*, X.7 (Migne, P.L., LXXXII, 368): « *aequus, est secundum naturam iustus dictus, ab aequalitate, hoc est ab eo quod sit aequalis; unde et aequitas appellata ab aequalitate quadam scilicet. »
61 In his article on canonical equity, Coughlin points to the Orthodox concept of *oikovoqia*. See: John Meyendorff, “Contemporary Problems in Orthodox Canon Law” *Greek Orthodox Theological Review* 41–50 (1972), 43–44.
63 Hostiensis, *Summa Aurea*, I, *De officio ordinarii*, n. 3 (C. 12, q. 2 c.9).
changed hands, but in the corruption of the judge “pecunia inter-
veniente.”64 Subsequent jurors reconciled this challenge by distin-
guishing between small and large gifts, but the principle that
recusal could also be determined through an examination of the
judge’s state of mind reflected a canonical development both in de-
gree and in kind.65

In his list of the grounds for recusal, Hostiensis’ contributions are
particularly noteworthy. He dissented from the majority opinion
that the deaf and dumb should be excluded from the judicial office,
but sided with Innocent III in suggesting that a judge could be dis-
qualified for his position in another action, especially if the action
involved nearly the same issues (similis paene causa). Hostiensis
reasoned that a judge who had previously had his own case legis-
lated over in a certain manner would “naturally have his mind
made up in advance in a similar case.”66 He also notably extended
the grounds for recusal to include the disqualification of judges
who were born in the same country as one the litigants.67 Richard
Helmholz has suggested that this condition may have been a pro-
duct of the time Hostiensis spent in England and the difficulties he
observed facing domestic judges. Regardless, his reasoning here
seems to parallel the general concept supplied by the decretals re-
garding consanguinity; that the relationship between judge and lit-
igant could not be strictly defined by degree, but should be exam-
ined on a case by case basis to determine if a special relationship
exists between the two individuals.68

Hostiensis’ emphasis that a judge should take into consideration
the individual circumstances of a case was one of the fundamental
characteristics of his understanding of the officium iudicis. In clas-
sical canon law, the officium iudicis did not only include the duties
of the judge, but consisted of the means and powers that a judge

64 Hostiensis, Summa, t. de recusationibus §1; Durantis, Speculum Iudicale, t. De
recusatione, §5. “…quia per eum corruptus est, pecunia interveniente.”
65 Helmholz, “Canonists,” 397.
66 X. 2.1.18; Durantis, Speculum Iudicale, t. de iud. del. §7.
67 Summa t. de rec. iud. del. §3. “Consuevit etiam livor invidiae regnare inter
indigenas et alienigenas,… ad decorem haec causa et quaedam aliae fecerunt me
Angliam elongare.” Hostiensis also mentions that this condition was no longer
applicable if both litigants were from the same country as the judge, since the bias
would cease to obtain importance.
had at his disposal to realize those duties precisely. For Hostiensis, these capacities could not be separated from the broader realization of *aequitas canonica*. Huguccio had previously considered the *officium iudicis* in terms of the absence of an action, but Hostiensis saw this as the complete exercise of the judicial function, particularly when a judge was called to mitigate the harshness of a rule out of necessity or utility.

**IV. Recusatio under the Speculum Iudicale**

Composed by William Durantis between 1271 and 1276, the *Speculum Iudicale* was the greatest of the *ordines* produced during the thirteenth century, swiftly becoming the standard work of judicial procedure across Europe. Only the *Tractatus Universi Iuris* would surpass its reach at the close of the sixteenth century. The *Speculum* was glossed by the fourteenth century jurists Johannes Andreae and Baldus di Ubaldi, and drew heavily from the canonical texts from which it followed. Its main purpose was to organize and comment on the many procedural aspects of the law, while presenting the variety of opinions expressed by the canonists over the course of the previous two centuries. The text was divided into four books, the first of which contained four parts and concerned the quality of the persons involved in an ecclesiastical judgment. It is within this book that Durantis’ discussion of *recusatio* can be found. The second book was divided into three parts and dealt specifically with civil procedure, borrowing significantly from Tancred’s *Ordo Iudicarius*. The third book concerned criminal procedure, and the fourth contained an assortment of judicial formulas.

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73 Fowler-Magerl, *Ordines Iudiciarii*, 56.
Among the many gifts bestowed by the *Speculum*, Durantis’ section “De recusatione” should not be overlooked. Hostiensis had expanded the number of possible disqualifications of a judge delegate to thirteen, while his contemporary William of Drogheda had managed to list sixteen. William Durantis, on the other hand, enumerated thirty-six distinct grounds for the recusal of a judge, the largest account in his day.\(^{74}\) A brief look at Durantis’ comprehensive list indicates the extent to which judges delegate received particular attention by the canonists. The fact that the canon law permitted a litigant to choose his own judge in the resolution of a dispute meant that higher standards of impartiality would necessarily be required.\(^{75}\) Beyond simply listing the impediments to a proper judgment, Durantis’ discussion also considered whether or not the recusal of a judge could always be sought at trial, particularly when an objectionable impediment arose after the selection of the judge had been made.

Durantis’ contributions to the procedure on *recusatio* are most visible with regard to his insistence on *aequitas*. Rather than simply restricting *recusatio* to specific cases of disqualification, as was the common practice, Durantis’ text reflects the spirit of Pope Lucius III, and included broader challenges like the godlessness of a judge or the absence of justice as sufficient grounds for removal.\(^{76}\) Durantis saw the judge as the bearer of both justice and equity, and for this reason one finds countless instances throughout his *Speculum* where he points to the dangers of judicial corruption. His treatment of notorious crimes, for example, which in the canon law referred to cases where the weight of evidence against the accused was overwhelming,\(^{77}\) did not prevent Durantis from expressing

\(^{74}\) Durantis, *Speculum Iudicale*, t. de iud. delegato §7. Only Phillipus Francus would surpass this list in the fifteenth century, with forty grounds for recusal.

\(^{75}\) Helmholtz, “Canonists,” 388; Durantis, *Speculum Iudicale* t. De recusatione §5.

\(^{76}\) Durantis, *Speculum Iudicale*, t. de iud. delegato §3.

caution.\textsuperscript{78} Even in the case of notorium, any procedure that abrogated the rights to a defense should be avoided.\textsuperscript{79}

Durantis’ section \textit{De recusatione} reflected this same disposition. He begins his discussion by questioning the inability of an appellant to properly challenge a suspect judge: “Nunquid ergo actor poterit recusari.”\textsuperscript{80} Given that \textit{recusatio} was understood to be an exemption, and exemptions were traditionally reserved for defendants, Durantis affirms that both litigants should be permitted to challenge a suspect judge.\textsuperscript{81} In this way, Durantis followed Hostiensis in his characterization of \textit{recusatio} as more than an exception, but an essential feature of the \textit{officium iudicis}. The judge did not merely balance the two sides of a complaint; he also had to be impartial. Impartiality, however, did not consist in indifference, and unless a judge was willing to seek out both truth and fairness in a given case, he could not apply the equitable remedies required by his office. For Durantis, \textit{recusatio} was therefore the safest way for litigants to bring the judge to this point of neutrality required by his \textit{officium}.\textsuperscript{82}

In following Hostiensis’ expanded view of recusal, Durantis reaffirmed the view first put forth by the twelfth century jurist Martinus, which stated that both a judge ordinary and a judge delegate could be recused, contrary to the established civil law tradition.\textsuperscript{83} For a judge delegate, peremptory suspicion could suffice; for a

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\textsuperscript{79} Durantis, \textit{Specul. III partic.I De notoriis criminibus}, §1.13. “Hodie autem valde iudicium in hac inquisitione exuberat: ipsi namque adeo defensiones arcant, ut vere dici possit, quod eorum officium latissime patet… nonnumquam enim hominem inauditum et indefendum statim suspendunt. Sed certe quicquid fiat, nulli est de iure legitima defensio deneganda…”

\textsuperscript{80} Durantis, \textit{Speculum Iudicale}, t, \textit{De recusatione}, §3.

\textsuperscript{81} Durantis, \textit{Speculum Iudicale}, t, \textit{De recusatione}, §3.

\textsuperscript{82} Boris Bernabé, \textit{La récusation des juges}, 98.

judge ordinary, suspicion was needed with the addition of a reasonable cause. In adopting this view, Durantis insisted that *recusatio* was born from suspicion rather than a defined set of disqualifications, and suggested that an infinite number of grounds for *recusatio* can exist in both the delegated and the ordinary courts, provided that the latter action was supplied with a *causa rationabilis*.84

Durantis begins his comprehensive list of disqualifications with a discussion of the causes that reveal a relationship of subordination or association between the judge and the appellant (meaning that only the defendant could raise the challenge). His next set of causes can be raised by both parties, and relate to the excess of favour or kinship ties between the judge and either one of the litigants. Durantis then goes on to repeat the prohibition against judges who are enemies of the accused, and even suggests that recusal may be granted if a judge shares the same interests as one of the parties.85

Later on, Durantis continues the discussion initiated by Hostiensis regarding the legitimacy of the exchange of gifts in a judgment. Although Durantis agrees that a distinction should be made between action and intention, he seems to favour a hard-line approach, and states that a judge may not accept any type of gift (*munera, xenia, donors*), whether it is a material good, a gift of convenience (exchange of services), a gift of words (a promise), or a gift of blood (familiar status). For Durantis, each one of these exchanges had the effect of potentially devaluing the moral obligations attached to the *officium iudicis*.86

Given that Durantis did not attach *recusatio* exclusively to an exception in the canonical procedure, one of the most notable innovations found in the *Speculum* is the expansion of the constraints placed on litigants regarding the timing of a judge’s refusal. Unlike the established practice in the civil law, Durantis did not consider the *litis contestatio* to be the *terminus ad quem* of the refusal. He argues that the traditional twenty days should always be given after the filing of the application of a suit, regardless of the date of

the *litis contestatio*. As has been shown above, this issue had not been fully resolved within the civil law.\textsuperscript{87} For Durantis, disqualification was not simply a safeguard for the rights of litigants, but an *a priori* guarantee of the moral duties of the judge. For this reason, a judge should be subject to the moral burden of his *officium* both before and after the *litis contestatio*.\textsuperscript{88}

The lack of concern expressed by both Durantis and Hostiensis regarding the timing of the recusal also had the effect of occasionally narrowing the grounds for disqualification. On one occasion, Hostiensis argued that if a judge delegate fell under legal incapacitation (infamy or excommunication) during the course of the trial, it would be reasonable to remove him even after the trial had begun. Nevertheless, he added that “immediately upon cessation of these conditions” the judge would be allowed to regain his jurisdiction to return to the case.\textsuperscript{89} This principle is also to be found in the *Speculum*. Durantis argued that although a litigant was barred from objecting to a judge to whom he had agreed, if an objectionable impediment arose after the selection of the judge was made, he should be able to intervene *postmodum*. This was frequently the case in instances of bribery.\textsuperscript{90}

In treating *re cusatio* as a species of the *officium iudicis*, Durantis’ *Speculum* emphasized the principle put forward by Bernard of Parma, which stated that “*re cusatio et appellatio parificantur.*”\textsuperscript{91} Durantis’ *De recusatione* specifically noted that when an arbiter determined that a suspect judge delegate was guilty, that arbiter could succeed him “in the [like] manner of an appeal judge.”\textsuperscript{92} In this way, Durantis seems to reject the strict line drawn by the earlier jurists between *re cusatio* and appeal. For him, both were tools

\textsuperscript{87} Durantis, *Speculum Iudicale*, t, *De recusatione*, §3. “Fit autem recusatio usque ad 20 dies, secundum leges […] et hoc sive sit lis contestat, sive non; dummodo intra viginti dies proposuerit, secundum quosdam.”
\textsuperscript{89} *Commentaria*, II, *De testibus et attestationibus*, c. 40, para.3.
\textsuperscript{91} Durantis, *Speculum Iudicale*, I, *De recusatione*, §5, nos. 1 and 4.
\textsuperscript{92} Durantis, *Speculum Iudicale*, I, *De recusatione*, §5, nos. 1 and 4.
that a litigant could use to ensure the proper function of the officium iudicis.

Above all, the Speculum Iudicale saw the expansion of recusal into a far greater part of the procedural law. Not only did Durantis introduce a whole new set of disqualifications for judges ordinary and delegate, but he also described the place of recusatio as a function of the officium iudicis. The refusal of a judge was an expression of equitable relief, and it is notable that Durantis chose to dedicate an entire section to the subject, a practice that appears far less frequently in the work of his predecessors.

V. Conclusion

A brief look at the development of recusatio in the canon law may leave the impression that the standards of impartiality put forward by the medieval canonists were impossible to satisfy. Yet a closer look reveals that recusatio was not an unrestricted right in the hands of litigants, but one of the means by which aequitas canonica could be preserved through the officium iudicis. Despite the expansion of the grounds for recusal over the course of the twelfth and thirteenth centuries, a close reading suggests that canonical jurists were less interested in identifying a complete list of disqualifications. Rather, they were concerned with describing the types of qualities, relationships, and states of mind that might lead a judge astray in his attempt to reach a sound judgment. Notwithstanding the frequent challenge of petitioners using recusatio to delay or frustrate a judgment, the canonists expressed a clear desire to preserve equitable relief at court, and one of the ways this was realized was through the enlargement of the scope of recusatio iudicis under the canon law.
Indirect Rule: Law and Questionable Ambitions in British East Africa

Hannah Reid*

“While we talk very much about shouldering the white man’s burden, we take great care to secure for ourselves the black man’s land.”¹

On 15 June 1895, Britain declared a protectorate over East Africa. An intersection of Islamic, customary and British law began. The British imported their law and officials to enforce it, but how strong was the colonial hold on law and order? Indirect rule was utilised to rule through ‘traditional’ authorities, but why was this strategy employed and to what effect? Historian David Killingray admitted it is perhaps “unfashionable” to assert that British colonial rule in East Africa was relatively peaceful, and order was maintained in

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¹ Edmund Harvey, Member of Parliament (speech to the House of Commons, London, 28 July 1914).
contrast with the often violent conditions which previously prevailed. Upon exploring law in British East Africa, I would argue that recognising this relative peace is crucial. The law was used as a tool by the British to ease economic strains on their rule, and to appease incoming European settlers, but it was also utilised for noble pursuits. Individual chiefs and administrative officers should be acknowledged for using indirect rule to benefit African communities and improve customary law.

This work first examines the background to British rule in East Africa. It explains how the British gained control of the region and imported British law. I then outline the key players involved, namely the indigenous East Africans and European settlers. It should be noted the historical scope of this paper does not venture beyond 1952, for the Mau Mau uprising and consequential state of emergency in Kenya saw a departure from previous systems of law and order. The second section looks specifically at indirect rule, its vices and virtues, and what it says about British colonial ambitions. Thirdly, I will delve into the court system. Native courts were a foundational branch of indirect rule, and significant tension arose between the administration and judiciary over who should control these courts. I will then look at customary law and how it evolved during colonial rule. Following this, I analyse the effects of the court system. This leads into analysis of the intentions of the British in East Africa. Indirect rule was utilised by the British to create a climate conducive to finding and cultivating resources, which proved economically beneficial. I will show how this argument is most evident in the British land, tax and labour policies. However, many British genuinely believed indirect rule was the least intrusive, and most respectful, way to govern Africans. They showed great interest in gradually developing African societal structures and legal systems in line with British moral standards. Hindsight allows us to easily critique British motives and actions in East Africa, but genuine motives should be acknowledged, alongside the agency and innovation of African chiefs.

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I Background

Britain’s initial interest in East Africa began with suppression of the slave trade. In 1839, a British observer estimated that 40,000 to 45,000 slaves were sold annually in the Zanzibar market. In the 1880s, the European powers began solidifying claims to African territories. The 1885 Berlin Conference convened to resolve disputes between the powers regarding the coasts of Africa. It acted as a forum for negotiation. The powers emerged with a General Act of the Conference, setting out rules for legal acquisition of territory, under the banner of moral repugnance of slavery. Henceforth began the “scramble” for East Africa. Germany, France and Britain agreed that the Sultan of Zanzibar ruled the coast for ten miles inland, leaving the interior legally ownerless. Germany began concluding agreements with tribes, prompting Britain to enter an agreement with Germany to divide the inland territory in October 1886. This divide is the present Kenya-Tanzania border.

In 1888, the British East Africa Association, founded by William Mackinnon, was given authority over the British portion of East Africa. Though in law the Company was regarded as a commercial entity, it was a “familiar disguise” for government rule. The Company had the power to appoint commissioners to districts, enact laws, establish courts and acquire land. The Company dressed up governmental administration and called it commerce. By the

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5 Ghai and McAuslan, above n 4, at 4.
7 Ghai and McAuslan, above n 4, at 5.
8 At 5.
9 At 7.
10 At 8.
1890s, it drew criticism for being “ramshackle” and “poorly conceived, badly managed and grossly undercapitalized.” It did little to open up the country to trade. Mackinnon’s Company acted as caretaker for the territory while the British government deliberated how best to undertake, and fund legitimate administration.

A Colonial Jurisdiction

In 1896, the East Africa Protectorate was conceived and began to flesh out a framework for justified authority. Britain had authority over the territory now called Kenya and by 1902, Uganda. Tanzania came under British mandate officially from 1922 onwards, after the League of Nations took the territory from Germany. The 1889 Africa Order in Council provided British authority over British subjects and foreigners who submit themselves to the jurisdiction. According to Yash Ghai, this marked the beginning of the “period of experimentation” of administrative machinery. The role of Commissioner was established, conferring extensive powers to establish and regulate courts, make laws and establish a force to maintain order. The Commissioner enjoyed immunity from the courts and the only limitation on his power was instruction from London.

Jurisdiction was expanded in the East Africa and Uganda Orders in Council 1902, which gave the Crown full jurisdiction over all people and all matters. In addition, this Order established a High Court in each protectorate area and divided the country into districts and provinces. This shifted the focus from jurisdiction to

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11 At 11.
12 At 12.
13 At 12.
15 At 45.
16 Ghai and McAuslan, above n 4, at 37.
17 At 38.
18 At 38.
19 Morris, above n 15, at 46.
20 At 46.
administration. The new requirement of the Commissioner was to “respect existing native laws and customs, except so far as the same may be opposed to justice or morality in the making of legislation.” In London, responsibility for East Africa lay with the Foreign Office until 1902, when it switched to the Colonial Office. From 1896 to 1905, Britain gradually extended the scope of authority in East Africa, introducing a judicial structure and all-inclusive jurisdiction across her dependent territories. Just as the name change to ‘Protectorate’ was a mere declaration of what was already commencing, the change to ‘Colony of Kenya’ in 1920 was also a formality. It should be noted that Uganda remained a ‘Protectorate’ rather than a ‘Colony’, but that status had little influence directly over administration. The declaration of ‘Protectorate’ did not convert the territories into dominions of the Crown, but the commencement of administration paved a path towards Britain acquiring full legal and constitutional authority over East Africa. The Commissioners and Governors had wide discretionary powers until East African nations gained independence.

B Indigenous East Africans

The British encountered a diverse and sporadically located indigenous population. Buganda was a relatively organised society with hierarchical leadership and a kabaka. Further east, there was little evidence of chiefs save for some tribes like the Maasai with traditional chieftainship. Instead there were tribal groups, divided into clans, then divided into villages. Land was not held absolutely, rather it was allocated to individuals to cultivate and belonged to them as long as they continued to use it. There was

21 Ghai and McAuslan, above n 4, at 41.
22 At 41.
23 At 32.
24 Morris, above n 15, at 70.
25 Ghai and McAuslan, above n 4, at 78.
26 Translation: king.
28 At 8.
29 At 8–9.
often a council of elders who executed tribal will. Major Orde Brown observed:

Law was civil rather than criminal; marriage, like murder, was regarded as the removal of a social unit from the group, thus requiring compensation; useful occupation was the justification for land tenure; mutual aid with food, shelter, or protection was the rule of the tribe, with its concomitant generous hospitality; and the authorities, whether chiefs or elders, received unquestioning obedience.

Central to understanding why and how Britain undertook administration is understanding what they thought of the indigenous population. Charles William Hobley, a Colonial Service administrator, described African characteristics:

...they are usually dominated by the impulse of the moment, rarely considering either the past or the future...they have happy dispositions and a sense of humour...generally endowed with a lazy habit of mind...usually greedy and covetous...they will share food with friends to an extent unbelievable by Europeans.

Based on these impressions, British administrators assumed Africans were not ready to represent themselves or articulate their interests, thus agreements were concluded with local tribes from the 1890s onwards to establish a rudimentary system of administration. This was developed with Orders and policies carving out a more comprehensive administration.

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30 At 8–9.
33 Morris, above n 15, at 45.
C  European Settlers

Settlers fundamentally influenced how Britain established authority in East Africa. The primary influence was European and secondary was Asian. Arab traders from Northern Africa and the Middle East were a frequent presence, but it was Indian workers who established a strong presence during construction of the Ugandan railway from 1896 to 1901. British settlement in East Africa became an active policy in 1903. Settlers were needed to bring capital and transform East Africa “from a liability into an asset”. The 1905 Order in Council was more or less a response to settler demands. It created Legislative and Executive Councils and expanded British jurisdiction. As the settlers demanded more democratic processes, full adult white suffrage was provided for. Settlers were represented in the Legislative Council. In addition, missionaries saw themselves as “trustees” for Africans, and wove their interests into government policy. Kenneth Ingham argued that annexation to become a colony in 1920 was a concession to European settlers. While it is more likely the status change was related to legal and constitutional anomalies, there is no doubt that the European settler population had significant influence over the colonial government.

II  Indirect Rule

Indirect rule was a strategy conceived by Frederick Lugard, High Commissioner for Northern Nigeria from 1899 to 1906. Sir Donald

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34 Ghai and McAuslan, above n 4, at 36.
35 At 42.
37 Ghai and McAuslan, above n 4, at 32.
38 At 46.
Cameron’s 1932 Native Administration Memorandum No 1 for Tanzania described indirect rule as “the principle of adapting for the purposes of local government the institutions which the native people have evolved for themselves”. The British wanted to use native machinery to govern and administer the vast territory. Manpower and resources were thinly spread across East Africa, so indirect rule delegated authority. This system dominated administrative policy throughout colonial rule, though it was most “fashionable” between the two World Wars. The primary instrument for indirect rule was the chief. The chief was to be advised, guided and supervised by the administrative district officer, whose authority derived from the 1926 Native Administration Memorandum. A hierarchy was created where the Commissioner or Governor passed direct orders to district officers, who then ‘indirectly’ guided the chiefs to enforce government policy. Other instruments were established, notably Native Councils in 1924 and tribal police in 1929, but the essential mechanism for indirect rule was the chief.

The societal structures of pre-colonial indigenous African communities presented a hurdle for indirect rule. Tribes of Kenya were mostly non-chiefly in social order. This meant the administration had to select chiefs. The situation was different in Buganda, which already had a centralised hierarchical kingdom with village chiefs. Impressed with the Bugandan sophistication, the British aimed to introduce similar chiefly rule to the rest of East Africa.

42 Morris, above n 40, at 3 and 30.
43 At 23.
44 Dilley, above n 28, at 29–30.
46 Although in Uganda from the 1920s chiefs started to be appointed based on education or ability rather than claim to traditional authority. See Morris, above n 40 at 29.
Chiefs were appointed by the administration and owed their authority to the administration and the Village Headman Ordinance 1902.47 From the outset, the very means by which indirect rule was established appeared not to uphold the prestige of traditional organisation, but to introduce the administrative instrument of a ‘chief’. Harry Thuku said: “Chiefs are like dogs – they bark at the sound of other dogs, and when their masters want them to, and also when they want to be fed by the government.”48 The appointment of chiefs in the largely chiefless societies in Kenya and Tanyanyika built a framework for indirect rule, the installation of which appeared suspiciously ‘direct’.

Some chiefs used indirect rule to benefit their communities, but many used their newfound power to enrich themselves. Chiefs could employ assistants and compel attendance before native tribunals.49 The East Africa Protectorate Ordinance 1912 conferred duties upon chiefs to maintain order, arrest offenders, control alcohol and arms, collect tax and prevent the spread of diseases.50 Chiefs were also used to seek the opinions of their community on proposed policy. District officers toured areas with the local chief and explained policy to the Africans; a baraza might be held to hear concerns.51 Henry Francis Morris remarked that given the attitudes of colonial administrators and the limited resources available, “it is hard to see that there was any alternative system of administration which could in fact have been adopted and which would have proved more equitable or effective.”52 Chiefs were indeed effective, and they proved key agents in determining how indirect rule could influence their clans and villages.

47 Ghai and McAuslan, above n 4, at 134.
49 Dilley, above n 28, at 27.
50 Morris, above n 40, at 21.
51 Translation: A meeting held by a group of wise people.
52 Morris, above n 40, at 10.
The chiefs were not mere slaves to the colonial authority. Dual loyalty to the British and to their communities resulted in some genuine representation and advancement of African interests.53 Historian Dr Benjamin Kipkorir tested the hypothesis that chiefs manipulated indirect rule for personal enrichment and found this did not always appear to be the case.54 Chief Koinange in the Kiambu District was the first Kikuyu to use a plough and barbed wire on land, and the first to build a mill for grinding grain.55 He had a reputation for being fair, never taking bribes and making balanced and well-reasoned decisions.56 The Native Councils demonstrated a surprising “willingness to tax themselves” to build schools, roads and other education facilities.57 Some chiefs used indirect rule to improve conditions in their communities, using their new authority to introduce favourable economic and social ideas.

Other accounts tell a very different story. Failure to obey the order of a chief was an offence, carrying punishments of a fine or up to two months imprisonment.58 The empowerment of British-appointed chiefs over traditional elders caused some hostility and difficulties.59 Harry Thuku criticised chiefs like Njiri of Fort Hall for resisting new agricultural techniques and holding informal courts in their own houses to make money in addition to charging native court fees.60 Jairo Okello was chief of Yimbo between 1914 and

53 Although representation became more difficult when chiefs were given a salary paid by the native treasury. See Morris, above n 40, at 25 and 31.
56 At 63.
57 Dilley, above n 28, at 29.
58 Morris, above n 40, at 22.
59 Ghai and McAuslan, above n 4, at 134.
60 Thuku, above n 49, at 62.
1926.61 He enforced harsh taxes and forcibly recruited young men as labourers and soldiers for World War I (WWI).62 Many chiefs provided lists of people who allegedly died in the war and requested the government strike their names off the tax-roll, when in fact these people were still alive and paying taxes directly into the pockets of the chiefs.63 This kind of corruption shows the way indirect rule was utilised by chiefs for personal gain. Any loiterers near Okello’s residence were arrested by his retainers and caned.64

By 1915, “almost all of the African tribes expressed concern over the ferocity and corruption of certain chiefs.”65 When an elder in Yimbo, Bartholomew Ogutu, was asked why the community did not report Okello to the district commissioner, he claimed that it was a fool’s errand to venture for days on foot to find the “white man at Kisumu” who spoke a different language.66 The district officers “were gods my child” and it was cheaper and safer to be caned or pay fines than to risk your life reaching the district officer to complain.67 When the British wrote a report on Okello, they said he was “a good chief, greatly respected by his people, does his work well and there are no complaints from his location.”68 Communication difficulties coupled with the ease of corrupting the indirect rule system supports the conclusion that many chiefs took advantage of the system for personal enrichment. While there is no denying some chiefs honestly and genuinely advanced their communities, I hesitate to give chieftaincy more credit than it may deserve.

62 At 185.
63 At 199.
64 At 200.
65 At 201.
66 At 204.
67 At 204.
68 At 185.
A Analysing Indirect Rule

Cooperation between administrative officers and chiefs was fundamental to colonial rule. The testimony of administrative officers reveals their thoughts on the significance of indirect rule. One theory is that the chiefs were installed to mitigate the harsh new system of government inflicted on Africans.69 Violent incidents were seen by colonial officers as a failure, and they wanted peace and development for Africans led by one of their own. John Ainsworth was a long-serving administrative officer in East Africa who used ‘soft power’ to engage with the Maasai.70 The Maasai had warlike traditions which not only interfered with railway construction, but manifested itself in raids on villages and cattle theft. The Kedong Massacre in 1895 resulted in the massacre of hundreds of Swahili and Kikuyu, and a British trader, by the Maasai. Instead of punishing the Maasai, John Ainsworth recognised they had been provoked by a Swahili headman, and he absolved the Maasai leaders of blame. This decision “deeply impressed them and seems to have given them greater confidence in the fair mindedness of the Europeans.”71 Indirect rule was used by administrative officers to shield Africans from the sharp impact of British authority.72 Administrative officers often felt the need to protect traditional African values and were particularly sceptical of missionary activities like the imposition of Christian concepts of marriage.73 Hobley recalled how a community asked him to stop a magician named Mgahanya in north Kisumu, who was posing as a rain-maker and taking cows in exchange for ineffective magic powers.74 Hobley simply brought Mgahanya to his home and asked him to stop. He noted:75

69 Killingray, above n 3, at 417.
71 At 43.
73 Morris, above n 40, at 16.
74 Hobley, above n 33, at 119.
75 At 119.
...these rough and ready methods of dealing with crises as they arose may be scoffed at by budding administrators, but the guiding principle was to do something which appealed to the native mind, and was more or less in accordance with their point of view. In this way one gained their confidence.

Installing chiefs and attempting to act in accordance with local wishes was a way for administrative officers to gain the confidence of Africans. It could be suggested that this was undertaken with intentions to respect customs while bringing gradual development to the communities.

Another way to look at indirect rule is to see the relationship between officer and chief as less cooperative, and more subordinative. Sir Charles Eliot noted that “most observers” had remarked Africans were “incapable of self-restraint, foresight, and fixed purpose or organisation”. Administrative officers in this sense took advantage of headmen to enforce government will and new offences. Indeed, the 1926 Ordinance made it a criminal offence for chiefs to refuse to issue orders from administrative officers. E.K. Lumley, a district officer in Tanganyika from 1923 to 1944, told of a chief who ‘was not beneficial to his tribe’ because he could not or would not force his people to pick a cotton crop. He was relieved of his duties. This view suggests that the district officers saw chiefs as nothing more than convenient tools for the imposition of British policy. However, there were blatant intentions of some district officers to visit the communities and hear concerns, to make decisions in line with African custom, and to maintain order with genuine development concerns. It would be naive to suggest this was the intent of colonial policy as a whole, but to brush all officer-chief relationships with a paternalistic or exploitative brush would overlook the genuine efforts of some administrative officers.

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77 David V Williams “Law and Authority in Colonial Tanganyika” (2013) 3 Zanzibar Yearbook of Law 201 at 209.
78 At 210.
B Virtues and Vices of Indirect Rule

Indirect rule as a colonial strategy had both virtues and vices. The question remains; how should historians assess and remember indirect rule? James Read argues that indirect rule should be viewed not as a system, but a principle to be invoked and adopted for various motives, and for district officers it was “a creed by which they were inspired to offer a devoted, and primarily selfless, service, and at a time when such service was being made increasingly difficult by contemporary changes”.79 For Africans, indirect rule was a means to take advantage of British practices which could benefit their traditional way of life. Although some British-appointed chiefs exploited indirect rule for personal gain, Kipkorir argues that “the overwhelming impression which the studies give is that on the whole, the chiefs enjoyed a considerable degree of support from their people, and not without reason.”80 Indirect rule adds a new dimension in how to look at imperialism, that dimension being collaboration. That being said, the virtues of development and respect for African tradition cannot overpower the stance that indirect rule was a convenient way to surreptitiously govern Africans directly.

Indirect rule was anything but indirect.81 While it was used by some Africans to improve their livelihoods, historians are quick to point out the intentions behind its implementation and utility. William Robert Ochieng argued that “no well-intentioned African who was employed in the colonial service had a chance to administer authentically to the positive needs of his people” because tax and labour policies implemented through chiefs were extractive.82 Chiefs could not be true traditional authorities because of reliance on the British for security of office. Allowing Africans to implement British agricultural or trade practices relied on the good will of the British. For instance, policy towards Africans in Kenya included large-scale alienation of land to non-Africans and strict regulations on how they could grow and trade crops. Ugandan land, however,

79 Read, above n 42, at 286.
80 Kipkorir, above n 55, at 9.
81 Williams, above n 78, at 202.
82 Ochieng, above n 62, at 181.
was not as suitable for settlers, hence Africans in Uganda were encouraged to grow coffee and cotton crops for themselves which bolstered their economy.83

There was collaboration, but British interests trumped. A district officer serving in Tanganyika in the early 1940s complained that indirect rule was too late to shield Africans from the shocks of modern economics, transport and missionary endeavours.84 Kenneth Bradley, another district officer, said “the Colonial Service, when it was nearing the end of its task, still tended to treat Africans as if they were schoolboys”.85 Indirect rule may have been implemented with the best of intentions by some district officers and chiefs. What cannot be ignored is the convenience it served in implementing unpleasant British policy in the form of taxes, offences against the Crown and the ‘babysitting’ function is served in isolated rural districts. On balance, history should assess indirect rule as a convenient means to gradually acquire direct authority over the Africans, but should keep in mind the well-meaning intentions of those district officers and chiefs who used collaboration to ameliorate conditions.

III The Judicial System

A Native Courts

From 1895 to 1930, the British passed Ordinances supporting a tripartite judicial system with a hierarchy. The three systems were English, Muslim and native.86 The native courts were a feature of indirect rule, and until 1930 were attached to the English court hierarchy. Appeals went from the native courts to the High Court, then the Court of Appeal and finally the Privy Council. The East Africa Native Courts Amendment Ordinance 1902 provided that the courts shall be guided by native law “so far as it is applicable and

84 Read, above n 42, at 285–286.
85 At 286.
86 Muslim courts on the Coast observed Islamic law, and law of the courts of the Sultan of Zanzibar. See Ghai and McAuslan, above n 4, at 131.
is not repugnant to justice and morality or inconsistent with any Order in Council”. The courts were also instructed to decide all cases “without undue regard to technicalities of procedure and without undue delay”. Native courts were made up of the British-appointed chiefs and traditional elders, with decisions subject to revision by administrative officers. With such close supervision by administrative officers, unofficial traditional bodies flourished with the aim of avoiding any unfamiliar judicial procedures. District officers were loud in their praise of native courts, but this is likely because of the great discretionary powers they were given in supervision and appeal. Morris describes the native courts as simple, easily accessible and quick, serving their purpose “reasonably well”. The laws to be administered were customary law and certain Ordinances like the Poll Tax Ordinance. In the late 1920s however, indirect rule became increasingly popular and administrative officials began calling for native courts to be more independent from the British court structure.

From 1930 onwards, native courts were separated from the judiciary and became the preserve of the administration. In 1927, Governor Cameron circulated a dispatch which expressed concern with the chief losing authority because of judicial functions being invested in British officers. He complained the High Court judges knew nothing of the language, customs and thoughts of Africans. The Native Courts Ordinance was enacted in 1930 which changed appeal to first the Native Court of Appeal, then the Provincial Commissioner. The High Court ceased to have any responsibility for the

87 Ghai and McAuslan, above n 4, at 133.
88 At 133.
89 At 135.
90 At 147.
92 At 134.
93 At 142.
94 At 145.
native courts. The condition was that native courts could not impose corporal punishment and a party had right to appeal to the Supreme Court. Administrative officers had wide powers of control. Practice, procedure and punishment were to be in accordance with native law and custom not repugnant to morality, and could include fines and imprisonment. After 1930, the native courts were aligned more with the executive and removed from the judicial branch of the colonial government.

B The ‘European’ Courts

The High Courts were not obsolete following 1930 because of jurisdiction over Europeans and Asians. The High Courts were established in 1902 to sit in Uganda, Kenya and Tanganyika. The High Courts had jurisdiction over British subjects and gained full jurisdiction over other Europeans throughout the protectorate by 1907. They also had jurisdiction over natives accused of serious crimes. The courts followed similar procedures to courts in England with slight adjustments to suit colonial circumstances. The laws enforced by the courts contained a strong link to Indian law because the Indian Penal Code was enforced before East Africa became a protectorate. Decisions from English courts were treated as virtually binding in the East African courts. The difference between English Courts and the East African colonial High Courts is most evident in the procedures for different ethnicities. In 1914, when the accused was non-African, a maximum sentence was usually specified by number of years. When the accused was African, they could be given any sentence. Settlers demanded trial by jury, but only for accused Europeans, which essentially gave settlers the power to veto a guilty verdict for a European charged with murdering an African. For example, a European settler had beaten an African employee who subsequently died, and the jury

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95 Ordinances separating the High Court from native courts were enacted in Tanganyika and Kenya but not in Uganda.
96 Morris, above n 92, at 149.
97 Ghai and McAuslan, above n 4, at 149.
98 Morris, above n 73, at 74.
99 Ghai and McAuslan, above n 4, at 33.
100 At 167.
101 At 167.
102 At 169.
found him guilty of causing grievous hurt rather than murder.103 Africans accused in the High Courts were given trial by judge, and were allowed three assessors from their tribe to advise the judge on relevant customary law, but the judge could disregard their advice as biased.104 There was substantially more confusion in Uganda because an Order in Council conferred jurisdiction over native major crimes to the High Court, but the 1902 Agreement with Buganda gave jurisdiction to indigenous courts.105 This confusion was not cleared until a 1937 dispatch ruled that the High Courts had ultimate jurisdiction.106 The High Courts were much the same as in England, save for different procedures for Africans and a requirement to take customary law into consideration, which was rarely respected.

C The Doctrine of Segregation

Colonial rule brought new institutions and procedures. There was a tripartite system of law based on race. This distinction was not criticised heavily until after World War II (WWII). The doctrine of segregation meant that Europeans could be subject to the English system, Africans could be subject to the English and native systems, and Africans living on the Coast could be subject to the English, native and Muslim systems. The law that governed individual actions completely changed from person to person, based on race. The judge in *R v Earl of Crewe ex parte Sekgome* defended the segregation:107

> The idea that there may be an established system of law to which a man owes obedience and that at any moment he may be deprived of the protection of that law is an idea not easily accepted by English lawyers. It is made less difficult if one remembers that

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104 Ghai and McAuslan, above n 4, at 169.
105 Morris, above n 15, at 52–57.
106 At 57.
107 *R v Earl of Crewe ex parte Sekgome* [1910] 2 KB 576 at 609 as cited in Ghai and McAuslan, above n 4, at 24.
the Protectorate is over a country in which a few dominant civilized men have to control a great multitude of the semi-barbarous.

Some English procedures were required in the native courts, but even the concept of court decisions was somewhat alien. In civil judgments, native courts gave victory to one party and defeat to the other, contrary to traditional methods of settling civil disputes. Because English conceptions of law and justice were so far removed from traditional African processes, the doctrine of segregation was used to avoid imposing an alien system on Africans. The gradual introduction of English ideas of justice resulted in the post-WWII call for legal integration by African politicians, who viewed the English system as a privilege which should be available to everybody, not just settlers.

D Judicial Approach vs Administrative Approach

Significant tensions arose in the 1920s and 1930s between two views on customary law. The judiciary believed English standards should be strictly applied to all cases, even where natives are involved. The administrative view believed administrative officers had the sufficient knowledge of social conditions to administer justice themselves. The Bushe Commission was appointed in 1933 to investigate the criminal justice system in East Africa. They concluded that the district magistrates had been given excessive jurisdiction, and all serious crimes committed by anyone in the territory should be tried by the High Court. There should be no diluting of English rules and procedure. Technicalities were important and Africans should be given the same standard of justice as the Europeans. Judges criticised administrative officers for lacking legal training and insulting advocates with their dispensing of justice.

108 At 138.
109 At 164.
110 Morris, above n 73, at 98.
111 Ghai and McAuslan, above n 4, at 144.
112 Morris, above n 73, at 99.
113 At 73.
114 At 87.
Bushe himself was particularly critical of “rough and ready justice...administered under a palm tree by the man on the spot”. Col. Meinertzhagen recorded in his diary that few administrators had any education and they could “suffer from megalomania and regard themselves as little tin gods”. Sir Charles Eliot observed:

...a young man of between twenty-five and thirty often finds himself in sole charge of a district as large as several English counties, and in a position which partly resembles that of an emperor and partly that of a general servant.

Another feature of the judiciary is their condemnation of whipping as punishment, considering it degrading and brutal. They were concerned with excessive sentencing by administrative officers. In *R v Malakwen arap Kogo*, a Nandi offender was convicted of stealing a goat and sentenced to two years imprisonment with hard labour by the administrative officer. Justice MacGregor of the Supreme Court condemned this, saying “two years is just as long in the life of an illiterate African as it is in the life of anyone else”.

The administrators rejected the Bushe Commission’s findings. The Chief Native Commissioner argued that technicalities should not matter and administrators should be given wide discretion to create a system for Africans which suited local conditions. Sir Charles Eliot said it seemed “unreasonable to apply civilised law to simple savage life”. They argued the imported English system should be modified. Judges in High Courts often did not take customary law into consideration the way district officers would. Chief

115 At 90.
116 Ogot, above n 46, at 261.
117 At 261.
119 At 300.
120 Ghai and McAuslan, above n 4, at 145.
121 Eliot, above n 77, at 197.
Justice of Uganda Morris Carter noted the difficulty of getting native witnesses to travel to the High Courts to give evidence to an intimidating court working in another language. W.E.H. Scupham, a district officer in Tanganyika in 1932, expressed:

The conception that, because a man has passed Bar examinations and has eaten a number of dinners in one of the Inns of Court, he is fit to be a magistrate is, in my opinion, fallacious... A knowledge of the language, customs and psychology of the people is necessary and this can never be acquired by sitting in court...

Administrative officers believed whipping was the most effective form of punishment for minor offences. The Governor of Tanganyika in 1923 explained that natives were often unable to pay a fine and imprisonment would bring them into contact with hardened criminals, so it was preferable to cause them temporary physical discomfort by whipping.

Both views had defects, but on balance the administrative view was most appropriate in the circumstances, and in Kenya and Tanganyika it was adopted from 1930 until the 1960s. The downside to the administrative view was largely due to the amount of power given to individuals with little legal training. Administrative and judicial functions were combined into one officer. In Akutendasana d/o Hamidi v R, an elderly woman was convicted of murder because she confessed arson to the district commissioner whose subsequent questioning incriminated her further, playing both police officer and judge. Extensive discretionary powers were given to officers who could make uneducated and hasty orders overruling court decisions. The drawback for the judicial view was the manner in which British justice was administered to Africans without

122 Morris, above n 73, at 80.
123 At 84–85.
124 At 95.
125 Akutendasana d/o Hamidi v R (1956) 23 EACA 487 as cited in Read, above n 119, at 305.
regard to their comprehension of it. Four Bagishu men were convicted of murder in 1928 and sentenced to death, but before the sentence was carried out they were suspended because witnesses had given statements under coercion.\footnote{Morris, above n 73, at 88.} A 1931 report found that nobody explained any of this to the accused or translated the suspended sentence for them.\footnote{At 88.}

The judiciary were less benevolent than they claimed because they conducted proceedings in a language and manner completely foreign to the Africans.\footnote{Ghai and McAuslan, above n 4, at 173.} The administrators were more unrestrained than they claimed, left to choose whether they wanted to apply British justice or rely on African customs depending on their conception of fairness.\footnote{At 173.} East Africa was a vast area to govern, and despite the administrators dispensing largely ignorant justice, they were in a better position than judges to decide what would make sense to Africans, what fit their traditions and how to explain decisions to them. The administrative view, though not without its defects, was the best route for Kenya and Tanganyika considering the touted strategy of indirect rule. Indirect rule relied on adaptation of British law to suit local conditions.

IV Customary Law

A Customary Law Hitherto Colonial Rule

Before colonial rule, each ethnic group in East Africa had a distinct body of laws and customs. They were mostly unwritten, sourced from tribal traditions, commands of elders and religious practices. Chiefly societies, particularly in Uganda, had a more formalised body of law compared with the \textit{ad hoc} systems of non-chiefly communities in Kenya and Tanganyika. Between 1898 and 1901, a judge called for reports on local customs to be compiled and published.\footnote{James S Read “Customary Law Under Colonial Rule” in HF Morris and James S Read \textit{Indirect Rule and the Search for Justice: Essays in East African Legal History} (Clarendon Press, Oxford, 1972) 167 at 192.} The severe limitations of resources combined with the

\footnotesize{\begin{itemize}
\item \footnote{Morris, above n 73, at 88.}
\item \footnote{At 88.}
\item \footnote{Ghai and McAuslan, above n 4, at 173.}
\item \footnote{At 173.}
\end{itemize}}
difficulty in ascertaining what customary law actually was, rendered this task near impossible. Justice Hamilton did create Notes on Native Laws and Customs, noting some of the interesting customs of the Galla: “Manslaughter not amounting to murder may be forgiven. In cases of rape or adultery the offender may be publicly thrashed by the offended father or husband.” Murder was seen as a loss of family strength, so compensation may be replacing the murdered man with another man. He also noted the prevalence of the idea of females as property to be bought, sold and inherited. Contracts for marriage were generally made when the girl was around eight years old. An oath was sworn by the hyena, or by stepping over the tail of a wild animal with the invocation: “May this animal kill me if I do not tell the truth.” Later attempts to record oral testimonies of customary law provide some guidance, but reliability of these records is questionable because of the time elapsed and lack of written records. Laws in Kenyan communities were frequently according to the dictates of witch doctors and enforced through fear of the power of the gods. The Bugandan kabaka system even had legislation, with Kabaka Metuse I enacting laws prohibiting drunkenness and selling of slaves, and house-breakers to be killed on the spot.

Through indirect rule, customary law could be enforced by chiefs and recorded by the native courts. Investing power in chiefs sometimes led to chiefs enforcing behaviours on their people under the banner of ‘customary law’. In a club-fight in Yimbo in 1900, a warrior injured the chief’s son and was summoned before the chief’s court for causing bodily harm to the son of a chief. He was fined two bulls and savagely whipped with a cane made from a hippo’s

132 At 196.
133 At 198.
134 At 198.
135 At 198.
137 At 186.
139 At 171.
140 Ochieng, above n 62, at 191–192.
The chief often dealt with offences concerning respect for his authority, particularly until the 1930s, when chiefly influence over most native courts was then switched to tribal elders. Offences like stealing, insulting retainers or being involved in a fight were dealt with by the chief, with punishments of fines or caning. One chief dealt with a man preaching discontent by caning his son. The magistrate courts and High Courts were instructed to be guided by native laws where natives were parties, and there is some evidence of courts seeking evidence on foreign customary laws, like the Bugandan court seeking expert testimony on Rwandan customary laws of marriage in *Kalekezi v Kabuka*. For the most part, however, the High Courts gave little or no regard to customary law.

### B The Evolution of Customary Law

Customary law underwent a rapid evolution over the course of British rule. Firstly, customary laws were permitted to be applied in native courts, and be considered in High Courts, but not if they were inconsistent with written laws, or repugnant to justice or morality. With British influences, particularly missionaries, African morals changed. A Bugandan customary law statute in 1916 forbade certain native dances, likely a result of heavy missionary influence. Other customs were either outlawed or rejected in courts. The Memorandum on Native Courts in Tanganyika said “the murder of twins, ordeal by poison” were customs “which a civilized Government has no option but to prohibit, and enforce its prohibition with penal sanctions.” The courts also were prevented from giving effect to the Giriama custom which permitted debts to be paid with infant females. A group of Kikuyu leaders in 1913 used customary power to burn a witch to death, a custom known as the king’ole procedure. The 54 leaders were charged with

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141 At 191–192.
142 At 201.
143 At 201.
144 Read, above n 132, at 175.
145 At 167.
146 The Law to Prevent the Native Tabulu Dance and Certain Other Native Dances 1916 (Buganda).
147 Read, above n 132, at 176.
148 Hamilton, above n 137, at 101.
murder in *R v Karoga and 53 Others* but given light sentences because they had not been properly instructed on the limits of their power. Customary law was permitted to survive, and it evolved with the introduction of British moral teachings and the restrictions on court use of customs.

Secondly, customary law was unwritten, so it enjoyed unlimited opportunity to evolve and reflect changes in African communities. It provided a link with the past and gestures to the future. More than 100 native laws were enacted in Uganda by the *kabaka* over the course of colonial rule, many codified evolving customary laws like the Adultery and Fornication Law 1918. After WWII, Law Panels were established throughout the rest of East Africa to guide the development of customary law. These Panels debated customs like female circumcision and attempted to develop a coherent customary law, but achieved little because of the difficulty of recording customary law, and meddling from missionaries and administrators. Nevertheless, it showed a willingness of Africans to incorporate British influences into their systems voluntarily, and develop customary law to keep up with rapidly changing social morals. It sparked cooperation between communities. British colonial rule sped up the process of developing a legal system and provided fuel for its evolution.

**V The Effects of Indirect Rule**

**A Native Court Proceedings**

Native courts were both a blessing and a curse. As Morris points out, they were “simple and intelligible to all”. However, they were largely unchecked and their escape from strict application of English rules and procedures gave the courts free reign. In *R v Lohira wa Esondyi*, a native court sentenced a prisoner to 18 months imprisonment and 25 lashes for an offence to which the Indian Criminal Procedure Code fixed a maximum punishment of three

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149 *R v Karoga and 53 Others* (1913) 5 EALR 50 as cited in Read, above n 132, at 185.
150 At 204.
151 At 205.
152 At 205–206.
153 Morris, above n 127, at 17.
months. Where administrative officers were given more control over native courts after 1930, they were constantly instructed to attempt to observe proper rules of evidence and procedure. The courts “increasingly took on the outward trappings of an English-type court”. Trials replaced customary reconciliation procedures. Record requirements meant replacing traditional members with literate Africans. Sentences of imprisonment were a previously unknown punishment to Africans. Courts extended jurisdiction from the relative local tribe to all Africans in the vicinity. Where Africans appeared in the High Courts, customary law was rarely taken into consideration, they were undefended by counsel in an unfamiliar environment, and strict evidence rules often tipped favour against the accused. Customary law had to be proved for acceptance by the High Courts, whereas native courts had the advantage of accepting and implementing customary law without proof. In procedure alone, native courts were celebrated as mirroring traditional judicial bodies but in fact employed processes which were in many respects untraditional.

Despite native courts existing to preserve customary law, they mostly decided cases related to British statutory offences. Statutory regulations controlled the movements of natives, forbade communal activities like ngomas after 9 pm without a licence and imposed a tax on huts occupied by indigenous people. Section 8 of the Native Authority Ordinance 1926 specified offences related to intoxicating liquor, destruction of trees, spreading infectious diseases, movement of stock, burning of bush and failure to supply food. In Tanganyika in 1930, crimes related to failure to comply with orders or administrative regulations accounted for around 45 per cent of persons convicted. David Williams analysed court statistics from Tanganyika and found:

154 Ghai and McAuslan, above n 4, at 141–142.
155 At 151.
156 Morris, above n 73, at 92–94.
157 Read, above n 132, at 189.
158 Translation: drums. See Ghai and McAuslan, above n 4, at 40.
159 Williams, above n 78, at 217.
160 At 215.
161 At 202.
...a huge proportion of the ‘crimes’ dealt with in these Native Courts had nothing at all to do with traditional African customary norms...Rather they were ‘offences’ committed by Africans who sought to avoid or resist the economic production requirements of the colonial government.

Some British regulations were ignored by native courts. From 1905, circulars called attention to district officers to limit the use of flogging, but they were largely ignored and similar warnings were still being issued in 1948. Punishments given by district officers following native court decisions were often far more severe than suggested sentences from government regulations. The Attorney-General described sentencing in Kenya as “at times almost savage”. Aside from the discretion of district officers in punishments and court procedure, a large proportion of native court proceedings were related to government statutory offences.

B The Reality of Indirect Rule

The stronghold the district administration had over customary law and how Africans could regulate themselves through native courts bolsters the argument that indirect rule was, in fact, quite direct. With their powers of supervision and revision, administrative officers “had virtually a free hand in their control and education of the native courts”. Such close ties with administrative oversight led Ghai to conclude the native courts were “regarded by the Africans as government institutions notwithstanding their evolution from indigenous institutions”. An altruistic take on this would recognise the moral objectives touted by the British. Bringing the benefits of the Rule of Law to East Africa was believed to civilise Africans. Some aspects of customary law seem barbaric and cruel to modern standards of justice and morality, but they were also barbaric in the eyes of the British in 1900. The less altruistic explanation is that customary laws and native courts were used to control Africans under a guise of indigenous authorisation.

162 Ghai and McAuslan, above n 4, at 140.
163 At 141.
164 Morris, above n 127, at 15.
165 Ghai and McAuslan, above n 4, at 154.
C Was Indirect Rule a ‘Colonial Bluff’?

Despite government regulations in place, banned practices continued to exist, customary law survived and district officers virtually did as they pleased. Killingray has remarked that “Africans may have been fooled by the colonial bluff”.166 The British installed a system, but it may not have been as robust as it appeared. There was a significant lack of communication between administrators in the field and the government, and vast areas lacked any government control. Unofficial indigenous bodies were rendered illegal under the 1930 Ordinance, but flourished in communities where the governmental framework proved unreliable.167 David Throup studied Kenya in the years after 1945 and found notable government failure to police urban centres like Nairobi.168 This left armed African groups to police the community themselves, which lends to the argument that the Colonial Office was only interested in African affairs where they posed a threat to European presence. In 1933, 100,000 cases were disposed of by native courts in Uganda, but the High Court made only three revisional orders during the year.169 Read suggested that 'lawless' areas of East African towns were partly due to adherence to traditional, tribally based, customary law completely free from colonial interference.170 For the most part, maintaining law and order really was in the hands of African ‘traditional’ authorities. Richard Meinertzhagen was a soldier in Kenya in 1902, and recorded:171

Here we are, three white men in the heart of Africa, with twenty nigger soldiers and fifty nigger police, sixty-eight miles from doctors or reinforcements, administering and policing a district inhabited by half a million well-armed savages who have only quite recently come into contact with the white man.

The colonial government gave the appearance of stable, manifest authority over Africans. In reality, it appears the administrators

166 Killingray, above n 3, at 422.
167 Ghai and McAuslan, above n 4, at 154.
168 Killingray, above n 3, at 418.
169 Morris, above n 92, at 157.
170 Read, above n 132, at 201.
171 Killingray, above n 3, at 421.
were quite happy, if not relieved, to leave Africans to administer themselves. That is, unless British interests were concerned.

VI  British Motivations in Contention

A  Invented Tradition for Development

When looking at indirect rule, the omnipresent issue is ascertaining the intentions behind British rule. Both missionaries and the British were interested in providing education to Africans, even when educated Africans proved to be the ones leading revolutionary movements in Kenya from the 1920s onwards.\textsuperscript{172} When the area existed as a protectorate, this implied there was a mandate from the people to provide guardianship. Col. Wedgwood said in 1919, “we have tried to administer the Crown Colonies...for the advantage of the natives of the territory and in their interests”.\textsuperscript{173} Hobley’s memoir provides insight to some conditions he encountered during his explorations of East Africa. In Ngomeni he met a tribe with great diseases, periodic raids by Maasai and a people “in a terrible state of depression”.\textsuperscript{174} The Maasai stole livestock and slaughtered “every human being they could catch”.\textsuperscript{175} When Hobley was a district officer, he began a ‘rat campaign’, paying Africans for the number of rats they killed, in an effort to promote economics and curb disease.\textsuperscript{176} After WWII, the district officers focussed on developing African district councils.\textsuperscript{177} Cameron’s Native Administration Memorandum 1925 for Tanganyika says the purpose of indirect rule was to help Africans build their own society and structure, so that one day they can “stand by themselves”.\textsuperscript{178} Sir Charles Eliot wanted more integration between the Europeans and Africans, to keep the Africans from feeling isolated and perpetuating “bad customs”.\textsuperscript{179} There are clear indications that the British were not merely in East Africa for exploitation and enrichment. There was a genuine interest in civilising the Africans, improving health

\textsuperscript{172} Ogot, above n 46, at 262.
\textsuperscript{173} Dilley, above n 28, at 134.
\textsuperscript{174} Hobley, above n 33, at 53.
\textsuperscript{175} At 60.
\textsuperscript{176} At 122–123.
\textsuperscript{177} Morris, above n 127, at 19.
\textsuperscript{178} Read, above n 42, at 259.
\textsuperscript{179} Eliot, above n 77, at 310.
and sanitation, and introducing the Rule of Law and what they truly believed was the finest system of justice.

Looking at records left by administrators, it seems many were either preoccupied with trying to survive the harsh new environment or working with Africans on development initiatives. Hobley’s memoir tells stories of administrative officers frequently encountering diseases, lions, elephants, snakes and crocodiles. There was a great desire to explore East Africa. District officer for Kikuyu, Frank Hall, was badly mauled by both a rhino and later by a leopard. Hobley himself was struck by lightning on an expedition in Uyoma. Read notes that cited communication between officers and administrators was probably written with no intention of the communication being published. They are mostly sincere, and rarely mention exploitation or oppression, rather trying “to find a more just system for the administration of the law”. Diaries left by administrative officials indicate a strong interest in exploring the region, and offering what they perceived to be help to Africans they encountered.

Amicable intentions can further be inferred from judicial safeguards the British put in place, namely instructions to respect customary law and an attempt to install chiefs, which the British believed to be authority more familiar to Africans. Approaching independence, Africans for the most part wanted to retain the British legal legacy, and showed a great respect and admiration for it. As Morris pointed out, it is “hard to see what alternative system which would have been more effective and acceptable could have taken its place”. The flexibility granted to native courts was intended as a safeguard. Another safeguard was the ‘dual policy’ in response to burgeoning settler influence. In the 1927 White Pa-

180 Hobley, above n 33, at 37–45.
181 At 78.
182 At 91.
183 Read, above n 119, at 291.
184 At 291.
186 At 18.
187 At 22.
per, the ‘dual policy’ was defined as “the complementary development of the native and the non-native communities”. The Governors and administrators often found themselves having to weigh settler interests with African interests—a tough position to be in.

B Inventing Tradition for Exploitation

Conversely, the argument runs that well-intentioned claims of civilising Africans were a ploy to mask economic enrichment and exploitation. One of the first missions for the British was building a railway to Uganda to assist the flow of trade from the mineral-rich Great Lakes region. Britain also had strategic interests in securing control of African areas in competition with France, Belgium and Germany. Law, therefore, was a means to secure economic and political power. Africans were a useful tool, with Sir Charles Eliot remarking that the more intelligent Maasai “make good soldiers and policemen”. Eliot also claimed “it is mere hypocrisy not to admit that white interests must be paramount and that the main object of our policy and legislation should be to found a white colony”. Ochieng used stronger language, saying the British “came here primarily to loot”. This language is perhaps too strong, as looting implies plundering resources with no care for the original owners. It is more accurate to say that the British took advantage of the economic opportunities East Africa presented, but were not as eager to share their newfound economic exploits with Africans as they were in sharing the Rule of Law.

It has been suggested that the appropriate way to describe indirect rule is an ‘invention of tradition’. Ordinances enforced through ‘traditional’ chiefs and the native courts leaned heavily towards colonial policy goals of production. Ghai argues it is unrealistic and hypocritical to suggest that the Rule of Law was beneficial for East Africa, as the British used it to control the weak and help the

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188 Dilley, above n 28, at 281.
189 Ogot, above n 46, at 252.
190 Morris, above n 127, at 9.
191 Eliot, above n 77, at 100.
192 At 103.
193 Ochieng, above n 62, at 205.
194 Williams, above n 78, at 203.
strong.195 Morris believed that far too little customary law was absorbed into the legal system, like reconciliation procedures and taking tribal conditions into account.196 Details of English procedure were “all too often zealously applied regardless of appropriateness”.197 Even the concessions to customary law, like use of assessors in criminal trials, depended on the willingness of administrative officers to respect them.198 Furthermore, the preference for British law over customary law from the outset reinforced a sense of superiority in all facets of society, save for perhaps military tactics. Sir Charles Eliot described Africans as having a mind “far nearer to the animal world than is that of the European or Asiatic”.199 He further noted “the absence of any feeling for art in the African is remarkable.”200 Hindsight privileges us to be critical of such statements, but this mode of thinking was what the British had to justify their rule over the Africans. They believed it. They further believed that the Rule of Law, gradually through ‘indirect’ rule, was the best way to civilise Africans.

Chiefs and native courts were ‘invented traditions’. They were used for both economic benefits and perceived moral benefits in terms of aiding development. Law in independent Kenya ended up borrowing pieces of both British and customary law, proving to be just as much of a complex patchwork as colonial-era law. While there were still British concepts of courts, trials and advocates, there were also procedures that derived from customary law, including severe sentences involving corporal or capital punishment. Customary practices like female genital mutilation, obtaining body parts of albinos for magic powers, and killing suspected witches still occur in East Africa. Some customary law survived colonial rule. The ‘invention of tradition’ was used by the British to enforce policies for their enrichment, but it would be foolish to deny the noble intentions of individual administrators, chiefs and other African leaders to use indirect rule to improve African legal structures and communities.

195 Ghai and McAuslan, above n 4, at 34.
196 Morris, above n 127, at 25.
197 At 25.
198 Ghai and McAuslan, above n 4, at 508.
199 Eliot, above n 77, at 92.
200 At 101.
VII Policy Analysis

A Land Policy

The labour policy implemented in East Africa was the best example of how altruistic motivations were used to cloak economic exploitation. The labour demand began with the large-scale sale of land to European settlers, particularly in the Rift Valley region of Kenya. The East Africa (Lands) Order in Council 1901 empowered the Commissioner to grant leases of ‘Crown lands’,\(^\text{201}\) Crown lands were all public lands within the Protectorate or acquired by the Land Acquisition Act 1894.\(^\text{202}\) By 1902, land could be sold or leased when it was not occupied by Africans.\(^\text{203}\) The Crown Lands Ordinance 1915 expanded the term ‘Crown lands’ to include land occupied by native tribes.\(^\text{204}\) Africans were often allocated reserves, but traditional nomadic lifestyles of some tribes like the Maasai were seen by administrators as “wasteful”.\(^\text{205}\) Koinange described how he felt seeing European homes and farms surround them, tear down their crops and claim their land:\(^\text{206}\)

> When someone steals your ox, it is killed and roasted and eaten. One can forget. When someone steals your land, especially if nearby, one can never forget. It is always there, its trees which were dear friends, its little streams. It is a bitter presence.

The large scale sale of land to settlers steadily increased from 1903 onwards. Settlers arrived wanting land and labour to cultivate it.

B Tax Policy

Labour policy was closely related to tax policy. By 1910 there was a general poll tax collectible in the Protectorate, through the 1901 Hut Tax Regulations.\(^\text{207}\) In 1916 the hut tax increased to meet the

\(^{201}\) Ghai and McAuslan, above n 4, at 26.
\(^{202}\) At 26.
\(^{203}\) At 27.
\(^{204}\) At 27.
\(^{205}\) Eliot, above n 77, at 104.
\(^{206}\) Clough, above n 56, at 61.
\(^{207}\) Dilley, above n 28, at 240.
cost of fighting WWI.\footnote{Ogot, above n 46, at 264.} Taxing Africans was supposedly in exchange for British protection and law.\footnote{Dilley, above n 28, at 239.} Sir Charles Eliot saw the hut tax as a trade for the advantages the British brought by abolishing slavery.\footnote{Eliot, above n 77, at 191.} To put the tax in proportion, in 1926 estimates put European tax contribution at £36 per capita annually, with Africans contributing six shillings in comparison.\footnote{Dilley, above n 28, at 242.} The estimated average income for an unskilled urban worker in East Africa was between eight and ten pence per day in the 1920s, but the large rural population had to find alternative ways to pay tax.\footnote{E Frankema and M Van Waijenburg “Structural Impediments to African Growth? New Evidence from Real Wages in British Africa, 1880 – 1965” (2012) 72 Journal of Economic History 895 at 905.} Harry Thuku gave evidence before the 1932 Carter Commission that some Africans worked for Europeans for two shillings a month.\footnote{Thuku, above n 49, at 55.} The tax could be paid either by shillings, one goat, three hoes or a certain amount of chicken or crocodile eggs.\footnote{Hobley, above n 33, at 124.} Hobley saw tax as “an outward and visible sign that the particular section had definitely accepted Government control”.\footnote{At 124.} He suggested the wealth of tribes increased under British rule, and tax would teach Africans how to manage wealth.\footnote{At 124.} He acknowledges the allegations that “we have done nothing but ‘exploit the poor black’” but insists on unselfish motives.\footnote{At 124.} In reality, if Africans could not grow and sell crops, there was little choice other than to work for the administration or on settler plantations in order to pay tax. Ochieng described the British tax policy:\footnote{Ochieng, above n 62, at 207.}

You must pay your taxes… If you don’t have the money then you must sell your cattle, if you don’t have both then you must sell your labour, if you refuse that as well then you must go to jail.

\footnote{Ogot, above n 46, at 264.} \footnote{Dilley, above n 28, at 239.} \footnote{Eliot, above n 77, at 191.} \footnote{Dilley, above n 28, at 242.} \footnote{E Frankema and M Van Waijenburg “Structural Impediments to African Growth? New Evidence from Real Wages in British Africa, 1880 – 1965” (2012) 72 Journal of Economic History 895 at 905.} \footnote{Thuku, above n 49, at 55.} \footnote{Hobley, above n 33, at 124.} \footnote{At 124.} \footnote{At 124.} \footnote{At 124.} \footnote{Ochieng, above n 62, at 207.}
Tax policy directly contributed to the problems arising under the colonial labour policy.

C Labour Policy

When an African refused to pay tax, they were ordered to work on public works like clearing bush or building roads. The labour demands on Africans corresponded with the influx of settlers. WWI saw over 10,000 soldiers from Kenya alone fight for Britain. Fighting alongside the British, Africans noticed how little the Europeans knew about warfare, which gave many returning African soldiers the confidence to demand more of the government in the 1920s. But freedom was seriously curtailed with laws like the Native Registration Ordinance 1915 which made deserting your employment a criminal offence. Women and children were recruited for cheap labour on settler farms from WWI onwards. Thuku recalled the District Commissioner would request labour from the chief, who would undertake the process of selection:

They would simply go to people’s houses – very often where there were beautiful women and daughters – and point out which were to come to work. Sometimes they had to work a distance from home, and the number of girls who got pregnant in this way was very great.

Africans responded to oppressive labour laws by beginning to organise themselves. In 1921, Africans formed their first political organisations in Nyanza and Nairobi.

Unlike the tax policy, one struggles to find any benevolent motivation to cover up exploitative labour policies. These policies can largely be attributed to settlers asking the government to find ways to induce Africans to “come out and work”. Based on the taxes collected from Europeans compared to Africans, it is no wonder the government heeded their requests. A Native Labour Commission

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219 Williams, above n 78, at 212.
220 Ogot, above n 46, at 264.
221 At 265.
222 At 267.
223 Thuku, above n 49, at 16.
224 Ogot, above n 46, at 269.
225 Dilley, above n 28, at 221.
was appointed in 1912, and found six reasons for Africans not working:226

(1) district officers were encouraging Africans to develop their reserves;
(2) tribes accumulated wealth from their land, not wages;
(3) settlers increased demand for labour;
(4) methods of recruiting labour were discouraging;
(5) administrative staff were inefficient;
(6) labour conditions like bad housing, bad diet and ill-treatment.

The settlers demanded policies to address these factors. District officers were instructed to use “every possible lawful influence” to recruit labour.227 Methods included encouraging chiefs to induce young men to work, holding public meetings to explain working conditions, and inviting plantation owners into reserves to meet the people.228

The 1920 amendment to the Native Authority Ordinance was highly criticised as amounting to forced labour.229 It required compulsory labour from Africans to work for the government for 60 days per year, unless the individual worked for a European for three months in the previous year.230 It was hoped that the government paying less would prompt Africans to work for settlers instead. This policy earned serious criticism from London, drawing outrage that 2,000 settlers could have such influence over government. Sir Arthur Steel-Maitland spoke in the House of Commons in July 1921, and expressed concern that a “native chief in a Colony like Kenya Colony cannot distinguish between encouragement by a Government official and an order by the Government”.231 Under pressure from

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226 At 221.
227 At 224.
228 At 224.
229 At 227.
230 At 226.
231 At 231.
the Secretary of State, the law was changed in 1922 to require absolute necessity and authorisation from the Secretary for any compulsory labour.\textsuperscript{232} Low wages and the requirements to work for either the government or settlers was exploitative. Ochieng argued “the Europeans did not colonize Africa because they loved the Africans. Their primary motive was economic. They came to enrich themselves at the expense of the Africans.”\textsuperscript{233} Africans were not being forced to work for their own communities, rather for settlers. It is difficult to reconcile how separating families and villagers to provide cheap labour for settler plantations could possibly be enforced with philanthropic motivations.

It is important to keep in mind that not all administrators were slaves to the will of settler demands. John Ainsworth wanted to protect the Kikuyu people from having land taken. He demanded proper surveying of every plot of land.\textsuperscript{234} In the Nyanza province he encouraged the production of local cotton alongside other agricultural experiments to be run by Africans.\textsuperscript{235} The maize seeds that resulted from this initiative had a “revolutionary effect not only upon the people’s food habits, but upon their whole way of life”.\textsuperscript{236} He further opposed all labour demands from settlers in Nyanza without guarantees of suitable working conditions.\textsuperscript{237} Ainsworth and his legacy shows how careful historians should be in painting the colonial administration with generalisations of being exploitative and oppressive.

\textit{VIII Conclusion}

To conclude, law in colonial East Africa was a useful tool wielded by the British to maintain order across the vast territory while exploring the economic potential it had to offer. Despite blatant strategic benefits at play, many administrators carried out their duties with the genuine intention of improving conditions for Africans. Lugard’s indirect rule touted respect and preservation of traditional authority, but it was imposed through untraditional chiefly rule.

\textsuperscript{232} At 232.
\textsuperscript{233} Ochieng, above n 62, at 181.
\textsuperscript{234} Mungeam, above n 71, at 46.
\textsuperscript{235} At 49.
\textsuperscript{236} At 49.
\textsuperscript{237} At 50.
Indirect rule was, in fact, very direct. Some chiefs used their position to improve their communities, while others used it to solidify their power and wealth. British law and legal proceedings were completely foreign to Africans, and handing discretion to district officers moulded British law to fit local circumstances. Customary law survived colonial rule, albeit altered by imported European morals and ideas. The ‘invented traditions’ were used both for British enrichment and to foster development in African society. However, the arrival of settlers required land, taxation and labour. Attempted forced labour policies demonstrated the settlers’ influence.

What were the real intentions of the British in East Africa? To draw a conclusion that the British used indirect rule to loot and pillage, selfishly taking advantage of the bewildered Africans, would be naïve. It is an approach which ignores the benevolent intentions of missionaries and some administrative officers, and ignores the agency of chiefs who welcomed British rule and used it as opportunity to benefit their communities. The British secured ‘the black man’s land’ with morally suspicious ambitions, but introducing British law was not an entirely fruitless venture.

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Edmund Harvey, Member of Parliament (speech to the House of Commons, London, 28 July 1914).
Law Book Catalog of Patrick Byrne, Philadelphia Bookseller, 1802

Joel Fishman*

Professor Erwin Surrency laments the fact that "all too few of [the law book dealers] have been preserved."¹ One of the least known law booksellers of the early Republic era was Patrick Byrne. This short article provides basic biographical information and a review of his first law book catalog, one of the earliest law book catalogs published in the first years of the nineteenth century.

Patrick Byrne was a bookseller first in Ireland in the 1790’s and then in both Philadelphia and Baltimore in the first decade of the 1800’s. He was part of the Irish book trade of the 1790’s and was one of a hundred Irishmen who emigrated to the United States at the end of the century.² Although he is not referred to in the standard biographical dictionaries, Richard Cole has presented a good biographical review of his life in his work Irish Booksellers and English Writers 1740-1800 (1986). John Tebbel refers to Byrne, who had left Ireland like other Irish printers, to become a Philadelphia bookseller, to have been a predecessor to the T. & J. W. Johnson & Co.³ Rollo Silver listed him as a Baltimore printer who advertised

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² Gordan, supra note 1, at 2-14 for Byrne’s life before coming to the United States.

³ 1 JOHN TEBBEL A HISTORY OF BOOK PUBLISHING IN THE UNITED STATES 385, 524 (1972). "T. & J. W. Johnson & Co. was the eventual imprint of a firm of law book publishers that was successively, beginning in 1829, Nicklin & Johnson, Mathew Carey & Son; Benjamin Warner; Jacob Johnson; Patrick Byrne and Farrand & Co."
in several newspapers during the first decade of the nineteenth century. Rosalind Remer identifies him as an immigrant book printer and later bookseller and publisher, but with no additional detail in her study of Philadelphia book publishers.

Patrick Byrne was born in Ireland in 1741 and died at the age 73 in Philadelphia on July 1, 1814. After establishing himself in the late 1770s in the book trade in Dublin, he quickly developed trade in Ireland, England, and the United States. He carried on book trade with Mathew Carey of Philadelphia throughout the 1790s and even after he came to Philadelphia. Byrne was a member of the Dublin Society of United Irishmen and his bookshop on Grafton Street proved to be a local meeting place. His association with the United Irishmen led to his arrest on high treason in May 1798. Early in 1799 Byrne requested clemency claiming his “unblemished character as a trader” of nearly twenty years. He denied any association as a member of "any political club or society," but is contrary to the fact that he was a member of the Dublin Society as early as 1792. As a member of the Irish book trade he was associated with Henry Frazer, William Porter, Randall McAllister, James Moore, John Chambers, Thomas McDonnell, Peter Hoey, Richard Cross, and John Stockdale. He claimed his wife had died during this stay in prison, leaving five children without a parent. His business also declined over the year as shown in correspondence with Carey. He remained under arrest until mid-1800, when he wrote to Carey on June 21, 1800 that he would leave Dublin soon, but in another letter dated in September, he planned to go first to Oporto, Portugal and then to Philadelphia or New York in the spring. However, it appears that he went almost directly to Philadelphia, since he wrote a letter dated November 24, 1800 from 95 Eighth Street South, Philadelphia.

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4 Rollo G. Silver, The Baltimore Book Trade 1800-1825 19 (1953). Silver appears to have identified another Patrick Byrne who died in 1808 as the bookseller and has a separate entry for Patrick Byrne, Jr. However, the obituary of Patrick Byrne in the Baltimore of 1814, identifies this person as the eminent bookseller.


Mr. Gordan highlights Byrne’s career in Philadelphia, especially his work with five major figures: Joseph Priestly, Thomas Cooper, Alexander James Dallas, Thomas Lloyd, and Hugh Henry Brackenridge. For purposes of this article, Cooper was a lawyer, doctor, and other professions, who published the *Institutes of Justinian* and served as the President Judge of the Third, and then Eighth Districts until 1811 when his legislative opponents removed him from his office. Alexander James Dallas is best known for his publication of the first state court reports in Pennsylvania (1790) which came to include three volumes of cases from the United States Supreme Court. Thomas Lloyd was a stenographer who published the impeachment trials of the Alexander Addison (1803) and later Justice Samuel Chase of the Pennsylvania Supreme Court in 1805. Hugh Henry Brackenridge was a lawyer in Pittsburgh before Governor McKean appointed him as an Associate Justice of the Pennsylvania Supreme Court.

Morris Cohen identifies twenty-one publications that Byrne published between 1802 and 1814. Byrne not only sold his own works, but reprinted works from American printers. Mr. Gordan identifies three works published with other law booksellers. President Thomas Jefferson, in February 1805, purchased six of Byr-
ne's less expensive law books than the English editions for his library. Chancellor James Kent possessed twenty-nine titles in his library that were published by Byrne.

Although this short article deals with Byrne’s catalog of 1802, it should be noted that there are at least three more catalogs available through the first decade. A second two-page catalog appears in *Dallas’s Reports* (2d ed. 1806), a third catalog in Edward East’s *A Treatise of the Pleas of the Crown* (1806), and a fourth catalog in Leonard McNally, *The Rules of Evidence on Pleas of the Crown, Illustrated From Printed and Manuscript Trials and Cases* (1811).

In 1802, Byrne began to advertise in the Philadelphia *Aurora General Advertiser* throughout the year that his warehouse in Dublin “is more extensively stocked than any other in Ireland, with all old and new law books.” He published his *Catalogue of the Quire Stock of Books* with printer Thomas Bradford of Philadelphia. The sixty-

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16 *[Patrick] Byrne. A Catalogue of the Quire Stock of Books of P. Byrne, With the Bound Price of Each Article Affixed, as Sold by Him to the Public. Of Most of the Books in This Catalogue, Byrne Has Large Quantities—of Many the Whole Impressions.*
six-page catalog contained not only law books but several hundred other works as well. It consisted of twenty-one pages of legal publications (see appendix 1) followed by another forty-five pages of non-legal titles. Interestingly, he annotated some of the titles as to their usefulness to the legal profession; the non-legal works were not. The catalog also lists costs for each title.

From the late fifteenth century English legal materials were published second only to religious literature.\(^\text{17}\) By the eighteenth century, there had been an enormous growth in legal publications as shown by the two-volumes of Sweet & Maxwell’s *Legal Bibliography* or 900-page bibliography, J. N. Adams, *Bibliography of English Legal Literature in the Eighteenth Century.*\(^\text{18}\) The *Catalogue* has only 127 titles listed in the quire catalog are all English publications (except two) covering court reports (45), treatises (73), digests (5), statutes (2), dictionaries (1), and parliamentary debates (1). Only a portion of the items have any comment. Finally, the listing of the actual sales prices of each title in dollars and cents as provided shows how much the works actually cost.

This listing corresponds in part to sources discussed by legal historians. Searching Jenni Parrish’s list of American law books\(^\text{19}\) published at this time shows only titles reprinted in American editions at this time. Professors Herbert A. Johnson\(^\text{20}\) and W. Hamilton Bryson\(^\text{21}\) have demonstrated that many of the titles were imported into the United States and brought by many prominent

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members of the bench and bar. I have used the *Sweet and Maxwell's Legal Bibliography*\(^{22}\) to identify all titles and provide the edition that fit closest to the catalog listing based on the year of when the title was actually published. If a question arose between two editions that were published in England or Ireland, I have chosen the Dublin edition because of Byrne's work there. I have also numbered the items in the catalog and refer to them in the following paragraphs with brackets [ ] to refer to them in the catalog.

There are forty-five court reports published between mid-16th century to the end of the eighteenth century.\(^{23}\) Court reports covering King’s Bench, Common Pleas, Exchequer and Chancery are covered by various publications beginning with Plowden [91], Dyer [5], and Coke [30] in the sixteenth century, Yelverton [127], Salkind [109], Kelyngs [72], and Modern Reports [82] in the seventeenth century, and T. Raymond [99], R. Raymond [100], Vernon [120], Vesey [118], Vesey, Jr. [119] Blackstone [9], Leach [74], Loft [75], Bosanquet & Fuller [103], and Durnford & East [129] for the eighteenth century. Francis Hargrave published the first three volumes of *State Trials* [62], while individual publication of Michael Foster’s trial of the Scottish rebels of 1746 [50] and the later treason trials of Thomas Hardy, John Horne Tooke, and John Telwall (1794) [115]. Only one report dealt with precedent cases in the Parliament. [65]. The latest volumes are *East’s Reports*, [45] containing cases from 1800 and 1801 that the publisher states have four volumes published so far and the fifth is in production. What is not stated in these reports is the edition. Many of these reports had gone through various editions; in late eighteenth century many earlier reports had been reprinted in Ireland.

The only Irish reports were John Davies’ *Reports* covering part of the reign of King James I (1604-12) [35].

Byrne also listed the first three volumes of reports by Alexander James Dallas, the first court reporter for Pennsylvania and for the United States Supreme Court. Dallas’s *Reports of Cases Ruled and


\(^{23}\) There are more than 140 titles of English, Scottish, and Irish Reports for the pre-1800 period; See Grace W. Bacon, “List of British Law Reports” in *Frederick C. Hicks, Materials and Methods of Legal Research* 432-59 (3d ed. 1942).
Adjudged in the Courts of Pennsylvania [41], was first published in 1790 covering Pennsylvania Supreme Court and county court cases from 1754 to 1789.24 It was only the second state court report published in the United States in the late eighteenth century.25 The succeeding three volumes expanded their coverage to include the United States Supreme Court and Circuit Court as well as Pennsylvania courts.26 Later he began to publish American works, and in 1806, obtained the rights to print a second edition of volume 1 of Dallas’s Reports27 and then volume four of the Reports in 1807.28

Byrne annotated some of the titles by pointing out authors of the reports. Ambler’s Reports contained the cases of the “great luminary Lord Hardwicke” [5]; Blackstone’s Reports were of “high and established reputation of those Reports are well known to every

professional man.” [9] and later referred to as “celebrated Reports [103].” Douglas’s Reports “have met with the general approbation of the profession, and are esteemed for transmitting with accuracy the determination of the Court....” [36] Kelyng’s Reports were published “by that very able Crown lawyer, Lord Chief Justice Holt,” in an “uncommon merit of this report.” [72] Of Peake’s Cases determined at Nisi Prius, “the Author has stated every circumstance which appeared to him to affect the question before the court....”[85] Finally, he cited Vesey Jr.’s Reports of Cases...Chancery “plan adopted by this very able and accurate Reporter has met with the most general approbation:”

The plan adopted by this very able and accurate Reporter has met with the most general approbation, the facts are stated in their natural order, and in a manner as concise as possible, consistently with the necessary perspicuity; the judgments are stated fully, and with a strict regard to accuracy, and he has been particularly anxious by preserving the language used, to give not only his own construction, but as nearly as possible, the very words in which the opinion of the court was expressed. [119]

Five digests cover both statutory law and court reports. Three statutory law digests were Comyns’s Digest of the Laws of England [28] and two specialty topics of Bankrupt Laws [16] and Heywood’s Digest of the Laws Respecting County Elections [68]. For court cases, there were Bacon’s Abridgement of the Law and Equity, [8] Espinasse’s Digest of the Laws of Actions and Trials at Nisi Prius [42], and Viner’s General Abridgement of Law and Equity [117].

There was one dictionary listed: Richard Burn’s New Law Dictionary, revised by his son John Burn (1792) [19]. First published seven years after his father’s death, the dictionary was similar to Jacobs’s Law Dictionary, but different enough that Bryan Garner, the compiler of the tenth edition of Black’s Law Dictionary, commented “…the book appeared during the formative years of American law, and it is a valuable reference for those who want to see how legal terms were understood in the 18th century.”[29]

Only one title covered parliamentary debates, and that title dealt with the Irish Parliament of the 1780s and early 1790s. The Parliamentary Register; or, history of the proceedings and Debates of the House of Commons of Ireland, ...1781...1795 [95] played an important part in Irish history that Byrne acknowledged in his comment and his admiration for its members:

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The above value and interesting work, forms a complete history of the politics, trade, and internal resources of Ireland, during the space of sixteen years, which was the grand and important period of her existence as a nation; it will also serve to hand down to the last moment of recorded time, the names of those illustrious men, whose splendid talents adorned its Senate, and made it the admiration and envy of surrounding kingdoms.

Seventy-three treatises have the largest number of titles published in the Catalogue. Treatises began in the fifteenth century beginning with Littleton on Tenures (1481 or 1482) and rapidly expanded topics in the sixteenth century to even more works in the seventeenth and eighteenth centuries. As English law developed, the topics of treatises expanded. Single volume treatises expanded over the years into multivolume works as original works were reprinted with additional materials and more and more citations to court cases were added. By the late eighteenth century, treatises were standard legal publications. These English treatises were long-standing standard works in the Anglo-American legal literature up through the nineteenth century.

The treatises covered both standard works in English law as well as new publications covering a wide variety of topics. Of these titles, Byrne annotated twelve of them.

The two best known works were Coke’s First Institutes of the Laws of England and Blackstone’s Commentaries on the Laws of England. Coke’s First Institutes of the Laws of England or Coke on Littleton (1628), the major treatise of the seventeenth-century legal litera-

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ture, reached its fifteenth edition by 1794 under the excellent editorship of Francis Hargrave and Charles Butler [31]. Charles Butler’s notes to the 13th and 14th editions were also published independently of the bound volume [32].

Blackstone’s Commentaries replaced Coke’s Institutes as the major mid-eighteenth century legal treatise. Its four volumes, published between 1765 and 1769, quickly became the standard work on English law going through thirteen editions, the latest updated by Edward Christian, by 1800. But with no date in the catalog, the edition listed is probably the thirteenth, published in Dublin in 1796. Byrne recognized Christian’s contribution as “the learned and judicious notes of Professor Christian, must make it a most valuable book to the young student.” [6] Christian’s Notes were published in three different forms and “printed so as to bind at the end of each Volume of the duodecimo size” and cite to the “page, line and word in the line, of each Book commented on…” [27] Richard Burn, the editor of the ninth edition (1783) 33, also published his notes as a separate pamphlet. [20] 34

Two of works on conveyancing received positive remarks. Frederick Jones’s Attorney’s New Pocket Book and Conveyancer’s Assistant was an “above useful and neat Pocket Companion will be found to contain all such forms in conveyancing as are in general use.” [3] William Cruise’s Essay on Uses was “being in fact the theory of

32 Coke reprinted Littleton on Tenures (1481, reprinted in 1627) with his commentary in 1628. For Coke, see the recent works, THE SELECTED WRITINGS AND SPEECHES OF SIR EDWARD COKE (Steven Sheppard, ed. 2003); DAVID CHAN SMITH, SIR EDWARD COKE AND THE REFORMATION OF THE LAWS: RELIGION, POLITICS, AND JURISPRUDENCE, 1578-1616 (2014).
33 BLACKSTONE’S COMMENTARIES ON THE LAWS OF ENGLAND. 9th ed. London. 1783. 2 SM 5.
34 Although I am using Sweet & Maxwell’s Complete Law Book Catalogue for purposes of this article, for a comprehensive catalog of Blackstone’s works, see ANN LAEUCHLI, A BIBLIOGRAPHICAL CATALOG OF WILLIAM BLACKSTONE (2015). In the second half of the nineteenth century, the Commentaries was still being updated by George Sharswood (1861) and reprinted several times down to 1898 and William Draper Lewis (1897) and reprinted several times down to 1922. For a full bibliography, see ANN LAEUCHLI, A BIBLIOGRAPHICAL CATALOG OF WILLIAM BLACKSTONE (2015). See also BLACKSTONE AND HIS COMMENTARIES: BIOGRAPHY, LAW, HISTORY (Wilfred Prest, ed. 2009). Oxford University Press just published a new modern edition of THE OXFORD EDITION OF BLACKSTONE’S COMMENTARIES ON THE LAWS OF ENGLAND (Wilfred Prest, ed. 2016).
modern conveyancing, this Essay is written with a view of reducing into a small compass, the leading principles on that subject." [22]

For court practice, Byrne praised five titles. Charles Barton’s *Historical Treatise of a Suit in Equity* “will furnish the student with such a knowledge of the proceedings in Courts of equity, as may enable him to understand them scientifically, and prepare them with accuracy.” [15] John Fonblanque’s *Treatise of Equity* was a “…very learned and ingenious work is attributed to the late Henry Ballow, Esq. his motive for concealing his name, is a matter of great surprise, as his works has been held in the highest estimation by the learned of the profession, the addition of marginal notes and references, are by the present editor.” [49] Gorges Edmund Howard’s *Compendious Treatise of the rules and practice of the Pleas side of the Exchequer, in Ireland*, was a book that “Every attorney should have this excellent work in his possession, the qualifications necessary for young gentlemen who intend embracing that branch of the law, are pointed out in the most judicious manner, in a most excellent preface.” [64] Sir John Mitford’s *Treatise of the Pleadings of suits in the Court of Chancery* in its first edition of this admirable treatise though ushered into the world without a name, received the general approbation of every learned practitioner. In this second edition the public have the pleasure of beholding the name of that great and equitable lawyer, Sir John Mitford, as the author, and with it considerable additions.” [83] John Sellon’s *Practice of the Courts of King’s Bench and Common Pleas* was a “useful and excellent work is an improvement on Mr. Crompton’s Book of Practice, and has met the general approbation of the profession.” [104]

Richard Burns’ *Justice of the Peace and Parish Officer*, published in eighteen editions between 1755 and 1797, was one of the most popular work published in the eighteenth century for local magistrates that Byrne recognized in his comment: This valuable Work ought to be not only in the possession of every Justice of the Peace but in the hands of every country Gentleman, where (to use the words of the learned Judge Blackstone) he will find every thing relative to this subject, both in antient and modern practice, collected in a most clear and judicious method. [14] Barton’s *Historical Treatise of a Suit in Equity* “furnish[es] the student with such a knowledge of the proceedings in Courts of equity, as may enable him to understand them scientifically, and prepare them with accuracy.” [15]
Baron Gilbert’s *Law of Evidence*, the first treatise on the subject, received praise as well:
The learned Judge Blackstone, in speaking of the lack of evidence, says, the nature of my present design will not permit me to enter into the numbless niceties and distinctions of what is, or is not legal evidence to a Jury; this is admirably performed in Lord Chief Baron Gilbert’s Treatise of Evidence—a work, which it is impossible to abstract or abridge without losing some beauty, and destroying the chain of the whole. [51]
His other work on *Tenures* continued to be published down into the nineteenth century.

One international law title, Robert Ward’s *Enquiry into the Foundation and history of the Law of Nations in Europe* also received notice: “In this very able and truly learned work, the Author has ventured to quit the beaten path, and to differ from authorities, whose deserved reputation would have overwhelmed him, did he not feel well supported by illustrious auxillaries.”[121]

It is not possible to discuss each title, but some observations upon topics may be useful. One of the earliest law books republished was Fitzherbert’s *New Natura Brevium* originally published in mid-sixteenth century, valuable for its collection of writs for the common law court system.

Constitutional law was covered by DeLolme’s *Constitution of England* [40], an important work of mid-century describing the nature of English government.

Montesquieu’s *Spirit of the Laws* was the only entry listed twice [78 and 110], a French publication translated into English, under both the author’s name and under the title.

Commercial law treatises were first published late in the century after Chief Justice Mansfield had begun to give some order to commercial law. Both Bailey’s *Bill of Exchanges and Promissory Notes*

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36 For recent work on Mansfield, see JAMES OLDHAM, THE MANSFIELD MANUSCRIPTS AND THE GROWTH OF ENGLISH LAW IN THE EIGHTEENTH
and Kyd’s *Treatise on the Law of Awards* [71] were useful for the law merchant in carrying out commercial operations.

Contract law, though two hundred years old, had its first treatise written by John Powell’s *Essay upon the Law of Contracts and Agreements* [90] (1790 and 1796).\(^3\)

John Reeves offered two historical works: *History of the English Law* (1783-84 and 1787) [100] *History of the Law of Shipping and Navigation* (1792) [101], the former a standard work until Holdsworth’s *History of English Law*, and the latter went to a second edition in 1802.

At the end of the century Francis Hargrave and Charles Butler published their edition of *Coke’s Reports* and Hargrave’s own *Collectana Juridica* [61] published a number of unpublished essays in legal history including cases from the reign of James I, Matthew Hale’s introduction to Henry Rolle’s *Abridgement*, and more recent cases from Lord Hardwicke.

William Noy’s *Maxims*\(^3\) was a standard summary of legal phrases similar to West’s *Words and Phrases* set lawyers currently use.

Criminal law titles include the two most important published in eighteenth-century England: Matthew Hale’s *History of the Pleas of Crown* [58]\(^3\) and Hawkins’ *Pleas of Crown* [59]. Both sets went

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\(38\) TREATISE ON THE PRINCIPALL GROUNDS AND MAXIMES OF THE LAWES OF THIS KINGDOM 6th ed. Dublin, 1792. 1 SM 172. This work also had John Dodderidge’s *A Treatise of Estates* ascribed to John Dodderidge and Observations Concerning a Deed of Feoffment [by T. H.].

\(39\) Hale, the leading judge during the reign of Charles II, was the most important legal writer between Coke and Blackstone although all of his works were published posthumously. Besides his *Pleas of the Crown*, his *History of the Common Law* was the first major exposition on the history of the common law; see Matthew Hale, *The History of the Common Law* (Charles M. Gray, ed., 1971); Matthew Hale, *Prerogatives of the King* (D. Yale, ed., 1976) (Selden Society v.), Harold Berman, *The Origins of Historical Jurisprudence of Coke, Selden, and Hale* 103 Yale L.J. 1651-1738 (1994).
through multiple editions in the eighteenth century and were well-known. For Irish criminal law, Byrne recommended Thomas Dogherty’s *Crown Circuit Assistant* as “a most excellent assistant as to the forms of criminal proceedings.”[39]

In conclusion, Bryne was a successful law bookseller in early nineteenth-century Philadelphia. Like his better-known colleague, Mathew Carey, Byrne served a growing legal market whose need for court reports, treatises and other legal publications that grew tremendously during the nineteenth century. Patrick Byrne’s catalog reflected an important English law library collection at the end of the eighteenth century and beginning of the nineteenth century. With American law still in its early infancy, the American bench and bar were still dependent on English case law and treatises. As mentioned above, Byrne’s career expanded in the decade after 1802 to include republishing English books as well as publishing American titles as well.
A CATALOGUE
of the
QUIRE STOCK OF BOOKS
of
P. BYRNE,

WITH THE BOUND PRICE OF EACH ARTICLE AFFIXED, AS SOLD BY HIM TO THE PUBLIC.
OF MOST OF THE BOOKS IN THIS CATALOGUE, BYRNE HAS LARGE QUANTITIES--OF MANY THE WHOLE IMPRESSIONS.
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Preface
P. Byrne has his most grateful acknowledgements to make to the Gentlemen of the law, for their very liberal support of him, since his commencement of business in this city, and for the encouragement they have given him in his undertaking to print good American Editions of new Law Books, which must ultimately serve the profession, as well as benefit the country. He has now finished the printing of two Octavo volumes, Willen’s Reports and Vesey, Jun. Vol. 3--the 4th and 5th are in the press--as is East’s Reports, vol. 1. being a continuation of Dunford and East, 8 vols. it is forming a new series of Reports in the King’s Bench. By the late arrivals he has received a large addition to his stock, among which are a number of the Old Reporters, of which there is a separate Catalogue. His Miscellaneous Books are numerous, many quite new, and containing great variety. By every vessel from Dublin he gets a new supply of Books, Law, Miscellany, etc. To the Gentlemen of the trade (Booksellers) he feels great obligation assures them his credit and discount will meet their wis[dom]. Gentlemen favoring him with their orders shall have immediate attention paid.

BYRNE’S CATALOGUE, &c.
[1] Andrews’s (George)⁴⁰ Reports of Cases argued and adjudged in the Court of King’s Bench; containing some additional cases not before published. By George William Vernon. 8vo. 1791. 2.50

[2] Anstruther’s (Alexander)⁴¹ Reports of Cases argued and determined in the Court of Exchequer, from Easter Term, 32d George 3d, to Trinity Term, 33d George 3d, both inclusive, 8vo. 3.

[3] Attorney’s New Pocket Book and Conveyancer’s Assistant⁴², containing a collection of the most common and approved precedents in conveyancing, with many practical remarks; to which is subjoined a short treatise on the nature of estates in general, and the qualities and effects of different legal instruments. By Frederick Conningby Jones, of Gray’s Inn. 2 vols. 12mo. 2.

The above useful and neat Pocket Companion will be found to contain all such forms in conveyancing as are in general use.

[4] Attorney’s Vade Mecum, and Client’s Instructor⁴³, treating of Actions (such as are now most in use) of prosecuting and defending them, of the pleadings, and law also, of Hue-and-Cry; the subjects arranged in a clear and perspicuous manner, in three volumes. To the second volume is added an appendix, containing a few precedents, being copies of complete Records. The whole bound, in 2 vols. 8vo. 5.

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[5] Ambler’s (Charles)⁴⁴ Reports of Cases argued and determined in the High Court of Chancery, with some few in other courts, 8vo. 1790 3.25

This volume consists chiefly of cases in the time of the great luminary Lord Hardwicke.

⁴⁰ C. Andrews, Reports, King’s Bench [1737–38]. 2d ed. by G. W. Vernon, 1791, Dublin. 2 SWEET & MAXWELL’S COMPLETE LAW BOOK CATALOGUE (hereafter SM) 87.
⁴² Coningsby, F. Attorney’s new Pocket Book and Conveyancer’s Assistant; Containing a Collection of the most common and approved Precedents. 2 vols. 1798. 2 SM 151.
⁴³ John Morgan, Attorney’s Vade Mecum, and Client’s Instructor, treating of Actions. 1787. 2 SM 79.
⁴⁴ C. Ambler, Reports, Court of Chancery [1737–1783]; 2 vols. Dublin 1790. 2 SM 104.
Blackstone’s (Sir William)\(^\text{45}\) Commentaries on the laws of England, the thirteenth edition, with the last corrections of the author. Additions by Richard Burn, L.L.D. and John Williams, Esq. continued to the present time by Edward Christian, Esq. barrister at law, and professor of the laws of England, in the University of Cambridge, 4 vols. 12mo. 6.

*This edition of Blackstone being enriched by with the learned and judicious notes of Professor Christian, must make it a most valuable book to the young student.*

N.B.--Gentlemen having the former edition of Blackstone, may be accommodated with the notes in a separate volume bound, 1.50

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[7] ________________\(^\text{46}\) Law Tracts, 8vo. 2.

[8] ________________\(^\text{47}\) Reports of Cases determined in the several Courts of Westminster Hall, from 1746 to 1779, published according to the directions in his will, from his original manuscripts, by his Executors, 2 vols. 8vo. 8.

[9] Blackstone’s (Henry)\(^\text{48}\) Reports of Cases argued and determined in the Courts of Common Pleas and Exchequer Chamber, from Easter Term, 28th George 3d, 1788, to Hilary Term, 36th George 3d, 1796, both inclusive, 2 vols. 8vo. 9.

*The high and established reputation of those Reports are well known to every professional man. They form an important detail of the proceedings of one of the highest Courts of judicial authority, in which many questions of the greatest importance to the professors of real and commercial property, are constantly agitated.*

[10] Barnes’s (Henry)\(^\text{49}\) Notes of Cases, in points of practice, 2.

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\(^{45}\) William Blackstone, Commentaries on the Laws of England. This is probably the 13th ed. published in Dublin in 1796. 2 SM 5.

\(^{46}\) Blackstone (Sir William). Law Tracts. 2 vols. 1762. 1 SM 15.


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[13] Brown's (William)\textsuperscript{52} Reports of Cases argued and determined in the High Court of Chancery, beginning with Trinity Term, 18th, Geo. 3d, 1778, and ending with Hilary Term, in the thirty-fourth year of the reign of his Majesty George 3d, 4 vols. 8vo. 16.

Reports of this Court are continued by Mr. Vesey, and printed by Byrne; 3 vols. are now on sale, and 2 more will be published this year. Gentlemen wishing to encourage this work will please subscribe to the printer, or to the booksellers.

[14] Burn's (Dr. Richard)\textsuperscript{53} Justice of the Peace and Parish Officer, continued by his son, John Burn, Esq. the eighteenth edition, revised and corrected, 4 vols. 8vo.

This valuable Work ought to be not only in the possession of every Justice of the Peace but in the hands of every country Gentleman, where (to use the words of the learned Judge Blackstone) he will find every thing relative to this subject, both in antient and modern practice, collected in a most clear and judicious method.

[15] Barton's (Charles)\textsuperscript{54} Historical Treatise of a suit in equity, in which is attempted a scientific deduction of the proceedings used on the equity sides of the Courts of Chancery and Exchequer; from the commencement of the suit, to the decree and appeal; with occasional remarks on their import and efficacy, and introductory discourse on the rise and progress of the equitable jurisdiction of those Courts, 8vo. 1.50

\textsuperscript{50} W. Bunbury, Reports Court of Exchequer [1713-1741]. 2d ed. Dublin, 1793. 2 SM 100.
\textsuperscript{51} J. Bayley, Bills of Exchange, Cash Bills, and Promissory Notes. 2d ed. 1797. 2 SM 166.
\textsuperscript{52} W. Brown, Reports, Courts of Chancery [1778-1794]. 4 vols. fol. 1790-1794; with an appendix of cases and additional references, 1801. 2 SM 104.
\textsuperscript{53} R. Burn, Justice of the Peace and Parish Officer. 18th ed. by John Burn. 4 vols. 1797. 2 SM 56.
\textsuperscript{54} C. Barton, Historical Treatise of a Suit in Equity; a Scientific Deduction of Proceedings used on the Equity side of the Courts of Chancery and Exchequer, [with] discourse on the rise and progress of Equitable Jurisdiction of those courts sd(1796). 2 SM 67.
This Work will furnish the student with such a knowledge of the proceedings in Courts of equity, as may enable him to understand them scientifically, and prepare them with accuracy.

[16] Bankrupt Laws\textsuperscript{55} (a succinct Digest of) The Laws relating to Bankrupts, in which all the several manuscript cases upon this subject, from the first passing of the bankrupt laws in the time of Henry the 8th, to the commencement of Michaelmas Term, in the thirty-first year of George 3d. 8vo. 2.

[17] Burrows's Reports\textsuperscript{56}, 4 vols. 16.

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[18] Bacon's Abridgement of the Law and Equity\textsuperscript{57}, with the additions of Guiliam, in 7 vols. royal octavo, 37.

Supplement to Bacon's abridgement, being vol. 6 and 7 which are sold separate for convenience of those who have the former edition, in 2 volumes which they complete, 12.

[19] Burn's (Richard, L.L.D.)\textsuperscript{58} New Law Dictionary, intended for general use, as well as for gentlemen of the profession; continued to the present times. By John Burn, Esq. his son, 8vo. 1792. 3.50

[20] Burnes' Notes\textsuperscript{59} 2.

[21] Colles's (Richard)\textsuperscript{60} Reports of Cases upon Appeals and Writs of Error, in the High Court of Parliament, from the years 1697, to the year 1713; with tables, notes, and references, being a supplementary volume to Brown's Cases in Parliament, 8vo. 3.

[22] Cruise's (William)\textsuperscript{61} Essay on Uses, 8vo. 1.25

\textsuperscript{55} D. Baggett, Bankrupt Law of Ireland. Dublin 1795. 2 SM 188.

\textsuperscript{56} J. Burrow, Reports, King's Bench, 1756-1772. 5 vols. Dublin ed., 1785. 2 MS 88.

\textsuperscript{57} M. Bacon. New Abridgment of the Law. 5th ed. with additions by Sir H. Gwillim, 7 vols. 1798. 2 SM 2.

\textsuperscript{58} Richard Burn. New Law Dictionary; Continued by John Burn Dublin (1792). 2 SM 2.

\textsuperscript{59} It is unclear what title this is. Burn edited the ninth edition of Blackstone’s Commentaries on the Laws of England (Oxford, 1783).

\textsuperscript{60} R. Colles, Reports, Court of Parliament, 1697-1713; a supplementary volume to Brown's Cases in Parliament. Dublin, 1789. 2 SM 22.

\textsuperscript{61} W. Cruise. Essay on Uses. 1795; Dublin, 1796. 1 SM 309.
Uses being in fact the theory of modern conveyancing, this Essay is written with a view of reducing into a small compass, the leading principles on that subject.

[23] Crokes's (Sir George) Reports of select Cases adjudged in the Courts of King Bench and Common Pleas, during the reigns of Elizabeth, James 1st, and Charles 1st; the fourth edition, with additions of marginal notes, and many references to later authorities; including several from the manuscript notes of the late Lord Chief Baron Parker. By Thomas Leach, Esq. Barrister at Law, 3 Vols. royal octavo 12.

[24] Costs in the Court Chancery, with practical directions and remarks for the guidance of the Solicitor, in the conducting of a cause from the commencement to its close; in which the practice of the court (particularly before the Master) is fully explained, in a manner entirely new, with an appendix, containing a variety of modern precedents in necessary use during the progress of a cause, 8vo. 1.75

[25] Crompton's Practice in the Courts of King Bench and Common Pleas, methodically arranged, the third edition; considerably altered and enlarged, with new cases, titles, &c. 2 vols. 8vo. 1787

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[26] Cooper's Reports 3.50

63 Costs in the Court of Chancery, With Practical Directions and Remarks for the Guidance of the Solicitor in Conducting of a Cause [and] Appendix of Precedents; by a Solicitor of the Court. 2d ed. 1795. 2 SM 101. An earlier edition was titled Costs in the High Court of Chancery. 1791. 2 SM 101.
64 G. Crompton. Practice common-placed; or Rules and Cases of Practice in the Courts of King Bench and Common Pleas. 2 vols. Dublin, 1787. 2 SM 74.
65 Unknown. I cannot identify this work either in the Sweet and Maxwell’s A Bibliography of English Law or in Grace C. Bacon, List of British Law Reports in Frederick Hicks, Materials and Methods of Legal Research 432-59 (3d ed. 1942). If it is a printing error, then it may be Cowper’s Reports. 2 SM 89.
[27] Christian's (Edward) Notes to Blackstone's Commentaries, which are calculated to answer all of the editions, 12mo. 1.0
The Publisher respectfully informs the Reader, that the Notes of Mr. Christian are printed as to answer the quarto, the octavo, and duodecimo editions of Blackstone's Commentaries; that a portable size has been preferred for the convenience of carriage, &c. &c. The Notes are printed so as to bind at the end of each Volume of the duodecimo size, at the same time they will answer separate, to illustrate the Commentaries; --they are printed to refer to the page, line and word in the line, of each Book commented on, (all the editions of Blackstone's Commentaries being printed page for page) for example, in vol. 1 of the duodecimo edition, Note 1, p.6.l.29. Word power and so throughout the four volumes of all the editions.


[29] Reports continued down to 1790.--By Macnally. 2 vols.


[32] Addenda to do. 1.50

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66 Notes on Blackstone, to form vol. 5 of any edition, Dublin, 1797. 2 SM 5.
69 E. Coke. Reports [K.B., C.P., Exch., etc. 1572-1616]. Ed. by G. Wilson, 1776, etc. or Dublin, 1793. 1 SM 196.
71 C. Butler, Additional Notes on Coke's First Institute; Additions to the 13th and 14th editions of Coke upon Littleton. Dublin, 1795. It was printed as a 60 page or 58 page folio. 1 SM 290. It is also listed under the editions of Coke, First Institute, 2 SM 287.
[33] Durnford's (Charles)\textsuperscript{72} and Edward Hyde East's Reports of Cases argued and determined in the court of King's Bench, from Michaelmas Term, 26th George, 3d. 1785, to Trinity Term, 38th George 3d, 1798. both inclusive. 8 vols. 8vo. 42.

[34] Index to 7 vols.\textsuperscript{73} By Tomlins, 8vo. 3.

[35] Davies (Sir John)\textsuperscript{74} Reports of Cases and matters in law, resolved and adjudged in the King’s Courts, in Ireland, 8vo. 2.

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[36] Douglas's (Sylvester)\textsuperscript{75} Reports of Cases argued and determined in the Court of King's Bench, in the nineteenth, twentieth, and twenty first years of the reign of George 3d. the third edition, with additions, notes and authorities, royal 8vo. 1795 5.

\textit{These Reports have met the general approbation of the profession, and are esteemed for transmitting with accuracy the determinations of the Court, as well as for the advantageous use and improvement of the practitioner and the student; the preface to this collection contains a general account of the different methods of Reporting Cases with certain strictures which the author laid down to himself in framing his Reports.}

[37] Dyer's (Sir James)\textsuperscript{76} Reports of Cases in the reign of Henry 8th. Edward 6th. Queen Mary and Queen Elizabeth, now first translated, with additional references to the latest books of authority, marginal abstracts of the points determined in each Case, and an entire new index to the whole by John Vaillant, M.A. of the Inner Temple, Barrister at law;--to this edition a life of the author is prefixed, and from an original manuscript, in the library of the Middle Temple several new Cases are introduced in the notes, 3 vols., royal 8vo. 1794 9.

\textsuperscript{72} C. Durnford and E. H. East. King's Bench Reports [1785-1800]. Published 1788-1800; 2d ed., 1994-1802. 2 SM 90.
\textsuperscript{73} T. E. Tomlin. Digested Index to the Term Reports, 1785 to 1798. 1799; 2d ed. to 1800, 1801. 2 SM 111.
\textsuperscript{74} John Davies, Reports of Cases and Matters of Law, Resolved and Adjudged in the King’s Courts in Ireland [1604-1612]. Translated. 1762. 1 SM 384.
\textsuperscript{76} J. Dyer, Ascun Nouel Cases. 7th ed. Translated by John Vaillant. London; reprinted in Dublin, 1794. 1 SM 198.
[38] Dalrymple's (John) Essay towards a general history of feudal property in Great Britain, 8vo. 1.50
[39] Dogherty's (Thomas) Crown Circuit Assistant, being a collection of precedents of Indictments, Informations, Convictions by Justice, Inquisitions Pleas, and other entries in Criminal and Penal Proceedings, together with an Alphabetical Table to the Statutes relating to felony; brought down to the twenty-sixth year of his present Majesty George 3d. 8vo., 1788; 2.
The gentlemen attending the Circuit and Quarter Sessions, will find this book a most excellent assistant as to the forms of criminal proceedings.

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it is compared both with the Republican form of Government, and the other Monarchs in Europe; new edition, corrected, 8vo. 1.75

[41] Dallas's Reports of Cases ruled and adjudged in the Courts of Pennsylvania before and since the revolution, 1754-59-60. 62, 3, 4, 5, 6, 7, 8-1773--4,6,--a few cases decided in the above years, are all that could be collected previous to the Revolution in 1778, Mr. Dallas commences his Reports, which are regularly carried on from that period to 1799--in 3 volumes. 15.
We understand this gentleman intends continuing his Reports.

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78 Thomas Dogherty, Crown Circuit Companion; Containing the Practice of the Assises on the Crown Side and of the Courts of General and General Quarter Sessions of the Peace [with] the Clerk of Assizes's Circuit Companion. 7th ed. 1799. 2 SM 114.
[42] Espinasse’s (Isaac) Digest of the Laws of Actions and Trials at Nisi Prius, the second edition, corrected with several additions from printed and manuscript Cases, and three new chapters on the Law of Corporations and Evidence. 8vo. 5.

[43] Equity Pleader’s Assistant (the) containing a great variety of precedents of bills, answers, pleas, replications, demurrers, decrees, and interrogatories, methodically arranged; to which are added, readings and observations under each respective head. 3 vols. 8vo. 5.

To the industry of M.C. Walker, Esq. the profession stand indebted for this truly useful and very excellent compilation; in it will be found a greater variety of precedents than in any former publication, it is therefore earnestly recommended to the attentive perusal of both lawyer and attorney.


[45] East (Edward Hyde) Reports of cases in K.B.--with table of names, of cases, and principal matters--Vol. 1st. (being a new series, or continuation of Dunford and East) containing the cases in the 41st year of George 3d,--1800 and 1801 4.

This work is continued every term, and will be printed, as it appears, by Byrne.

[46] Espinasse’s (Isaac) Cases argued and ruled at Nisi Prius, in the Courts of King Bench and com-

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mon Pleas, from Easter Term, 33 George 3d, to Easter Term, 39 George 3d. 2 vols. 8vo. 6.

This work is continued and printed by Byrne.

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82 M. C. Walker, Equity Pleader’s Assistant. London; 1796; Dublin, 1796. 2 SM 68. The title is listed as having only two volumes.
83 Genera Abridgment of Cases in Equity Argued and Adjudged in the High Court of Chancery, etc., with several cases never before published, alphabetically digested under proper titles. 3d ed. 2 vols. Dublin 1792-93. 2 SM 109-110.
85 I. Espinasse. Reports at Nisi Prius, King’s Bench and Common Pleas, [1793-1807]. 6 vols. in 3, 1796-1811; editions of vol. 1 in 1796, 1797, 1801, and 1803; editions of vol. 2 in 1798, 1800, and 1803. 2 SM 90.
[47] Finch’s (Thomas)86 Precedents in Chancery, being a collection of cases argued and adjudged in the High court of chancery, from the year 1689, to 1722. Second edition. 2.50


[49] Fonblanque’s (John)88 Treatise of Equity, with the addition of marginal notes and references. 2 vols. 8vo. 1795. 4. 
This very learned and ingenious work is attributed to the late Henry Ballow, Esq. his motive for concealing his name, is a matter of great surprise, as his works has been held in the highest estimation by the learned of the profession, the addition of marginal notes and references, are by the present editor.

[50] Foster’s (Sir Michael)89 Crown Law. 8vo. 2.

[51] Gilbert’s (Lord Chief Baron)90 Law of Evidence, considerably enlarged.--By Capel Loft, Esq, to which is prefixed some account of the Author, and his argument in case of Homicide, in Ireland. 2 vols. royal 8vo. 1795. 8.
The learned Judge Blackstone, in speaking of the lack of evidence, says, the nature of my present design will not permit me to enter into the numbless niceties and distinctions of what is, or is not legal evidence to a Jury; this is admirably performed in Lord Chief Baron Gilbert's Treatise of Evidence—a work, which it is impossible to abstract or abridge without losing some beauty, and destroying the chain of the whole.

86 Thomas Finch, Precedents in Chancery; Cases, Courts of Chancery, 1689-1722. 2d ed. 1786, Dublin, 1792.
89 Michael Foster, Report of Commission for Trial of Rebels in 1746; so to which are added Discourses upon a few branches of the Crown law, viz., high treason, homicide, accomplices, and observations on the writings of Lord Hale. 2d ed. 1776, and Dublin, 1791; 3d ed., 1792. 1 SM 225, 2 SM 90.
90 G. Gilbert, Law of Evidence by a Late Learned Judge. 5th ed. (1791-96); (Dublin, 1795-97). 2 SM 121.
[52] ___________________________.91 Law of Equity, 2.
[53] ___________________________.92 Devises, 1.50
[54] ___________________________.93 Reports, 2.
[55] ___________________________.94 Replevins, 2.
[56] ___________________________.95 Common Pleas, 2.
[57] ___________________________.96 Tenures, 1.05

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[58] Hale's (Sir Mathew)97 Historia Placitorum Coronae, the history of the Pleas of the Crown, published from the original manuscript. By Solomon Emlyn, of Lincoln’s Inn, Esq., a new edition, carefully revised and corrected, with additional notes and references to modern cases, concerning the pleas of the crown together with an abridgment of the statutes concerning felonies, which have been enacted since the first publication of this work. By George Wilson, Esq. Sergeant at law. 2 vols. 8vo. 1778. 6.

[59] Hawkin’s (William)98 Treatise of the Pleas of the Crown, a system of the principal matters relating to that subject, digested under proper heads, in two books, the sixth edition;--in which the text is

93 G. Gilbert. Reports of Cases in Equity, Courts of Chancery and Exchequer [1705-26; with] Cases in Equity, Court of Exchequer, Ireland. 2d ed. 1742. 2 SM 105.
98 W. Hawkin’s, Pleas of the Crown. 7th ed. by Thomas Leach. 1795. 2 SM 116.
carefully collated with the original work, the marginal references corrected, new references from the modern reporters added, a variety of manuscripts inserted, and the whole enlarged by an incorporation of the several statutes upon criminal law, to the twenty-seventh year of George the 3d; to which an explanatory preface is prefixed, and new and copious indexes are subjoined. --By Thomas Leach, Esq. of the Middle Temple, barrister at law, 2 vols. 8vo. 7.

[60] Howard’s (George Edmund) 99 Treatise on the rules and practice of the Equity side of the Exchequer in Ireland, with the several statutes relative thereto; as also several adjudged cases on the practice, in the courts of equity, both in England and Ireland, with the reasons and origins thereof, in many instances, as they arose from the civil law of the Romans, or the canon or feudal laws; and a complete index to the whole, 4.

[61] Hargrave’s (Francis) 100 Collection of tracts relating to the laws of England from manuscripts. 8vo. 1787, 3.

[62] Hargrave’s (Francis) 101 Edition of the State Trials, now printing, there are 3 vols. finished, price in boards. 21.

[63] Hargrave’s (Francis) 102 Edition of Coke on Littleton. folio. 18.

[64] Howard’s (Gorges Edmund) 103 Compendious Treatise of the rules and practice of the Pleas side of the Exchequer, in Ireland, as it now stands between party and party, with the rules of the said court, and an abridgment under head of practice of the said court,

99 Dublin, 1793-92. 2 SM 194.
100 F. Hargrave, Collectanea Juridica; Collection of Tracts Relative to the Law of England From Manuscripts Never Before Published. 1787. 1 SM 19-20.
102 Coke, Sir Edward. First Part of the Institutes of the Laws of England; or, Commentaries upon Littleton. 15th ed. by Francis Hargrave and Charles Buttler, including notes of Chief Justice Hale and Chancellor Nottingham, and an Analysis of Littleton. 3 vols. 1794. Hargrave edited the thirteenth to sixteenth editions. The editors of the Sweet and Maxwell’s Legal Bibliography state: “The learning and ability with which Hargrave and Butler edited the Institute is not equalled by any similar performance in modern times.” 1 SM 289.
103 2 SM 193.
and an abridgment under each head of practice of the several Acts of Parliament now in force relating thereto; the second edition, revised and corrected. 2 vols.
N.B. The Equity and Pleas side in 4 vols. and bound in two vols. 8vo. 1794. 5.
Every attorney should have this excellent work in his possession, the qualifications necessary for young gentlemen who intend embracing that branch of the law, are pointed out in the most judicious manner, in a most excellent preface.

[65] Hatsell’s (John) Precedents of proceedings in the House of Commons, with observations. 3 vols. 8vo. 1786. 5.
Vol. 2d. Relating to Members, Speakers, &c.

[66] Hardress’s (Sir Thomas) Reports of Cases adjudged in the Court of Exchequer, in the years 1655, 1656, 1657, 1658, and 1660, and from thence continued to the 21st year of the reign of his late majesty King Charles 2d. the second edition, with notes and references. 8vo. 1792. 2.

[67] Hullock’s (John) Law of costs. 8vo. 1793. 3.
This useful book exhibits in one point of view, what otherwise could only be obtained by consulting a number of different, and often widely scattered authorities.

[68] Heywood’s (Samuel) Digest of the Laws respecting County Elections, containing the duty and authority of the High Sheriff, from the receipt of the Writ, to the return thereof, and the mode of proceeding at County Elections; whether determined by the View, the Poll, or the Scrutiny; together with the qualifications, and personal and other disqualifications of the Voters. 8vo. 1791. 2.

[69] Impey’s (John) Office of Sheriff, shewing its History and Antiquities, the manner of appointing the High Sheriff, his Under Sheriff, and other
[p.11]

104 1 SM 116.
105 T. Hardres, Reports, Court of Exchequer, 1655[-69]. 2d ed., Dublin, 1792. 2 SM 100.
107 SM cites the date as 1790. 2 SM 25.
108 2 SM 159.
Deputies, together with their respective powers and duties, particularly with regard to the County Courts, Sessions, Circuits, Arrests on Mesne Process, Bail Juries, Executions, Escapes, Rescues, and Replevins, &c. &c. 12mo. 1.75

[70] Jones's (Sir William) Essay on the law of Bailments, the second edition, with introductory remarks and notes, comprising the most modern authorities—By John Balmanno, of Lincolns Inn, Esq. Barrister at Law. 8vo. Lond. 1798. 2.

[71] Kyd, Bailey and Lovelass, on Bills of Exchange, Cash Bills, and Promissory Notes. Bound in one vol. 8vo. 2.5

[72] Kelyngs (Sir John) Reports of cases in Pleas of the crown, adjudged and determined in the reign of the late King Charles 2d. with directions for Justices of the peace and others: collected by Sir John Kelyngs, Knt. late Lord Chief Justice of his majesty's Court of King's Bench, from the original manuscript under his own hand; to which is added, the Reports of three modern cases,—Armstrong and Lisle—The King and Plummer—The Queen and Mawbridge;—as originally published by lord chief justice Holt, with additional notes and references.—By George Joseph Brown, Esq. Barrister at Law. 8vo. 1789. 1.50

As proof of the uncommon merit of this report, it may be sufficient to state, that it was published by that very able Crown Lawyer, Lord Chief Justice Holt, and that shortly after the Revolution;—when the crown law became better understood, and had assumed that Constitutional and Systematic arrangement, which at present harmonizes and adorns it.

[73] Kyd's (Stewart) Treatise on the Law of Awards, 8vo. 1.75

In this ingenious, and well written Essay, the Author has taken uncommon pains, not barely to lay down the law as it is received at the present day, but as far as determinations of the Court will permit.

111 2 SM 91.
[p.12]
[74] Leach’s (Thomas)\textsuperscript{113} Cases in Crown Law, determined by the
twelve judges by the Court of King’s Bench, and by commissioners
of Oyer and Terminus and general gaol delivery, from the fourth
year of George the Second, to the twenty-ninth year of George the
Third. 8vo. 2.50

[75] Loft’s (Capel)\textsuperscript{114} Reports of cases argued in King’s Bench, from
Easter Term, 12th George 3d to Michaelmas Term, 14th George 3d,
inclusive, some select cases in the Court of Chancery, and common
pleas, which are within the same period. 8vo. 4.

[76] Laws (The)\textsuperscript{115} Respecting Landlords, tenants, lodgers. 1.

[77] Law Grammar\textsuperscript{116}. 8vo. 2.

[78] Montesquieu’s Spirit of Laws\textsuperscript{117}. 2 vols. 8vo. 3.

[79] Morgan’s (John)\textsuperscript{118} Attorney’s Vade Mecum, 3 vols. in two. 5.

\textsuperscript{113} T. Leach, Cases in Crown Law, Determined by the Twelve
Judges, by King’s Bench, and by Commissioners of Oyer and Ter-
miner and General Gaol Delivery, [1730-1800]. 3d ed. 1800. 2 SM
92.

\textsuperscript{114} C. Lofft, Reports, King’s Bench, with Select Cases, Court of
Chancery and of Common Pleas [1763-1774, with] the Case of Gen-
2 SM 92.

\textsuperscript{115} James Barry Bird, Tenant’s Law; or, Laws Concerning Land-
lords, Tenants and Lodgers; Laid down in a plan and easy man-
The Sweet and Maxwell Catalogue lists the eighth edition of 1806.
I used the Yale Law Library catalog to locate the earlier editions.

\textsuperscript{116} Law Grammar; or Introduction to the Theory and Practice of
English Jurisprudence. Dublin, 1791. Or, it could be Giles Jacob,
Jacob was a well-known writer and since his name was not in-
cluded, it may be the first item.

\textsuperscript{117} Montesquieu. Spirit of the Laws. 2 vols. The work was published
in two volumes in 1794 in a London edition.

\textsuperscript{118} J. Morgan. Attorney’s Vade Mecum and Client’s Instruction;
treating of Actions, of prosecuting and defending them, of the
Pleadings and Law, also of Hue and Cry, [with] precedents. 3 vols.
in 2. Dublin, 1787-1788. 2 SM 79.
Morgan's (John)119 Essays upon, first, the law of evidence, second, new trials, third special Verdicts, fourth, trials at bar, fifth, Repleaders. 3 vols. 8vo. 1789. 5.

Morius's (John)120 Public Notary, advice concerning bills of exchange, wherein is set forth the nature of exchange in different languages, manner of proceeding in protests, countermand, security, letters of credit, assignments, and generally the whole practical part and body of exchanges anatomized. 8vo. 1.

The Author of this treatise on bills of exchange, was certainly a man of great experience and knowledge: a practice of twenty-four years as notary, at the royal exchange, London, must, in the eyes of the commercial world, stamp his advice with some degree of authority.

Modern Reports121, or, Select Cases, adjudged in the courts of King's Bench, chancery, common pleas and exchequer, since the restoration of his majesty King Charles 2d. to the end of the reign of King William 3d. in twelve volumes, the fifth edition, revised and corrected with the addition of many thousand new and proper references, selected from all the reporters and other books of authority. 31.

Mitford's (Sir John, now Lord Chancellor of Ireland)122 Treatise of the Pleadings of suits in the Court of Chancery, by English Bill; second edition, 8vo. 1.75

The first edition of this admirable treatise though ushered into the world without a name, received the general approbation of every learned practitioner. In this second edition the public have the pleasure of beholding the name of that great and equitable lawyer, Sir John Mitford, as the author, and with it considerable additions.

Natura Brevium (The New)123 of the most reverend Judge William Anthony Fitz-Herbert, together with the authorities in law and

121 Modern Reports; or Select Cases adjudged in the Courts of K.B., Chancery, C.P., and Exchequer. 12 parts. Dublin, 1794. For full description see, 2 SM 93-94.
122 J. F. Mitford, First Baron Redesdale. Treatise on the Pleadings in Suits in the Court of Chancery, by English Bill. 2d ed. Dublin, 1795. 2 SM 102.
123 Dublin, 1793. 2 SM 181.
cases, in the books of reports cited in the margin;--the ninth edition, carefully revised, some errors in the text of the last edition corrected, and the writs accurately translated into English, by an able hand; to which is added, a commentary, containing curious notes and observations on the most remarkable writs, which illustrate and explain many doubtful and abstruse cases and points in the original.--By the late lord chief justice Hale; with a new and exact table of the most material things contained therein. 8vo. 1793. 3.

[85] Peak’s (Thomas) 124 Cases determined at Nisi Prius, in the Court of King’s Bench, from the sittings of Easter Term, 30th George 3d, to the sittings of Michaelmas Term, 35th George 3d, both inclusive. 8vo. 1795. 2.
In the above cases the Author has stated every circumstance which appeared to him to affect the question before the court, when arguments have been urged, he has attempted to report them, and when any portion of the Pleadings was necessary to elucidate the case, of such it has been endeavour to give a faithful abstract.

[86] Proctor’s 125 Practice in the Ecclesiastical Courts, containing
1st--An account of the several courts, offices and officers, with a list of the judges, advocates, proctors, and practitioners, and the methods of proceeding therein.
[p.14]
2d.--Cases adjudged in the courts of Doctor’s Commons, with references to the authorities in the common and statute law.
3d.--Acts or orders of court, fully extended from the citation, to the execution of the sentence, in causes of the first instance, and from the inhibition, to the sentence in appeals;--also, a table of fees, allowed to be taken in the Public Offices.--by Philip Floyer, Gent. of Doctor’s Commons, the third edition; to which is added, an introduction to the general rules of practise with the whole proceedings on excommunications,--by Thomas Wright, Gent. of Doctor’s Commons, 8vo. 1795, 2.

[87] Powel’s (John Joseph) 126 Treatise upon the Law of Mortgages, the third edition, revised and corrected by the author, 8vo. 1791, 2.25

\[124\] T. Peake, Cases Determined at Nisi Prius in the Court of King’s Bench, From Easter Term, 30 Geo. 3, to Michaelmas Term, 35 Geo. 3. 1795. 2 SM 94.
[88] ________________.[127] Essay upon the learning of Devises, from their inception by writing, to their consummation by the death of the devisor, 8vo. 1791, 2.25

[89] ________________.[128] Essay upon the learning respecting the creation and execution of Powers, and also, reporting the nature and effect of leasing powers; in which the doctrine of the judgment delivered by the Court of King's Bench, in the case of Pugh and the Duke of Leeds, and the principal of authorities for and against it, are considered; the second edition, 8vo. 1791, 2.25

[90] ________________.[129] Essay upon the Law of Contracts, the two vols. in one, 8vo. 1796, 2.25

[91] Plowden's (Edmund)[130] Commentaries, or Reports, containing divers cases upon matters of law, argued and adjudged in the several reigns of king Edward 6th, Queen Mary, King and Queen Philip and Mary, and Queen Elizabeth, originally written in French, and now faithfully translated into English, and considerably improved by marginal notes and references to all the books of the common law, both ancient and modern; to which are added, the queries of Mr. Plowden, now first rendered into English at large, with references and many useful observations, with two new tables more complete than any yet published, [p.15]
the one of the names of the cases, the other of principal matters, 2 vols. 8vo. 1792 7.

[92] Points in Law and Equity.[131], selected for the information, caution and direction, of all persons concerned in trade and commerce,

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[130] E. Plowden, Commentaries or Reports; Divers Cases Upon Matters of Law [1550-1580]; written in French, now Translated, [with his] Querries rendered into English. Dublin, 1792. 1 SM 201.
[131] Points in Law and Equity, Selected for the Information, Caution, and Direction of All Persons Concerned in Trade and Commerce,
with references to the Statutes and Reports, and other Authorities upon which they are founded, 12mo. 1793  1.

[93] Perkin's (John)\textsuperscript{132} Treatise of the Laws of England, on the various branches of conveyancing, the fifteenth edition, corrected and enlarged, 12mo. 1792,  1.

[94] Plowden's (Francis)\textsuperscript{133} Jura Anglorum, the Rights of Englishmen, 8vo. 1792  2.25

[95] Parliamentary Register\textsuperscript{134}; or, history of the proceedings and Debates of the House of Commons of Ireland, commencing with the fourth Session of the fourth Parliament, in the reign of his present Majesty, which met the 9th of October, 1781, and continued to the sixth Session of the fifth Parliament, in the reign of his present Majesty, which met at Dublin, on the 22d of January, and ended the 5th of June, 1795. 15 vols.  30.

The above value and interesting work, forms a complete history of the politics, trade, and internal resources of Ireland, during the space of sixteen years, which was the grand and important period of her existence as a nation; it will also serve to hand down to the last moment of recorded time, the names of those illustrious men, whose splendid talents adorned its Senate, and made it the admiration and envy of surrounding kingdoms.

[96] Pleader's Assistant\textsuperscript{135}, containing a select collection of precedents of modern pleadings in the Courts of King Bench and Common Pleas, &c. viz. declarations, avowries, pleas, replications, rejoinders, demurrers, &c. in a variety of actions, including the most usual, as well as the most special matters, with forms of writs in several cases, interspersed with many observations and instructions; the whole drawn and settled by the most eminent counsel, 8vo. 1786,  2.

with References to Statutes, Reports, and Other Authorities. Dublin, 1793. 2 SM 170.


\textsuperscript{133} F. P. Plowden. Jura Anglorum; the Rights of Englishmen. Dublin, 1792. 2 SM 28.

\textsuperscript{134} Parliamentary

\textsuperscript{135} Pleader's Assistant; Containing a Select Collection of Precedents of Modern Pleadings in the Courts of King's Bench and Common Pleas, etc., With the Forms of Writs, Interspersed with Observations and Instructions. Dublin, 1795. 2 SM 80.
[97] Reports of Cases argued and determined in the King’s Bench and Chancery, during the time in which Lord Hardwick presided in those courts, collected from a manuscript never before printed; to which are added, notes, references, and tables. By William Ridgeway, Esq. barrister at law. 8vo. 1794 3.

[98] Raymond’s (Lord) Reports of Cases argued and adjudged in the Courts of King’s Bench and Common Pleas, in the reigns of the late King William, Queen Anne, King George the 1st and King George the 2d; the fourth edition, corrected, with additional references to former and latter reports. By John Bayley. 3 vols. royal 8vo. 1792 9.

[99] Raymond (Sir Thomas) Reports, 3.50

[100] Reeves’s (John) History of the English Law, from the time of the Saxons, to the end of the reign of Philip and Mary, 4 vols. 8vo. 1787 8.


[102] Roper’s (R.S.) Treatise upon the Law of Legacies, 8vo. 1.75

[103] Reports of Cases, argued and determined in the Courts of Common Pleas and Exchequer Chamber, and in the House of

137 R. Raymond, Reports, King’s Bench and Common Pleas [1694-1732]; with marginal notes and additional references by J. Bailey, 4th ed. 3 vols. Dublin, 1792. 2 SM 94-95.
139 J. Reeves, History of English Law, from the Saxons to the End of the Reign of of Philip and Mary, 4 vols. (1787). 1 SM 11-12.
141 R. S. D. Roper, Law of Legacies. 1799; 2d ed. 1804-5. 2 SM 160.
142 2 SM 87.
Lords, from Easter Term, 36th George 3d 1796, to Trinity Term, 39th George 3d 1799, both inclusive. By John Bernard Bosanquet, and Christopher Fuller, Esqrs. vol. 1st. 8vo. 6.

These reports are intended as a continuation of the celebrated reports of Henry Blackstone. Parts 1, 2, 3, of do. 4 and 5 are in the press.


This useful and excellent work is an improvement on Mr. Crompton's Book of Practice, and has met the general approbation of the profession.

[105] Strange's (Sir John)144 Reports of adjudged Cases in the Courts of Chancery, King's Bench, Common Pleas, and Exchequer, from Trinity Term, in the second year of King George 2d; the third edition, revised and corrected, with references to all the contemporary reporters, and other improvements. 2 vols. 8vo. 1792. 7.

[106] Schiefer's (John Frederick)145 Explanation of the Practice of Law, containing the elements of special pleading, reduced to the comprehension of every one; also, elements of a plan for a reform, shewing, that the plaintiff's costs in a common action, which of present amount to, from 25 to 35 l. ned not exceed 10 l. and those of the defendant, which are now from 12 to 20 l. need not exceed 6 l. 8vo. 1795 2.

[107] Saunders (Francis)146 Essay on the nature and laws of uses and trusts, including a treatise on conveyances at common law, and those deriving their effect from the statute of uses, 8vo. 1692. 2.

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143 2 SM 84. His initials are listed as B.J. and the date of publication as 1798 rather than 1796.
145 J. F. Schieffer or Scheiffer. Explanation of the Practice of Law: containing the elements of Special Pleading, also elements of a plan for a reform. 1792. Dublin, 1793. 2 SM 83.
[108] Sheperd's Touchstone\textsuperscript{147}, 3.50


[111] Sullivan's (Francis Stoughton)\textsuperscript{150} Lectures on the Constitution and Laws of England, with a commentary on Magna Carta, and illustrations of many of the English statutes; the second edition, to which authorities are added, and a discourse is prefixed concerning the laws and government of England. By Gilbert Stuart, L.L.D. 8vo. 1790, 2.

[112] State Trials\textsuperscript{151} (a complete collection of) and proceedings for High Treason, and other crimes and misdemeanors, commencing with the eleventh year of the reign of King Richard 2d and ending with the sixteenth year of the reign King George, 3d, with two alphabetical tables to the whole, to which is prefixed a new preface. By Francis Hargrave, Esq. to which is added a supplementary volume, containing all the interesting trials on constitutional subjects, particularly those of libels. &c. &c. This work when completed, will make eleven volumes in quarto, there are three published, price, in boards, 21.

[113] Toller's (Samuel)\textsuperscript{152} Law of Executors and Administrators. 8vo. 2.

\textsuperscript{147} W. Sheppard. Touch-Stone of Common Assurances: or, Treatise opening the Learning of Common Assurances or Conveyances of the Kingdome. 1791. 1 SM 312.


\textsuperscript{150} 2d ed. Dublin, 1790. 2 SM 13-14.

\textsuperscript{151} Reference is given, supra note .

\textsuperscript{152} S. Toller. Law of Executors and Administrators. Dublin, 1800. 2 SM 160.
[114] Tidd’s (William)¹⁵³ Practice of the Court of King’s Bench, in personal actions, 8vo. 1796  2.2[5?]

[115] Trials of Mr. Thomas Hardy, John Horne Tooke, John Thelwall¹⁵⁴, &c. &c. for High Treason, containing the whole proceedings from the opening of the special commission, the judges charge to the grand jury [p.18]
lists of the witnesses, jurors, and the bills of indictments found against them; together with the arguments of Council on the part of the Crown, and in defence of the prisoners, accurately taken in shorthand. By Manoah Sibly, shorthand writer to the City of London, 8vo. 1794 2.

[116] Vatell’s (M. de)¹⁵⁵ Law of Nations; or Principles of the Law of Nature, applied to the conduct and affairs of nations and sovereigns. 3.

[117] Viner’s (Charles)¹⁵⁶ General Abridgement of Law and Equity, alphabetically digested under proper titles, with notes and references to the whole, second edition, 26 vols. royal 8vo. 1794, 130.

[118] Vesey’s (Francis)¹⁵⁷ cases argued and determined in the High Court of Chancery, in the time of Lord Chancellor Hardwicke, from the year 1745, 1747, to 1755, with tables, notes and references, the third edition, revised and amended, with several additional notes and references, 2 vols. 8vo. 1788, 7.

¹⁵³ W. Tidd. Practice of the Court of King’s Bench in Personal Actions. 2 pts. 1790-94; 1799. 2 SM 84.
¹⁵⁴ The trial of Mr. Thomas Hardy, for high treason: containing the whole proceedings, from the opening of the special commission, the judge’s charge to the grand jury, lists of the witnesses, jurors, and the bills of indictment found against Thomas Hardy, John Horne Tooke, John Augustus Bonney, Stewart Kyd, Jeremiah Joyce, Thomas Wardel, Thomas Holcroft, John Richter, Matthew Moore, John Thelwall, Richard Hodgson, John Baxter: together with the arguments of counsel on the part of the Crown and in defence of the prisoner / accurately taken in short-hand by Manoah Sibly. This title is not listed in Sweet & Maxwell’s Legal Bibliography.
¹⁵⁶ 2 SM 4. The bibliography lists 24 vols.
¹⁵⁷ 2 SM 106. This set is by Francis Vesey Sr.
Vesey’s (Francis, Jun.) Reports of Cases argued and determined in the High Court of Chancery, beginning in the sittings after Hilary Term 29 George 3d, 1789, and ending in the sittings after Trinity Term, 32 George 3d, 1792, 3 vols. 8vo. The plan adopted by this very able and accurate Reporter has met with the most general approbation, the facts are stated in their natural order, and in a manner as concise as possible, consistently with the necessary perspicuity; the judgments are stated fully, and with a strict regard to accuracy, and he has been particularly anxious by preserving the language used, to give not only his own construction, but as nearly as possible, the very words in which the opinion of the court was expressed.

Volume 3d of his Reports, beginning Michaelmas Term, 36 George 3d, 1795, ending Easter, 38 George 3d, 1798, inclusive, 4.5 These volumes are sold separate to complete sets 4 50 each.

The 4th, and 5th, volumes are now in the press.

Vernon’s (Thomas) Cases argued and adjudged in the High Court of Chancery, from the 33d of King Charles 2d, to the 5th, King George 1st, 2 vols. 8vo. 1793, 7.

Ward’s (Robert) Enquiry into the Foundation and history of the Law of Nations in Europe, from the time of the Greeks and Romans, to the age of Grotius, 8vo. 1795, 2 vols. in one, 2.50 In this very able and truly learned work, the Author has ventured to quit the beaten path, and to differ from authorities, whose deserved reputation would have overwhelmed him, did he not feel well supported by illustrious auxiliaries.

Wooddeson’s (Richard) Systematical view of the Laws of England, as treated of, in a course of lectures read at Oxford during a series of years, commencing in Michaelmas Term, 1777, 3 vols. 8vo. 1792, 5.

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[123] Williams's (Thomas Walter)\textsuperscript{162} Original Precedents in conveyancing, settled and approved by the most eminent conveyancers, interspersed with the observations and opinions of counsel, from various Intricate cases: the whole selected from the draughts of actual practice, 2 vols. 8vo. 1790, 5.


[125] Wentworth's (John)\textsuperscript{164} System of Pleading, comprehending the most approved precedents and forms of practice, chiefly consisting of such as have never before been printed, with an index to the principal work, incorporating and making it a continuation of Townshend's and Cornwall's Tables to the present time, as well as an index of reference to all the ancient and modern entries extant. 10 vols. 8vo. 1799, 30.

[126] Wilson's (George)\textsuperscript{165} Reports of the Cases argued and adjudged in the Kings Bench and Common Pleas, from Hilary Term, 16th George 2d, to Easter Term, 14th George 3d, 3 vols. royal 8vo. 1792, 10.

[127] Yelverton's (Sir Henry)\textsuperscript{166} Reports of divers special cases in the Court of King's Bench, from the 44th of Queen Elizabeth, to the 10th of King James 1st, published originally by Sir W. Wylde in French. and now translated into English, 8vo. 1792, 2.

[p.20]
[128] Wright's (Sir M.)\textsuperscript{167} Introduction to the Laws and Tenures, 8vo.1.75

\textsuperscript{162} T. W. Williams, Original Precedents in Conveyancing with observations and opinions of counsel. 4 vols. 1788, 1792. 2 SM 155.
\textsuperscript{163} E. Wood, Complete Body of Conveyancing in Theory and Practice. 1790-1793. Earlier editions are listed as 3 volumes only. 2SM 155.
\textsuperscript{164} 2 SM 85.
\textsuperscript{165} 2 SM 97.
\textsuperscript{166} 2 SM 202.
\textsuperscript{167} M. Wright. Introduction to the Law of Tenures. 4th ed. Dublin, 1792. 2 SM 297.
[129] Willis (Lord Chief Justice) Reports of adjudged Cases in the Court of Common Pleas, during the time he presided in that court (1737 to 1758); together with some few cases of the same period determined in the House of Lords, Court of Chancery, and Exchequer. Taken from his Manuscripts: with Notes and References, to prior and subsequent decisions, by Charles Durnford, of the Middle Temple, Barrister at law. 4.50

Mr. Durnford’s various merits as a reporter are too universally known, and too constantly experienced, to require any praise on this occasion from us. Eight folio volumes*, containing the decisions of the Court of King’s Bench for the last fifteen years, bear ample and unequivocal testimony to his unremitting diligence; and the discriminating knowledge and nice precision, with which they are executed, justly entitle him to a distinguished place among this description of authors: incontestibly proving, also, that he has liberally discharged the debt which every man, according to Lord Coke, owes to his profession. As an editor, Mr. Durnford now appears before the public; and to his discretion is entrusted the reputation of that distinguished lawyer whose name is prefixed to the present work.

The correctness and authenticity of these Reports cannot be questioned, when it is known that most of them were written by the venerable author for the purpose of making them public, and may be said to have been published by himself to the profession from the Bench. They are, in many instances, the judgment which he delivered; and they are, therefore, more worthy of dependence than the notes which could have been taken by an uninterested writer, however great might be his accuracy.

*Byrne has printed them in 8 volumes octavo, and volume 1. of Mr. East’s Continuation, being a new series of them, which he intends continuing as they appear.--Price, 4.

The second volume is in the press.

[p.21]

and his talents. To several of the cases, allusions have been made to other works, particularly in Buller’s Nisi Prius; but they are now given with more minuteness, and carry conviction more immediately to the mind of the reader, than in any other report of them which has appeared.

We are particularly gratified by the judgment delivered is the great and well-known case of Omichund against Barker; in which Lord Chancellor Hardwicke desired the assistance of the Chief Justices of the King’s Bench and of the Common Pleas, and of the Chief Baron of the Exchequer. It was there decided, in opposition to the
authority of Sir Edward Coke, that the depositions of witnesses professing the Gentoo religion, who had been sworn according to the ceremonies of that religion, taken under a commission out of Chancery, were admissible as evidence. The strong and masculine sense, the sound learning and varied information, and the liberality, of the Chief Justice, appear no where to greater advantage than on this occasion. The curious nature of the subject discussed, and the splendid abilities of the Counsel who argued and the Judges who determined the question, entitle it to the utmost attention.

Mr. Durnford has much improved this publication by the edition of pertinent and applicable notes; pointing out in what particulars, prior and subsequent decisions agree with or differ from the cases contained in the volume. We consider the work as possessing great merit, and forming a valuable accession to the library of every professional man; and the editor is entitled to no slight praise for the accurate and perfect form in which he has presented it to the world.

**These Reports are enriched with Notes of Cases by the late Mr. Justice Fortescue, and by a Copy of some Notes taken by the late Mr. Justice Abney, which are added in the Notes: the former was in possession of Lord Chief Justice Willis, the latter was sent to Mr. Durnford by Mr. Justice Lawrence.**--Preface.
His Soul is Marching On: An Annotated Bibliography of William Weston Patton, Abolitionist and Educator of Freedmen

Douglas W. Lind*

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Introduction

Long before President Lincoln issued his Emancipation Proclamation on January 1, 1863, the battle for the conscience of the nation was being fought by religious groups using both the pulpit and the press. These attempts to sway public opinion against the institution of slavery through pamphlets and religious newspapers have been well documented, but the writings of one of the abolition movement’s instrumental figures has, surprisingly, languished in obscurity.

William Weston Patton (1821-1889) is perhaps best known today simply as one of the early presidents of Howard University, serving from 1877 to 1889, but what is less known is the bibliographic record documenting this man’s lifelong commitment to abolishing slavery and later, educating freed African Americans. A fiery evangelical pastor in the Congregational Church and prolific writer of anti-slavery tracts, in 1862 Rev. Patton traveled from Chicago to the White House to meet with President Lincoln and present a proclamation to emancipate the slaves. During the Civil War, Patton served as vice-president of the Northwestern Sanitary Commission where he inspected army camps throughout the central United

* Law Library Director and Professor of Law, Southern Illinois University School of Law.
States. During this time he penned new lyrics to an abolitionist song, then familiarly known as “John Brown’s Body,” which were published in the Chicago Tribune and soon thereafter modified by Julia Ward Howe into the version that is now known as “The Battle Hymn of the Republic.”

Late in life Patton was able to put his passion of educating Freedmen into practice when he assumed the presidency of Howard University in 1877. During his tenure there he was a frequent contributor of theological pieces to the New Englander and Yale Review and penned many items relating to the education of African Americans in The American Missionary, the official publication of the American Missionary Association. Soon after retiring from Howard University, William Weston Patton died at his home in Westfield, New Jersey, on December 31, 1889, at age 69.

Biographical Sketches

Patton’s biographical story has been largely ignored in print, both during his life and after. No entry for him appears in the two major biographical encyclopedias, Dictionary of National Biography and American National Biography. The titles below represent the two most complete and reliable sources for biographical information regarding William Weston Patton.

Published prior to his death, this brief encyclopedic entry provides basic biographical information, including: his education at New York University, Union Theological Seminary, and DePauw University; Patton’s early pastoral duties in Hartford, Connecticut and Chicago; his teaching at Oberlin College and Chicago Theological Seminary; his meeting with President Lincoln to present an emancipation proclamation; his work with the Sanitary Commission during the Civil War; his presidency at Howard University; as well as an abbreviated list of publications.

Patton, Cornelius H., and Caroline Patton Hatch. Honour Thy Father. A Sermon in Memory of William Weston Patton. 1890. [3]-75 p., frontispiece (portrait); 23 cm.²

² Available at https://archive.org/details/honourthyfathers00patt
Authored, and presumably self-published, by two of Patton’s surviving children, this pamphlet contains the most detailed biographical information published. Includes not only a sermon by Patton’s son detailing his father’s life, but a tribute by the First Congregational Church of Chicago, and a testimonial from the faculty of Howard University.

Connecticut Abolitionist Writings

In January 1846, Rev. Patton assumed the pastorate at the Fourth Congregational Church of Hartford, Connecticut. During his eleven year tenure, his fervent opposition to slavery collided with The American Board of Commissioners for Foreign Missions, an evangelical association which did not forbid its members in Indian Territory from owning slaves. Patton’s missionary zeal on the topic of abolition led to attempts to depose him by other pastors in Hartford. Patton stayed with the Fourth Church until January 1857, when he moved west to become the head of the First Congregational Church of Chicago. Many of Patton’s early writings were published in pamphlet form by William H. Burleigh, a Hartford abolitionist and editor of the religious newspaper, The Christian Freeman.

Written soon after assuming pastoral duties at the Fourth Church in Hartford, Patton takes on the evangelical missionary organization, The American Board, for their position of allowing slaveholding of some of its members. In his fiery denunciation, Patton notes that the American Board’s policy is in conflict with the foundation of the missionary enterprise, (p. 14) and concludes by asking followers to withdraw contributions as well as steadily voice their concerns to the press. (p. 47).

In this passionate sermon, Patton furthers the case for martyrdom of Charles Turner Torrey, an abolitionist from Massachusetts arrested and imprisoned in Maryland for freeing slaves. Torrey’s

³ Available at https://archive.org/details/americanboardsia02patt.
⁴ Available at https://archive.org/details/ASPC0001901200.
death in prison of tuberculosis on May 6, 1846 prompted this stirring pamphlet arguing that slave laws are against the Decalogue and therefore not binding. On the freeing of slaves in violation of slave laws, Patton concludes and urges his followers, “I should feel free to violate it whenever I safely could.” (p. 12).


In this pamphlet, Patton takes on those he considers to be infidels, who argue that because portions of the Bible sanction slaveholding, one must either denounce the entire text or accept the proslavery stance. Patton argues that the result of proslavery views will likely be infidelity to scripture and “if the Bible sanctions slaveholding, then the argument for its inspiration derived from its system of morals is forever destroyed. (p.4). He further suggests the authority of missionaries would be undermined because allowing for slaveholding causes skepticism of the Bible among slaves. (p. 13). A four page pamphlet extracted from this speech was later issued by the Union Anti-Slavery Society.6


Published in a 2nd edition in 1851:
Patton, William W. The Young Man’s Book; Or, Lectures for the Times. Auburn [N.Y.]: Derby and Miller, 1851. vii, 1 leaf, [11]-213 p.; 19 cm.7

This book is sort of self-help through prayer and devotion title intended for a general audience. Patton surprisingly spends little time discussing the abolition of slavery except in general terms, stating, “The time will be, when it will be universally execrated as one of the vilest children of sin, and one of the most fruitful parents of woe.” (p. 197).

Conscience and Law; or a Discussion of our Comparative Responsibility to Human and Divine Government; with an Application to the Fugitive Slave Law. By Rev. Wm. W. Patton, Pastor of the Fourth Congregational Church, Hartford, CT. (Mark H. Newman & Co.: NY;

5 Available at https://archive.org/details/ASPC0001859500.
6 Patton, William W. How the Action of the Churches Towards the Anti-Slavery Cause Promotes Infidelity. [United States]: [Union Anti-Slavery Society], 1860. 4 p.; 18 cm..
7 Available at https://catalog.hathitrust.org/Record/100592267.
Patton goes in to great detail here to challenge recent “pro-slavery” acts by Congress, particularly the Fugitive Slave Act, arguing that his religious brethren who remain silent, “aid in the deeds of despotism equally at war with the rights of man and the law of God.” (p. [3]). This small pamphlet, issued in stiff boards, was clearly intended to be distributed widely. Published by a consortium of religious pamphlet jobbers, this title was likely printed by Brockett, Fuller & Co. in Hartford, and apparently at the direction of Patton. A handwritten note by the author in one of the extant copies states, “I will present one hundred copies of this work to the Am. Reform Book & Tract Society. They may sell or give them away at their option.”


Although a general religious tract, Patton’s abolitionist philosophy comes through as he explains how the divinity of the Gospel trumps the legality of man-made laws, (p. 13-14) and addresses slavery in arguing that because legislators could not be relied upon to uphold the Wilmot Proviso, the Church must now be the catalyst for the abolition movement. (p. 23).


Patton and his co-authors issued this scathing report of their findings as the committee to investigate the policy of silence pursued by the American Tract Society on the topic of slavery. The authors resolve that their confidence in the American Tract Society is impaired, and note a similar “feeling of displeasure and disgust spreading rapidly throughout the North.” The charges against ATS by the authors include both a suppression and a striking out of condemnations of slavery in reprinted works, and a policy of omission in the publications of the ATS not to condemn slavery. The pamphlet, under both imprints, was widely circulated to religious newspapers around the country. This imprint, issued as number

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9 Item held by Southern Illinois University School of Law Library.
11 Available at [https://catalog.hathitrust.org/Record/100781955](https://catalog.hathitrust.org/Record/100781955).
16 of the Anti-Slavery Tracts, exists also under a Hartford, Connecticut imprint from the Foundry of Silas Andrus & Son, 1855.\footnote{Fourth Congregational Church (Hartford, Conn.). \textit{The Unanimous Remonstrance of the Fourth Congregational Church, Hartford, Conn., against the Policy of the American Tract Society on the Subject of Slavery}. (Hartford: Foundry of Silas Andrus & Son, 1855).}

Patton, William W. \textit{Thoughts for Christians, Suggested by the Case of Passmore Williamson; A Discourse Preached in the Fourth Cong. Church, Hartford, Conn., by Rev. William W. Patton, October 7, 1855} (Press of Montague & Co.: Hartford, 1855). 23 p.; 16 cm.\footnote{Available at \url{https://archive.org/details/ASPC0001901300}.}

Passmore Williamson, an abolitionist from Philadelphia was arrested under the Fugitive Slave Law for assisting the escape of a female slave, Jane Johnson, and her two children. The “escape” occurred while Johnson’s master, John Wheeler and his family and slaves were en route to board a steamer to South America. Before boarding in New York, Wheeler brought the slaves on a layover trip to Philadelphia where Williamson informed them that under existing state law, if a master brings a slave into a free state, that slave becomes free. The case pitted “slave power” over state law, and Patton here adds an abolitionist argument of judicial tyranny over “friends of liberty and Christianity,” (p. 11) noting “there should issue from every Christian mouth an indignant remonstrance against this glaring outrage.” (p. 13).

\textit{Slavery and Infidelity, or, Slavery in the Church Ensures Infidelity in the World} (Cincinnati: American Reform Book and Tract Society, [1856]). 70 p.; 15 cm.\footnote{Available at \url{https://archive.org/details/slaveryinfidelit00patt}.}

Penned ten years after his Hartford printed pamphlet on the same topic, Patton’s argument, now issued by the American Reform and Tract Society out of Cincinnati, illustrates the bibliographic transmission of Patton outside of New England. Although the argument is much the same as it was in the prior imprint, Patton has updated it with references to the recently published Harriet Beecher Stowe’s \textit{Uncle Tom’s Cabin} to illustrate his points. (p. 45).


The author takes Patton to task for his undisguised anti-slavery positions, and for Patton’s enduring criticisms of the body of Christian ministers who remained silent on the subject in the United
States. He describes these attacks as "unjust" and Patton himself as "thoroughly inimical to New England in all her highest interests."


In the first sermon in this pamphlet, given in January 1856, Patton reflects on ten years as pastor of the Fourth Congregational Church. Although he does not specifically address his early conflicts with local churches regarding their approach to slaveholding members, his congregation must surely have understood thinly veiled statements such as, “But, not even the conservatism of Hartford can quench the fire of truth, or defeat the friends of God and humanity.” (p. 24). The second, “farewell” sermon, given a year later as he was to leave Hartford to begin overseeing the First Congregational Church in Chicago, Patton states, “If I have anything to regret, it is, that I have said so little in behalf of the outraged slave, rather than I have said so much.” (p. 46).

Chicago Writings

In part because of his outspoken anti-slavery views which were receptive to many in the Chicago area, Patton was installed at the First Congregational Church in Chicago on January 1857. His pastoral oversight of the church resulted in it becoming the center of a large missionary undertaking. While there, he helped to organize the Chicago Theological Seminary and was president of its board of directors. In addition to his abolitionist writings, Patton traveled Europe in 1866 to promote the cause of the Freedmen. Patton resigned his pastorate at the First Church in 1867 to serve as editor-in-chief of The Advance, a Congregational weekly newspaper, and although Patton does not appear to have authored articles for this title, under his stewardship, which lasted until 1873, it was used as a powerful vehicle to spread the abolitionist message.

Patton, William W. The Death of a Mother: a Discourse Delivered in the 1st Congregational Church, Chicago Illinois, Sabbath, August 2, 1857. Chicago: Scripps, Bross & Spears, 1857. 22 p.; 19 cm. 15

The genesis of this heartfelt sermon was the news that Patton’s mother, Mary Weston Patton, of Stonington, Connecticut, died suddenly on July 25, 1857. Here Patton describes the unique love between a mother and her child. He concludes by reminding congregants to be kind to their mothers now, and urges “those whose

15 Available at https://archive.org/details/deathofmotherherdis00patt.
mothers have departed, to cherish their memory with special care.” (p. 20).


This pamphlet, signed by W.W. Patton, Charles G. Hammond, Owen Lovejoy, Joseph Emerson, Samuel H. Emery, William Carter, Willard Keyes, presents the Congregational Church’s position in the controversy between the Congregationalists and the Presbyterians, as to who should administer Knox College, located in Galesburg, Illinois.


This lengthy book, produced by the Congregational Church, is a collection of essays by Patton addressing spiritual aspirations such as “victory over evil habit,” “victory over pride,” “victory through sorrow,” etc. Curiously absent is any discussion regarding the abolition of slavery or education of Freedmen.


In this interesting temperance tract, Patton, bases much of his text on the writings of others and concludes that alcohol is not found in nature and, as such, is not a product of God but rather “an artificial thing prepared by man through the destructive process of fermentation.” (p. 118). This title was the subject of renewed interest in the late twentieth century and was reprinted several times.

Patton, William W. *Prayer and its Remarkable Answers; being a Statement of Facts in the Light of Reason and Revelation* (Chicago: J. S. Goodman, 1876 [c.1875?]) 408 p.: front.; 20cm.19

This book, clearly designed to appeal to a wide audience, intends to promote and reaffirm scriptural piety through prayer. Noticeably absent is any discussion of Patton’s familiar writing on slavery and

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16 Available at [https://archive.org/details/rightsofcongrega00cong](https://archive.org/details/rightsofcongrega00cong).
17 Available at [https://archive.org/details/spiritualvictory00patt](https://archive.org/details/spiritualvictory00patt).
18 Available at [https://archive.org/details/biblewinesorlaw00pattgoog](https://archive.org/details/biblewinesorlaw00pattgoog).
19 Available at [https://archive.org/details/prayeranswers00patrich](https://archive.org/details/prayeranswers00patrich).
education of Freedmen. One brief exception is a short piece titled “How a slave obtained freedom.” (p. 196.)


A pamphlet collection recording the exercises of the First Congregational Church quarter centennial, Rev. Patton’s address appears on pages 45-55. He discusses how the anti-slavery movement led to the founding of the church despite its unpopularity in the community.

U.S. Sanitary Commission Writings

Upon the outbreak of the Civil War, Patton was elected Vice-President of the Northwest chapter of the newly organized U. S. Sanitary Commission. Although based in Chicago, Patton’s administrative duties required him to travel to various army camps throughout the Midwest to inspect sanitary conditions and make recommendations to the federal agency.


This report to the U. S. Sanitary Commission provides modern readers a window into conditions of army camps throughout southern Illinois and St. Louis at an early point in the Civil War. Patton details the deficiencies of army camps caused by the unexpectedness and extent of the war, “which took the nation by surprise, and found the government wholly unprepared for the supply of so vast an army as it has been compelled to call into the field.” (p. 7). He lists among the deficiencies, lack of proper clothing, bedding and food, as well as “the ignorance and inefficiency of surgeons.” (p. 8).

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20 Available at https://archive.org/details/quartercenten-nia00good.

Patton responds to criticisms that the Sanitary Commission should be run as a volunteer, unpaid agency. In doing so, he describes in detail the duties the agency performs and the need for a paid staff in order to run efficiently and effectively. In justifying the expenses, Patton notes the following services the agency provides: distribution of hospital supplies; assisting discharged soldiers; recording the names of all soldiers who enter army hospitals; employing a large number of physicians who go from camp to camp inspecting the condition of the men and the situation of the camps, recording diet, clothing, and hygiene regimens; and the operating of Soldier’s Homes which provide food, clothing, and lodging for soldiers coming to or from the army.

**Writings Related to John Brown**

In October 1861, while on a Sanitary Commission trip from Chicago to southern Illinois by train, Patton “scribbled off on the back of an envelope a ‘New John Brown Song,’ in which he sought to express the moral issues of the war in relation to slavery.” Patton’s new lyrics to the battle song, “John Brown’s Body” were published in the Chicago Tribune on December 16, 1861. Patton’s new stanzas exemplify his abolitionist passion - glorifying John Brown, describing his execution, and comparing him to John the Baptist. Two months later, the Atlantic Monthly published further modified lyrics by Julia Ward Howe with the new song title, “Battle Hymn of the Republic.”


> Old John Brown’s body lies a-mouldering in the grave,  
> While weep the sons of bondage, whom he ventured all to save;  
> But though he lost his life in struggling for the slave,  
> His soul is marching on; Glory, Hallelujah!  

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22 Available at [https://archive.org/details/compen-satedagenc00patt](https://archive.org/details/compen-satedagenc00patt).  
25 “War Songs for the Army and the People – No. 2; The New John Brown Song,” *Chicago Tribune*, Dec. 16, 1861.
John Brown he was a hero, undaunted, true and brave,
And Kansas knew his valor, where he fought, her rights to save,
And now, though the grass grows green above his grave,
His soul is marching on; Glory, &c.

He captured Harper’s Ferry, with his nineteen men, so few,
And frightened “Old Virginny” till she trembled thru and thru;
They hung him for a traitor, themselves the traitor crew,
But his soul is marching on; Glory, &c.

John Brown was John the Baptist of the Christ we are to see –
Christ who of the bondmen shall the Liberator be;
And soon throughout the sunny South the slaves shall all be free,
For his soul is marching on; Glory, &c.

The conflict that he heralded, he looks from heaven to view,
On the army of the Union, with his red flag, white and blue;
And Heaven shall ring with anthems, o’er the deed they mean to do,
For his soul is marching on. Glory, &c.

Ye soldiers of Freedom, then strike while strike ye may,
The death-blow of oppression, is a better time and way;
For the dawn of old John Brown has brightened into day,
And his soul is marching on; Glory, &c.

Execution of John Brown, a Discourse, Delivered at Chicago, December 4th, 1859, in the First Congregational Church (Chicago, Church, Goodman & Cushing, printers: [1859?]. 14 p.; 23 cm.26

26 Available at https://archive.org/details/execution-ofjohnb00patt.
Patton delivered this forceful sermon only two days after John Brown’s hanging. Defending Brown’s actions, Patton states, “He did in life what he thought God called him to do” (p. 12), and “that we should have sympathy with John Brown in the general object of securing freedom to the slaves, follows not merely from our Christianity but from our very manhood.” (p. 7). Patton, firm in his abolitionist resolve, concludes that Brown was “the seed of Liberty divinely planted at this critical period that by ‘dying’ he ‘might bring forth much fruit.”’ (p. 14).


Written later in his life, Patton provides details regarding his October 1861 additions to “The John Brown Song” written while on a train from Chicago to Cairo, Illinois. While visiting an Illinois regiment in Paducah, Kentucky, Patton gave his verses to the chaplain, Rev. Joel Grant, who, in turn, distributed them to the troops to sing. Patton soon thereafter submitted the verses to the Chicago Tribune under the title, “The New John Brown Song.” The stanzas were published in that paper on November 16, 1861, “and were at once issued also in sheet music by Root & Cady, principle music firm of the West at that time. It thus went all over the West and into the army at the South.” (p. 341).

Proclamation of Emancipation

Perhaps Patton’s greatest accomplishment as an abolitionist was his role in petitioning President Lincoln to free the slaves. In 1862, as the result of a multi-denominational meeting in Chicago on the topic of abolition of slavery, Patton penned a memorial requesting universal emancipation and presented it to President Lincoln – meeting with him for over an hour. Lincoln’s Secretary of War, Edwin Stanton is quoted as telling the Chicago Tribune, “Tell those Chicago clergymen who waited on the President about the Proclamation of Emancipation that their interview finished the business.”28 It is astonishing that Patton’s meeting with Lincoln has been largely overlooked by historians.

Patton, William W. President Lincoln and the Chicago Memorial of Emancipation, A Paper Read Before the Maryland Historical Society

December 12th, 1887. Baltimore: [Printed by J. Murphy and Co.], 1888. 36 p.; 25 cm.29
This pamphlet, authored by Patton late in life while president of Howard University, recalls and memorializes his role in drafting a proclamation for emancipation of the slaves which was presented and read aloud to President Lincoln on September 13, 1862. Also recorded is Lincoln’s verbal response, spanning fourteen pages, detailing the president’s hesitation in freeing the slaves. He asks of Patton, “What good would a proclamation of emancipation from me do? ... How would my mere word free the slaves, when I cannot even enforce the Constitution, in the rebel states?”

Writings in the New Englander and Yale Review30

Although this literary journal covered a wide range of contemporary issues in the mid- to late-1800s, including politics, law, economics and history, the theological writings by Patton recorded here echo the periodical’s evangelical origins. Several of his pieces were subsequently issued in pamphlet form.

This fiery essay is Patton’s response to Rev. Hermann Schmettau, Foreign Secretary of the Evangelical Alliance, who felt that the recent resolution adopted by the [American] Evangelical Alliance regarding the Civil War was “cold, stately, restrained, and cautious.” (p. 291). Patton forcefully rebuts this accusation that the Alliance was not committed to the abolition of slavery – not only in the south, but in the District of Columbia and the Territories as well.


29 Available at https://archive.org/details/presidentlincoln00patt.
Patton takes strong issue with the contemporary “Liberal Christian” belief that all men will be granted salvation. He concludes with the warning, “Let it be generally believed that heaven is sure to every man at last, and the flood-gates of sin will be wide open.”


Patton attempts to clarify the meaning of a statement recently inserted into the Constitution of the National Council [of the Congregational Church] which reads: They [the Congregational Churches] agree in belief, that the Holy Scriptures are the sufficient and only infallible rule of religious faith and practice.


Patton discusses the need for a “double education” of intellectual and spiritual intelligence for all young men, as “mere intellectual culture never can of itself produce a complete and healthy manhood.” (p. 202). He further argues that it is the primary responsibility of the parents but the State cannot absolve itself in their role of a universal education, otherwise “infidelity will claim to be unsectarian and secular, and will be taught under State patronage.” (p. 211). Patton also addresses the need to educate Freedmen, a philosophy he carried into practice when he became president of Howard University four years later.


Patton disagrees with the Papal, Presbyterian, and Episcopal position that the outward ceremony of laying of hands is all that is required for one to be ordained a minister and have spiritual powers conveyed upon them. Patton contends that spiritual gifts are more inward and abstract, deriving internally and from direct teaching.


Patton expresses his concern that revivals are considered by many to be only a temporary excitement about religion and provides an outline of how they can be used as part of a permanent religious force.
Patton argues that lay preaching comes natural to some men and is akin to giving common sense advice which men do naturally. Acknowledging some of the “dangers” of lay preaching, Patton nevertheless believes that it is a right which all men possess and should be allowed to exercise.

Patton, W. W., Rev., D.D. “The Last Century of Congregationalism; or, the Influence in Church and State of the Faith and Polity of the Pilgrim Fathers” 35(137) *New Englander and Yale Review* 634-660 (October 1876),
*Reprinted in pamphlet form two years later when Patton was president of Howard University:*


Patton, while working in Chicago, notes the falling off of the growth of Congregational church as compared to the growth of the country’s population. He attributes this primarily to: geographically limiting themselves to New England; the anti-slavery position of the church turned away many slaveholding members; lack of national organization; too strict adherence to Calvinistic doctrine and other doctrinal peculiarities; lack of an influential method of preaching; a perception that they were aligned with aristocratic class prohibited denominational growth.

Patton disagrees with the contemporary fondness for Matthew Arnold’s definition of culture as, “a harmonious expansion of all the powers which make the beauty and worth of human nature, which goes beyond religion, as religion is generally conceived among us.” (p. 774). Patton argues against this notion that culture prepares one to achieve goals in their present life while religion merely prepares those for the afterlife.

In this densely theological piece, Patton examines a single verse from the Book of Peter regarding preaching to “spirits in prison” to

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31 Available at [https://archive.org/details/lastcenturyofcon00patt](https://archive.org/details/lastcenturyofcon00patt).
determine if it address those figuratively imprisoned by sin, or those literally imprisoned. It includes much analysis by grammarians and Greek scholars.

Patton, William W. “The U. S. Supreme Court and the Civil Rights Act” 43(178) New Englander and Yale Review 1-20 (January 1884). Reprinted soon thereafter in pamphlet form:

Patton, William W. The United States Supreme Court and the Civil Rights [s.l.: s.n., 1884?] 19 p.; 23 cm. Patton strongly disagrees with the Supreme Court’s narrow interpretation of the Thirteenth and Fourteenth Amendments in the Civil Rights Cases 32 which held that the Civil Rights Act of 1875 33 was unconstitutional and that congress lacked the authority to prohibit racial discrimination by individuals and organizations.

Patton, W. W., Rev. “Skepticism and Woman” 44(187) New Englander and Yale Review 453-472 (July 1885) In this lengthy article, Patton attempts to explain what he perceives as an increase in spiritual skepticism among women. Patton finds several culprits, including: fashionable literary circles; women becoming more educated and thus falling “temptation to assert a pseudo-independence”; “a revolt from corrupt Christianity”; and what can only be described as some sort of misdirected enthusiasm and women’s “tendency to extremes of feelings.”

Patton, William W., Rev. “Weak Points of the Evangelical Faith, as it is Commonly Stated” 45(190) New Englander and Yale Review 44-62 (January 1886)

Although not specifically written as a commentary on the salvation of Freedmen, Patton addresses the topic, quoting the 18th Century English abolitionist Hannah More’s poem on the slave trade and the duty of evangelicals to preach Christianity to the “heathen African.” Patton provides a scathing indictment that many evangelicals ignore the opportunity for salvation of African Americans and instead “industriously connect the race with Adam, in respect to sin and ruin.” (p. 57).

President of Howard University

32 Civil Rights Cases, 109 U.S. 3, 3 S. Ct. 18, 27 L. Ed. 835 (1883).
33 An Act to Protect All Citizens in their Civil and Legal Rights, Ch. 114, 18 Stat. 335 (1875).
William Weston Patton was the fifth president of Howard University and served in that position from 1877 to 1889, when health concerns forced him to resign. In addition to his presidency he also served as chair of Natural Theology and Evidence of Christianity in the Theological Department. His inaugural address to the university and his frequent contributions to *The American Missionary* magazine illustrate his philosophy on both the Christianization and education of African Americans in the late 19th Century. *The American Missionary*, which carried many pieces penned by Patton, was the official publication of the Protestant abolitionist group, American Missionary Association (AMA), whose main purpose was to abolish slavery, and later, to educate African Americans.\(^{34}\)

Patton, William W. *Inaugural Address of William Weston Patton, D.D. President of Howard University, October 9, 1877.* (Washington: W. M. Stuart, 1877) 20 p.; 23 cm. \(^{35}\)

In this stirring speech, Patton details his moral and educational philosophy. He lauds Howard’s “thoroughly democratic basis of giving equal educational advantages to all, irrespective of race or sex, and its special encouragement of the race which hitherto has been largely excluded from literary institutions.” (p. 11). Describing the unique mission of the university, he states, “Howard University is a child of Providence, and on heir to the new future, born out of the great civil war, which, in saving the National Union, gave freedom to four millions of slaves. That, be it remembered was an emancipation of four millions of minds, as well as so many bodies.” (p. 11). Opposing racially segregated education, Patton explains, “Colored youth educated wholly apart from the whites lose the stimulus of the competition which they need to have.” (p. 13).


Issued by Howard University, this pamphlet records the speech made by Patton to the students of that school. In his introduction he reiterates his philosophy described in his inaugural address that the instructors at Howard “are as faithful in pointing out the defects and sins of the negro as they are in standing up for his civil, intellectual, and religious rights.”[p.2]. The body of the speech details this philosophy through three topics: industrial, intellectual, and moral. Regarding the topic of educating freedmen, Patton

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\(^{34}\) *The American Missionary* is available digitally as part of *Making of America*, [http://ebooks.library.cornell.edu/a/amis/amis.html](http://ebooks.library.cornell.edu/a/amis/amis.html).

\(^{35}\) Available at [https://archive.org/details/inauguraladdress01patt](https://archive.org/details/inauguraladdress01patt).

\(^{36}\) Available at [https://archive.org/details/gilgalofcoloredr00patt](https://archive.org/details/gilgalofcoloredr00patt).
states, “They must learn to speak correctly, to think clearly, to understand ordinary matters with intelligence, to cultivate a taste for reading, for art, and for all elevating influences.” (p. 9). An advertisement for the university on the final page summarizes the advantages and opportunities offered by Howard University under Rev. Patton in the education of freedmen.


A single paragraph describing an increase in religious interests at the university, “greatly aided by the week of prayer held by the Young Men’s Christian Association of the University in concert with other Associations.”


An interesting account of the 1879 graduation ceremonies at Howard University which was attended by members of Congress. Speakers included ex-slaveholder and officer in the Confederate army, Thomas J. Kirkpatrick, and Frederick Douglass, who “cordially welcomed the ex-slave-holder to the common work of sustaining Howard University as a grand instrumentality for elevating the oppressed negro race.”


Here Patton describes how his father, a pioneer among evangelicals, began a Presbyterian church in New York in the 1820s and developed it into one of the largest in the city. Patton notes that his father’s church emphasized both missionary work and the importance of education. Five hundred copies of this pamphlet were produced for private distribution.


In describing the 1880 commencement exercises for the Theological Department of Howard University, Patton notes that it was attended by “a large audience of white and colored people... and it marks the rapid and healthful progress of public opinion.”

Patton discusses the raising of admission standards at Howard University, and lamenting the lack of funds, concluding “colored people must have educated leaders in church and state.” He also touts the school’s medical faculty who not only treated President Garfield and later performed his autopsy.


Patton discusses the 1882 commencement ceremonies for the five graduates of the Theological Department, concluding, “[W]e are prepared to receive and train young men, white or colored, for the Gospel Ministry of all Evangelical denominations.”


In this fascinating editorial piece, Patton reflects on five years as president of Howard University and uses Darwin as a model for arguing that changing the “intellectual and moral atmosphere” of African Americans by placing them in a “civilized” environment can only result in their improvement. He argues for removal from “communities of prevailing ignorance, superstition and immorality, where they live in miserable hovels, see only examples of coarseness and rudeness and hear only a negro dialect.” Patton not only insists that they be removed from their “depressing and degrading” surroundings, but that they be sent to universities, such as Howard, where “the standard of living is different and elevated; where religion is intelligent; where language is grammatical; where clothing is whole and neat; where public sentiment is on the right side of disputed questions.”


In support of the work of Howard University (with Patton at its helm) in training African American students (and a thinly veiled appeal for funds), Abbot reprints a letter from the prosecuting attorney from Amelia County, Virginia. The letter’s author praises the work of one Howard educated minister in not only helping to reduce crime in the area, but notes, “there has been such a marked improvement in conduct, character, morals and intelligence of the colored population.” The author concludes that although “the result of liberating the vast number of colored people of the South” was a dramatic increase in crime, Howard University has provided the remedy: “to educate and Christianize the race.”
Patton details commencement exercises for 1884, noting that the Theological Department was comprised of 385 students, coming from 34 states.

Patton uses this editorial piece to reaffirm his philosophy, which is stated here in the form of the question: “How is any race to rise without intelligent leaders of their own in every locality?” Acknowledging that “every race has certain peculiarities…and to these we have a degree in regard to our intercourse with them,” Patton, nevertheless, argues that African Americans “must have the chance that others have.”

President Patton of Howard University. “Editorial: The Impressions of Ten Years” 41(7) The American Missionary 193-195 (July 1887)
A reflection upon his ten years educating Freedmen, Patton argues for “a more rigorous academic training to pervade the colored colleges of the South.” Patton includes his familiar plea to “furnish the Negros with intelligent, well principled leaders, of their own race, to save them from being made tools by wily politicians among the whites.”

Patton briefly details the 1887 commencement exercises in which ten students graduated.

Patton provides details regarding his October 1861 writing additions to the John Brown Song while on a train from Chicago to Cairo, Illinois. While visiting an Illinois regiment in Paducah, Kentucky, Patton gave his verses to the chaplain, Rev. Joel Grant, who, in turn, gave to the troops to sing. Patton soon thereafter submitted the verses to the Chicago Tribune under the title, “The New John Brown Song.” The stanzas were published in that paper on November 16, 1861, “and were at once issued also in sheet music by Root & Cady, principle music firm of the West at that time. It thus went all over the West and into the army at the South.”

Death of William Weston Patton
Several newspapers carried news of Patton’s death but *The Appeal*, an African American newspaper based in St. Paul, Minnesota, provided the most detailed account of Patton’s final days. The front page for Saturday, January 4, 1890 contained the following report: *Rev. Dr. William Weston Patton, president of the Howard University, Washington, died in Westfield, N.J., Tuesday. He was in apparent good health on Monday and went out for a walk that afternoon. At 5 o’clock he was taken ill with congestion of the lungs and at 1 o’clock this morning he died. Before Dr. Patton left Washington for the holidays he sent in his resignation as president of the Howard University. The resignation was to take effect on Jan. 1, 1890. It had been accepted and Rev. Dr. J. E. Rankin is to succeed him. The funeral services were held in Westfield on Thursday. The body will be taken to Hartford, Conn. for internment.*

Patton, Cornelius H., and Caroline Patton Hatch. *Honour Thy Father. A Sermon in Memory of William Weston Patton*. 1890. [3]-75 p., frontispiece (portrait); 23 cm. Authored, and presumably self-published, by two of Patton’s surviving children, this pamphlet contains the most detailed biographical information published. Includes a tribute by the First Congregational Church of Chicago, and a testimonial from the faculty of Howard University.

37 See, e.g. *Indianapolis Journal*, Jan. 1, 1890; *Evening World* (New York, NY), Jan. 1, 1890; *Salt Lake Herald* (UT), Jan. 1, 1890; *Evening Star* (Washington, DC) Jan. 1 & 3, 1890.

38 Available at https://archive.org/details/honourthyfathers00patt.

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I. Introduction

Slavery, America’s original sin, played a pervasive role in the psyche of Kentuckians before the Civil War. While slavery was not as integral to the economy of Kentucky as it was to the states of the Deep South, all white residents had to decide whether to defend it, accept it, or oppose it. No group faced more moral anguish than the state’s Christian ministers, many who also owned slaves. The harsh law of slavery conflicted with the basic teachings of the New Testament and, as the nineteenth century progressed, the mother churches of all Kentucky’s Protestant faiths began to move toward moral opposition to the peculiar institution. But Kentuckians who wanted to free their slaves faced legal obstacles. Not only did manumission—the legal term for freeing slaves—extinguish significant family wealth, state laws demanded that the potential emancipator have enough capital post bond to assure that freed slaves would not be a burden to the state.

In the late 1830s, a Methodist minister, Richard Bibb, began to grapple with these issues. Having early settled earlier in Western Kentucky in one of the areas of the state most amenable to plantation agriculture, Bibb had owned up to a hundred slaves at times. But now he was called by his faith to free them. His son, George M. Bibb, did not agree with his father’s increasingly emancipationist views. George Bibb, a prominent Kentucky jurist and Democratic politician, had just finished a term as U.S. senator where he had been counted among the strongest supporters on slavery in the border region. He now sat in Louisville as judge of the Jefferson County Court of chancery.

The philosophical clash between this father and son would be the backdrop to a remarkable letter where the legal implications of the

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Rev. Bibb’s testamentary emancipation of his fifty-odd slaves\(^1\) would be patiently analyzed by Chancellor Bibb as he fulfilled the ethical responsibilities of a lawyer trying his best to properly effectuate the intentions of a testator (who happened to be his father). The result is a rare example of legal opinion-letter writing in the antebellum era, which, despite its familial opening and closing, was a rigorous legal analysis—came complete with internal citations that the recipient, also a lawyer, would understand.\(^2\)

II. The Bibbs of Kentucky: A Remarkable Family

The testator of the will discussed in the letter was Richard Bibb, Sr. (1752-1839), a Revolutionary War veteran, a Methodist minister, and a prominent settler in western Kentucky. He was one of a tiny group of slave-owners who manumitted large slave-holdings before the Civil War. A successful businessman and farmer, Bibb immigrated to Kentucky from Virginia, living in Lexington and Bullitt County before settling in Logan County where he built a large plantation. Bibb was a prominent member of the Kentucky Colonization Society, which sought to encourage slaveholders to free their slaves and resettle them in Africa. The idea of African colonization was popular because it gave whites who found slavery morally wrong but also feared racial equality the possibility of ending slavery without increasing the population of free blacks. In 1829, he freed and paid ship fares for twenty-nine of his former slaves to settle in Liberia. Unfortunately for the freed slaves, the ship they arranged for their passage, the *Ajax*, was “beset with tragedy. Nearly everyone aboard was struck down by cholera, whooping cough, or bowel disorder.” The ship had to stop in the West Indies for medical attention. At least thirty of the passengers died; a much reduced contingent of Bibb freedmen survived to settle in Liberia.\(^3\) The Rev. Bibb died a decade later in 1839. His will freed the remaining slaves and provided them with a trust of land and money.

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\(^1\) It is a little hard to nail down the number of Richard Bibb’s slaves at any date since he regularly freed individuals and owned many slaves of a child-bearing age. His will lists the names of 51 slaves but George M. Bibb’s letter indicates 54 at the time it was probated. Thirty-seven former slaves received freedom papers in Logan County but slaves might have received papers in another county, like nearby Grayson County. Judy Lyne, “Logan County Emancipations, 1792-1865,” 41 KENTUCKY ANCESTORS 182 (Summer 2006).

\(^2\) I have identified these sources and provided more proper modern citations in my transcription, below.

\(^3\) JAMES WESLEY SMITH, SOJOURNERS IN SEARCH OF FREEDOM: THE SETTLEMENT OF LIBERIA BY BLACK AMERICANS (1987) 120-21.
The author of the letter is George M. Bibb (1776-1859), the leading jurist of his era. He served as chief justice of the Kentucky Court of Appeals and was the author of four of the most influential volumes of Kentucky law reports. Later he took the national stage and was elected twice to the U.S. Senate, before later joining the cabinet of President John Tyler as secretary of the treasury. In later years, he settled in Washington, D.C. where he became a leading member of the Supreme Court bar. In contrast to the emancipationist beliefs of his father, George Bibb was strongly identified with the states-rights wing of his party. At the time this letter was written, Bibb was chancellor of the court of chancery in Jefferson County, Kentucky. Although at times a very wealthy man, in other letters of this era Bibb discusses the financial difficulties he had fallen into because of investment losses he suffered in the panic of 1837. As a lawyer and legal authority, Bibb had few peers, not only in Kentucky but also the United States.

The recipient of the letter, John Bibb, was Judge Bibb’s brother. John Biggers Bibb is perhaps best known for cultivating Bibb lettuce. Born in 1789, he came to Kentucky with his father, eventually settling in Logan County. John Bibb read law under Judge H. F. Broadnax and in 1814 was admitted to the bar. He served with the Kentucky militia during the War of 1812. After the war, John returned to Russellville which he represented in the Kentucky House of Representatives in 1827 and 1828 and in the state Senate from 1830 to 1834. In 1856, he moved to Frankfort, Ky. and built the house now known as Bibb-Burnley House. In its garden and greenhouses, Bibb developed the variety of butterhead lettuce that he called “limestone” but that as Bibb lettuce still graces the menus of Louisville’s finest restaurants. He died in 1884.

There is a fourth Bibb who deserves mention even though his name appears nowhere in the letter. The man, Andrew J. Bibb, is perhaps as important to the continuing understanding of the document as any of the others surnamed Bibb. At the time of the letter, Andrew was a teenage slave owned by Rev. Bibb. After obtaining his freedom papers, he remained in Logan County as a carpenter and builder before moving to Louisville on the eve of the Civil War. Master carpenter, business owner and landlord, A.J. Bibb would become a prominent member of the African American community in Louisville. He was an elder of the Colored Methodist-Episcopal Church and a founder of the Louisville Cemetery Association that

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he and other prominent blacks established to create a suburban cemetery available to black Kentuckians.\(^5\)

III. Slavery and the Law of Emancipation in Kentucky

As a border state, Kentucky always had an ambiguous relationship with the institution of slavery. Kentuckians were suspicious of seeing slavery increase but they feared rising populations of free blacks even more. Because of this, Kentucky’s laws discouraged both the importation of slaves and the free emancipation of bondsman.\(^6\) Article Six of Kentucky’s first constitution in 1792 empowered the legislature to “pass laws to permit the owners of slaves to emancipate them” while at the same time “preventing them from becoming a charge to any county in this commonwealth.”\(^7\)

The General Assembly acted on the constitutional invitation by passing a law in 1794 regulating the freeing of slaves. It required that person seeking to emancipate a slave do so in a “writing under his or her hand and seal, attested and proved in the county court by two witnesses.” The law further ordered that writing be filed before the county court and that the “court shall have full power to demand bond and sufficient security of the emancipator, his or her executors or administrators, as the case may be, for the maintenance of any slave or slaves that may be aged or infirm, either of body or mind, to prevent their becoming chargeable to the county.”\(^8\) The legal result of this provision was that oral testimony of a promise to a slave of future freedom was forbidden.\(^9\) Also,


\(^6\) The manumission statutes are briefly outlined Edward M. Post, Kentucky Law Concerning the Emancipation or Freedom of Slaves, 59 FILSON CLUB HISTORY Q. 344 (1985); the introduction to the Kentucky chapter of HELEN TUNNICLIFF CARTTERALL (ED), 1 JUDICIAL CASES CONCERNING SLAVERY & THE AMERICAN NEGRO (1926) has a good introduction to the case law.

\(^7\) 1792 Ky. Const. Art. VI.


\(^9\) Mahan v. Jane, 5 Ky. 32 (1810); Mullins v. Wall, 47 Ky. 445 (1848).
courts were strict as to these formalities. In an 1810 case, the court ruled that “[t]he solemnities upon which the right to freedom was to take effect having been prescribed by the act, it is not in the power of the Court to dispense with them, or any part of them. The rule in this respect is, *ita lex scripta est.*”\(^{10}\) The Latin maxim cited roughly translates as “so the law is written” and stood for the idea that a statute must be rigorously applied by a court despite the harshness of the result.

The 1794 act also required that “every slave” ... “shall have a certificate of their freedom from the clerk of such court on parchment, with the county seal affixed thereto, for which the clerk shall charge the emancipator five shillings.”\(^{11}\) A later law required that the court clerk issuing a “deed of emancipation” should “note upon the order book a particular description of such slaves, as to colour, age, form, height, and particular accidental marks.”\(^{12}\) These were the freedom papers that the freed slaves of Richard Bibb would carry at all times until their death or until slavery was abolished once and for all.

IV. The Will of Richard Bibb, Sr:

It is clear from sources that the Rev. Bibb had desired to free his slaves and settle them in Liberia; indeed his will said so much. But he also wanted these colonists to go freely—as did the slaves he freed did in 1829. The misfortunes of that mission perhaps caused him to think more realistically. The will probated in 1839 made ample effort to place enough wealth in trust to provide for the fifty or so slaves freed.\(^{13}\) The executors were “authorized to sell and convey any of the land or either property” and given significant “discretion” to “divide or lay out ” payments for the “benefit” of Bibb’s emancipated slaves.” The funds in the executory trust included numerous tracts of land in Logan and Grayson Counties, proceeds of the sales of horses, cattle, sheep, hogs, and equipment, outstanding payments for rents and crop sales, and $5,000\(^{14}\) in cash:

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\(^{10}\) *Donaldson v. Jude*, 5 Ky. 57, 59 (1810).
\(^{11}\) 1794 Ky. ACTS, ch. 161, sec. 4.
\(^{12}\) 1823 Ky. ACTS, ch. 543, sec. 1.
\(^{13}\) This will must have been written between 1837-1839 because it does not mention two persons Bibb had emancipated in 1836.
\(^{14}\) According to MeasuringWorth (a collection of relative value calculators maintained by a committee of economic historians), the relative value of $5,000.00 in 1839 ranges from $103,000 to $45,000,000 in today’s dollars. Samuel H. Williamson, “Seven Ways to Compute the Relative Value of a U.S. Dollar Amount, 1774 to present,” MeasuringWorth, 2016.
"I do hereby emancipate all of my slaves from and after the first day of January next after my death, and desire that all of them, who have not wives or husbands in bondage, be sent to Liberia. I give to my slaves hereby emancipated $5,000, to be divided out among them and paid out to them from time to time according to the discretion of my executors, and all my stock of horses, cattle, sheep and hogs, farming tools, wagons and carts and crops made the year of my decease or that may be on hand, and each slave hired out the hire due for the year in which I shall decease. I also give to said slaves all my lands which are unsold or undisposed of in the county of Grayson, of this state. The land in the county of Logan conveyed to me by Benjamin Tompkins, Ralph E. Nourse, and Robert Nourse is to be divided among them at the discretion of my executors, and also the land in Logan conveyed to me by Mark Hardin and about thirty acres adjoining to it, conveyances to be made by my executors, or either of them; and they are hereby authorized to sell and convey any of the land or either property hereby given to my emancipated slaves and divide or lay out the money for their benefit. I give to my Aaron the house and lots on which he lives in Russellville and his carpenter's tools as his portion of the legacies left my emancipated slaves. I give to my woman Clarissas, viz., that part most remote from the dwelling-house, to include the smith's shop.

"The following is the list of the emancipated slaves of the within will: Dick, Jack, Anderson, Randall, Stephen, Hendry, James, Monroe, Dennis, Nicholas, Aaron, York, Frank, Matt, Ben Wenn, old Mary, Leu, Charlotte, Angelia, Anna, Matilda, Sylvia, Winsea, Eliza, Keziah, Lucy, Mary, Agga, Andrew, Henry, Richard, Malinda, Rachel, Lucinda, Margarette, Chesterfield, Handee, Richardson, Wesley, Martha, Allen, Mary, Catherine, Spencer, Harlett, Mary Ephriham, William Wallace, Charity, Eliza, Jane, Lafayette. I give to my slaves by this will emancipated my two lots under the knob near M. B. Morton s, and two fractional lots in Saunders addition to Russellville, near James Bell s stable, and a fractional lot near William Duncan's and William First's, near the public square, to be divided and conveyed to them at the discretion of my executors." 15

The will was opened at the Rev. Bibb's death and his son John B. Bibb prepared to execute it and to administer the trust it created for the benefit of the freed slaves. As he did so, he called upon his brother, Chancellor George M. Bibb, to help him in this task.

Though John Bibb was himself an attorney, his brother was the perhaps foremost expert on wills and trust law in Kentucky.

V. The Opinion Letter of George M. Bibb

The letter by George M. Bibb is found in a small collection of Bibb family papers. It has six sheets for 12 pages of text, with Bibb's signature on the final page clipped off. In this transcription, page breaks are given in brackets, as are any interpolations I have added for clarity. Bibb's spelling ("colour") has not been changed; it was perfectly correct for his times.

Louisville
Feb'y 24, 1839

Dear brother,

Your letters, the first announcing the death of our father, the second containing a copy of his will, have been received. The event of his death was one which was to have been expected, from his advanced age & gradually declining bodily powers. I had desired much, ever since I settled in Louisville, to have seen him once more before his death, but the duties of my office, for the necessary application of my [efforts] to defray the expenses of my family, did not allow the time and the money required. Very soon after hearing of the death of our father, I was informed also, by letter from the state of Arkansas, of the death of my son Richard.

As to the will & testament of our father, I had expected, from some communications, made long ago by Mr. Slaughter\textsuperscript{16} & others, that the emancipation of his slaves would be directed by his will, under the influence of the principles of the church to which he belonged, as construed by one portion thereof, who considered that duty to God did not include duty to man, but overrided it, & gave license to inflict nuisances upon colour of religion. That one portion of the Methodist Church did not hold that a member of the church was bound to emancipate his slaves to the detriment & annoyance of \textsuperscript{2}\textsuperscript{17} the community, that religion included our duty to society as well as our duty to God & that the emancipation of a large number of negroes, male & female, helpless & infirm, old & young, would prove a nuisance to society, as well as an injury to the negroes, I did know by conversation with such members of the Methodist

\textsuperscript{16} This is likely Thomas S. Slaughter (1778-1838), an attorney who was involved in land transactions with Bibb and who is buried in the Bibb family cemetery.

\textsuperscript{17} Bracketed numbers mark the start of a new page.
Church. What effect the experiment our father has made in sending negroes to Liberia & in setting out some to work for themselves near him might have had in changing his mind upon the subject of emancipation I did not know. The will which he has left shows that his mind was unaltered. It is done. Poor as I am, struggling at my time of life, by the most intense application to the duties which does not afford any surplus at the years end above the expenses of my family, yet I would not, for the property bequeathed by the will, for all the negroes, nor the value ten times told, insult the memory of our father by and attempt to set aside the writing he has published as his last will and testament. Whoever suggested an intention on my part to oppose the will, or to endeavor to break it, did but little understand my thoughts or temper, spoke at random, without colour of authority from me & did me great injustice. He was a good father, kind and affectionate, he performed his duty in common with our mother, in educating the children, instituting into their minds moral principles & correct notions of their duties to their fellow men & to government. He gave me an education & a profession, with [3] property also from time to time, which would have made me independent & comfortable, if the deleterious effects of the banking system, operating upon my own confiding temper, had not, at one fell swoop, stript me of my own acquisitions & nearly the whole of what our father had then apportioned me. What was not taken from my personal use & convenience was saved only by borrowing money & pledging property upon which I have ever since been paying interest for the money. But sooner than entering into a lawsuit to prove my own father insane & unjust, from that or other cause, or in any way impeaching his last will & testament; I would review the office which I hold, retire to a new country where the expenses of living were left, the means of subsistence easier of acquisition, or if necessary labour with my hand in digging the earth for the common necessities of life. Wealth has no such charms for me as to induce the purchase at the price of dishonour, by abusing our fathers’ memory & litigation with my nearest kindred.

The extent of discretionary powers, given to his executors is not clear of difficulty. The true intention of the will is to be sought in the testament itself, applied to the facts and circumstances to which the testator has allusions, & the rules of law by which he, & his executors, were [4] bound, in relation to this subject of emancipation. The intention of the testator can not be explained by oral testimony; except so far as the actual state of facts to which the testator has alluded, & the subjects ordered to be done, & accomplished by his executors may tend to explain.
In construing the will, the intention of the testator is to be sought by taking the testament as one entire whole. The intention of the testator is to govern. Some sense is to be given to every part of the will; if consistent with other parts; every word is to have effect if not inconsistent with the general intention: the general intention of the testator is the controller, the check. These rules of construction in seeking & performing the intentions of the testator in cases of ambiguity have been settled by many precedents from the most ancient, down to the most modern adjudications, upon the subjects of wills & testaments. In short the meaning of the testator is the efficient course of the disposition, the pole star, or as some call it, the "lapis ductorius," to be sought for diligently, and to be preferred to words. This meaning of the testator when found, being his will & disposition, "is the queen and empress of the testament-to rule & govern, enlarge and restrain it, & in every respect moderate & direct the same." It would be tedious to cite the various authorities from which these rules of construction are extracted. They are settled, fixed, & indubitable, as the rules of common sense.

To apply these rules to the will. "I give to my slaves hereby emancipated $5000, to be divided out amongst them, and paid out to them, from time to time, according to the discretion of my executors."

The extent of the discretion which the executors are to exercise under the clause, respects, 1st. the division amongst these collegates, 2d. the time of the payments.

The important question is may the ex'rs divide the money in unequal shares. If the shares are to be equal, share & share alike to each legatee, if the ex'rs can not exercise a discretion by giving five shares unequal, or if the testator had not in his testament set out a rule as to the manner of disposing of the property, the executive discretion of the executors is the only means left for effecting the personal object of the testator. To be managed by them, as they appear most proper to the execution of his will.

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18 WILLIAM SHEPPARD, TOUCHSTONE OF COMMON ASSURANCES 434 (1820); COKE ON LITTLETON §322. Bibb’s letter has marginal notes citing treatises, Kentucky statutes and English cases. Bibb uses extremely crabbed citation forms; I will expand them to something like a normal style. In cases where can find the edition Bibb consulted, I will cite to it; when I cannot I will leave it as is.


20 Literally "guide stone," more commonly "touchstone."

21 SWINBURNE ON WILLS, pt. 1, § 3.9. See also 5 BACON’S NEW ABRIDGEMENT, "Wills & Estates"; 8 JACOB VINER, GENERAL ABRIDGEMENT, "Devises," §§ 181-182.

22 Archaic term for co-legatees.

23 Executors.
shillings to one & eighty dollars to another, from time to time, graduated by the incapacities, families, & infirmities, which enter into the question of the respective abilities, or inabilities to labour for self support; there the sentence would be no more operative by the presence of those words "divided out amongst them" than if those were expunged, and the testament left with the words "to be paid to them from time to time according to the discretion of my executors." By denying a discretionary power to the ex'rs to make the division amongst the collegataries in unequal portions, the one member of the sentence, would be made expletive, with no effect whatever; contrary to the rule that every word shall have effect if consistent with the other parts of the testament.

But apply this discretionary power to the objects to be accomplished as generally declared by the testators, & to the circumstances of those, the collegataries, to be emancipated, & the rules of law to which the testator was obliged, to look, & conform, to accomplish his general, design & purpose of emancipation of all his slaves on the first day of Jan'y next succeeding his death. The slaves to be emancipated were not less than fifty four in number, consisting of men & women, old & infirm, with all the intermediates of ages & sexes. The law authorizing the emancipation of slaves, (1 Digest by M. & B. p. 608, 610) authorizes the county court by whom the certificates of emancipation are to be authenticated, “to demand bond and sufficient security of the emancipator, his or her ex'rs or adm'rs, as the case may be, for the maintenance of any slave or slaves, that may be aged or infirm, either of body or mind, to prevent him, her, or them, from becoming chargeable to the county,” and for every certificate of emancipation the law authorizes the clerk to charge a fee of “five shillings.” The incapacities to earn self subsistence, whereby the patient laboring under such liability might become chargeable to the county, if not supported by the emancipator, or his ex'rs or adm'rs, are included in the predicate of this authority to the court to demand the security, whether such incapacity arises out of the infirmities of extreme infancy, or of extreme old age, or from unsoundness of mind.

[7] To effectuate the general intent of the testator to emancipate all his slaves, young and old, to meet the requisitions of the statutes respecting emancipation, to do justice to the testator, to induce them to take upon themselves the execution of the will, to save them from the charges of five shillings for each certificate of emancipation, & to indemnify them against the cautionary provisions of the law against the charges upon the county because of the general emancipation of all his slaves by the testator, this fund provided

24 1 CHARLES MOREHEAD & MASON BROWN, DIGEST OF THE STATUTE LAWS OF KENTUCKY 608, 610 (1834).
25 Administrators.
by him & put at the disposal of his ex'rs, to be used, at their discre-


tion as to the division, as well as, as to the paying out from time
to time, are calculated to meet the exigencies of law, the circum-
stances of the legataries, the ultimate objects of the testator, & the
just indemnity due to the ex'rs themselves. To say that all the
collegataries are to be equal in the division so confided to the ex'rs,
over which they can exercise no discretion, would be a gross viola-
tion of the rules of construction, by refusing to give a due sense to
a member of the sentence, and repugnant to the tenour of the in-
strument, would be a manifest perversion of the beneficent inten-
tions of the testator, as well in respect of the proper discrimina-
tion due to the varieties of his legataries, as in respect [8]of the justice
due to his ex'rs. In this my dear brother, I am as confident as any
man ought to be, who is not pronouncing a judicial sentence, from
which there is no appeal. But I have lived too long in the world not
to know that my opinions are not to be viewed as “ex cathedra” &
your conduct if conformable, or not confirmable, to my advice, may
be subject to inversion; therefore, use you own sound sense, & for-
tify yourself by the opinions of men not only learned in the law, but
also of sound hearts, & of also good matter of fact common sense—
Ask your wife, who is a woman of vigourous intellect and sound
sense, her interpretation. Let brother Richard ask his wife her in-
terpretation. I have more than once, when interpreting wills under
responsibility of judicial office, read clauses to my wife, to hear her
commentaries & profited from her suggestions & as judge of the
Court of Appeals felt a confidence of right, because her judgment
coincided with my own.

But then again, in another part of the testament, to each slave
hired out, the hire due for such slave for the year ensuing the
death of the testator, is specifically devised [to that slave], which
shews that equality of legacies to each slave emancipated was not
in the mind or will of the testator; but that emancipation was the
general object of the will, and not [9] that the fund of money, as
well as the lands, placed at the discretion of his executors, was not
for the purpose of equality of legacies, to each slave, but an abso-
lute & unconfined discretion to be exercised by his ex'rs fo support
of the many, according to circumstances, such as he himself would
have exercised, if he, in this lifetime, would have emancipated
them, & come under the positive engagement to the courts to keep
them from becoming a charge to the county.

In the case of Talbot v. Davies (2 Marshal’s repts. 608-609)26 shews
that if the county court should demand the bond & security as
before alluded to, & the ex'rs did not give it, yet they might be made
responsible as ex'rs, if any of the slaves emancipated by the testa-

26 Talbot v. David, 9 Ky. 603 (1820).
tor, should become chargeable to the to the county, after the demand of such security: the neglect or refusal of the ex'rs to give it notwithstanding, if the ex'rs qualify, & the county court demands surety for keeping any of the aged or infirm free from charge upon the county, the executors can not escape responsibility by refusing to give surety.

The sum divided out to each collegatary is not required to be equal; what this or that is to have, is to be judged by circumstances. The testator has not said "to be equally divided," as is very common in wills & in common parlance, his words import a discretion to be used in the division, as well as to the time of payment and that discretion is expressly directed to the executors. The election of the quantum to be divided, the times of the payment, are left not to the legataries, but being expressly & emphatically referred to the ex'rs appointed by the testator, they in whom the testator has vested his confidential power & authority of elections, uncertain & undefined are the persons to choose & to divide. The executors may be called to account for gross abuse, as to the division & procrastination; but not otherwise; and are not to be controlled by a court of equity, but in case of an abuse of the trust.

These observations are applicable to the other clauses of the will in which discretion to the executors is confided & need not be specially quoted or commented.

The time of payment & application of the sum of $5,000 specifically denoted, being left by the will uncertain, to be judged by the ex'rs, according to the circumstances, the ex'rs can not be chargeable for interest, unless for manifest delay & abuse, contrary to the trust. If the executors exercise the power of selling the lands, such funds, so raised, as shall not be divided or intended to be divided, in their discretion, presently after received, ought to be put to interest until such division shall become proper.

Your & your brother Richard are to have some trouble in the execution of the trust, in all probability, by reason of the interference of low minded ignorance, & interested knavery, by persons who will stimulate the negroes, & speculate upon their interests and poverty. If you have not such, you are fortunate above the condition of society here [in Louisville]. You will have to begin from the first, by taking care to have clear proof as to the sums & the occasions and times, of payments made to any & every of these the collegataries so emancipated, preserved in a shape veritable, & as little liable to be disputed, by death of the witnesses, as the nature of human transactions will permit, not relying upon the receipts from the negroes alone, but upon such payments openly made, in the presence of witnesses subscribing their names as attesting witnesses, or set down in accounts by

27 Swinburne on Wills, pt. 7, p. 497.
those who are cognizant of the facts, who can attest them if living, or whose […]

[A signature hunter has clipped off bottom half of last leaf which contains pages 11 and 12]

[When the letter resumes, Bibb has ended his advice on the will, and has begun to relay tidbits of information about their brother-in-law Albert T. Burnley. In an stunning example of the antebellum tendency to compartmentalize the institution of slavery, he moves without comment from a discussion of his father’s religiously inspired emancipation of his slaves to relating how his in-law Burnley has profited from the Texas slave trade].

[12] […] on the eve of success, & of a splendid fortune if the loan has been effected; __ will return to Philadelphia, (soon after he arrives here), on the same business and if not successful in the U.S. will probably go in conjunction with Gen’l Hamilton, 28 of S. Carolina, to England, under the most favorable prospects of success. Burnley 29 & Hamilton are united in the Comm’n by the Texian Gov. to negotiate a loan: which if effected, will make Burnley as wealthy as any man ought to be. In his trip to the eastward last year, he made $10,000 & also made a contract with Beverly Tucker of Virginia, 30 for 65 negroes, for five years, to be taken to Texas, upon terms which will assure him not less than $5,000 annually for four years, which was the business that urged him to Texas soon after his return from Virginia.

[THE SIGNATURE IS CUT OFF AFTER THIS PARAGRAPH.]

VI. Conclusion

In February 1840, a group of ten of Richard Bibb’s slaves appeared at the Logan County Courthouse on the Russellville city square seeking their freedom papers. One, Randall, was duly described in

28 James Hamilton, Jr. (1786-1857) served in Congress with George M. Bibb, forming part of the pro-slavery wing of the Democrats, then as governor of South Carolina, before resettling in the Republic of Texas.

29 Albert T. Burnley (d. 1861), served under George M. Bibb as clerk of the Jefferson Chancery Court before seeking his fortune in Galveston.

30 Nathaniel Beverley Tucker (1784-1851) was a lawyer and jurist and served for many years as a professor at William and Mary. He was leading intellectual leader of the states-right movement.
the deeds and orders book as “about 42, about 5’ 10” big boned, stout, straight, well made, yellowish complexion, high forehead and cheek bones.” With them was Nicholas, a 5’10” tall 28-year-old was depicted as “well made” with a “dark complexion, small eyes, [and] good countenance. Likely following deferentially was the youngest of the group, Andrew. At 16, the “pleasant-looking” young man with “yellow complexion” and “a large foot” may not have looked like the civic leader he would later become as A.J. Bibb, but he would walk out of the court house carrying an official parchment embossed with the state seal that declared him a free man.31

Over the coming months, this group would be followed by others. The predominately black district of Bibbtown in Logan County was established by some of these emancipated slaves with funds distributed through Bibb’s testamentary trust; others, like Andrew, would move to Louisville or beyond seeking their fortunes.32 A biographer of Muhammad Ali has traced the family line of the famed boxer and international humanitarian back to a descendent of these freed men and women.33 Folk singer and civil rights activist Leon Bibb and his son blues artist Eric Bibb are also thought to be descended from Richard Bibb’s freed slaves.34

Joined with other papers like them, this will, this letter, and these deeds of manumission are as much a part of the documentary history of America as the Declaration of Independence and the Bill Rights.

31 Lyne, “Logan County Emancipations,” at 194.
BOOK REVIEWS

Books reviewed in this issue:

Edward J. Balleisen, ed. Business Regulation

Jay R. Berkovitz, Protocols of Justice : The Pinkas of the Metz Rabbinic Court 1771-1789


Joseph A. Conforti, Lizzie Borden on Trial: Murder, Ethnicity, and Gender

Nicole Guenther Discenza and Paul E. Szarmach, eds. A Companion to Alfred the Great

Louis Fisher, Congress: Protecting Individual Rights

Michael C. Gizzi and R. Craig Curtis, The Fourth Amendment in Flux: The Roberts Court, Crime Control, and Digital Privacy

Joel K. Goldstein, The White House Vice Presidency: The Path to Significance, Mondale to Biden

Camilo Gomez-Rivas, Law and the Islamization of Morocco under the Almoravids: The Fatwas of Ibn Rushd al-Jadd to the Far Maghrib

Christophe Grellard and Frédérique Lachaud, eds. A Companion to John of Salisbury

Christian A. Nappo, The Librarians of Congress

Paul M. Pruitt, Jr., Ed. New Field, New Corn: Essays in Alabama Legal History
At the library where I work, one of our general acquisition rules is not to buy something that reproduces items we already have access to elsewhere. Many other libraries these days may have similar policies; I recall Georgetown Law’s Marylin J. Raisch citing a similar policy in her review of Ginsburg, Montaneri, and Parisi’s *Classics in Comparative Law* (LH&RB, Vol. 20, No. 2, Fall 2014, p.26). Therein lies the crux of this reviewer’s dilemma over this set. *Business Regulation* simply reprints articles from well-regarded journals, reports, and monographs, as well as items from more obscure sources.

Editor Edward J. Balleisen is Associate Professor of History and Public Policy, as well as Vice Provost for Interdisciplinary Studies, at Duke. In his introduction to the set, he lays out his arguments for the need for this compilation; he notes that the 2007-08 financial crisis sharpened the debate over business regulation, with the business lobby blaming the crisis on regulatory overreach and progressives saying lax enforcement and laissez-faire regulations were the culprit. He believes that this debate calls for a different look at the field of business regulations, one involving examination of interdisciplinary literature on the topic from the 1870s to the present day. This approach gives the reader a chance to discover or recall policy choices made long ago and see how they led to later choices while precluding alternative policy paths. In addition, he believes that showing older articles from outside the legal field gives readers the opportunity to see how intellectuals formerly played a bigger part in making policy.

Balleisen does a fine job in gathering perspectives from a wide range of disciplines. *Business Regulation*’s three volumes collect 115 articles and chapters. Some are from major law reviews, but there are also articles from political science publications, economics journals, statistical journals, history publications, general-interest periodicals, law-and journals like *Law and Society*, and chapters from monographs. He explains that he chose some of the selections for their influence on the field, while other items were chosen for the way they neatly summarized the thinking behind policies at certain points on time, for new innovations in methodology, or for major empirical findings. The first two volumes take a historical approach to the subject, describing major steps in the evolution of business regulation from the late 19th century to the modern era. Volume three takes a different approach, focusing on the present day and looking at interdisciplinary issues that need to
be considered as we ponder the direction business regulation should take today — issues such as ethnography, how to evaluate regulatory outcomes, analyzing organizational culture, and comparing different societies’ approaches to regulation.

Balleisen succeeds in his goal of bringing a variety of disciplinary approaches to business regulation in one set of books. This collection introduces the reader, especially one from the legal world, to sources they may not normally have considered when researching the history of this subject. It can be easy to forget that Justice Louis Brandeis wrote some important pieces in Harper’s Weekly, and this reviewer would not have thought to examine the North American Review for historical background. Balleisen’s introductory essay does a fine job not only of explaining the logic behind each selection but also of acting as a primer on the history of business regulation. He has done exactly what a collection editor should do: locate and assemble items for the collection’s reader, then explain why those items will be useful, putting them in their appropriate context. Balleisen’s Business Regulation is a well-made work.

Still, the question raised at the beginning of this review remains; is it worth adding to a library’s collection, especially at a four-digit price level? Of the 115 items in this collection, 108 are available through other means in William & Mary’s collection, and I think other academic libraries would have similar results.

In the Google era, bibliography might seem a dying art. Who needs to look at hand-curated lists of publications when you can just search a few databases for what you need? Admittedly, even this reviewer has wondered why journals such as the Legal Reference Services Quarterly still publish bibliographies in this day and age. This collection, though, shows that there is still a need for an expert such as Balleisen to select articles that the researcher may not have known about, while filtering out items that may look useful at first glance of the search results.

So the dilemma remains. In an era of ever-tightening budgets, it feels wrong to pay over a thousand dollars for a collection of articles and chapters your library mostly has already. The most valuable parts of Business Regulation are Balleisen’s introduction and the effort he put into curating the collection of articles. One essay, no matter how informative and well-done, probably does not justify a thousand-dollar purchase. The would-be user of this collection could save the money they would spend on Business Regulation by examining its Table of Contents and retrieving the articles from other sources. Doing that, though, strikes this reviewer as akin to spending an hour at a local bookstore asking detailed questions
about good books on a subject, writing down the employees' suggestions, then thanking them for their time and buying the books on Amazon.

Elgar publishes many high-quality original monographs, but they also seem to have a habit of issuing expensive compilations of previously-published material — the aforementioned *Classics in Comparative Law* is another of their sets. The quality of the compilation and choice of editors is very good, but the prices on these sets still seem out of tune with modern library budgets. Would it be better if publishers such as Elgar hired experts such as Balleisen to create more affordable bibliographies of important articles and chapters instead of expensive reprint collections – or would the rules of tenure make that unlikely?

At any rate, as things currently stand, *Business Regulation* might be useful to a law firm or lobbyist specializing in business law that finds itself making policy-oriented or historical arguments with some frequency but does not have access to a college’s resources. Academic law libraries, on the other hand, probably do not need to add this set to their collection, well-done as it is.

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“Protocols of Justice” by Jay R. Berkowitz (a professor of Jewish history at Brandeis) is subtitled “The Pinkas of the Metz Rabbinic Court 1771-1789.” While a “pinkas” in modern Hebrew means a “notebook”, the best translation in this case should be “minute book”. The book is a case study on the legal regime of the Jews in Metz (a city in Alsace, which at the time had been under French rule for slightly more than two centuries) during the last 18 years of the “ancient regime”, being the last period that they were an autonomous ethno-religious community, with less than full civil rights, on the verge of the radical political changes that resulted in losing autonomy while in theory gaining civil equality.

The work consists of two volumes, which the publisher sells only as a set. The first volume is a treatise in very proper academic English on the legal status of Jews in Metz. The second, and much thicker volume, is the text of the actual “pinkas”, printed in modern Hebrew fonts (a valuable transcription since the handwritten pinkas would prove very challenging since the script is quite different from contemporary Hebrew script). The language of the pinkas is somewhat similar to the “rabbinic” Hebrew used in much traditional Jewish legal literature, but with much French and Yiddish included. The pinkas is a contemporary record by the court clerks of actual proceedings rather than the thought out prose of responsa literature (shelot u-teshuvot).

Unlike the writings of jurists (and the rabbis of the period should be seen as the “jurists” of Jewish law), these are the actual cases. Nothing was revised to make it fit a legal argument, but rather this is what was actually happening. The problems were often “messier” than what might be described in treaties or responsa. This is about what the court actually did, rather than a scholar expounding on what the law is.

If you find private international law (conflict of laws) and legal pluralism to be fascinating, the world described in the book is something to feast on. From the Jewish community’s perspective, they were an autonomous community whose autonomy was sometimes not respected by the government. However under the Jewish “conflicts” principle that the “law of the king is law”, many cases between Jews would, according to Jewish law, be governed by French law, even though Jewish law required the case to be litigated in the rabbinical court, requiring the court and litigants to be aware of
French law and in some cases for the rabbinical court to work with French lawyers.

The French government usually deferred to the community’s organs in matters of domestic relations but apparently regarded the rabbinic court as nothing more than an arbitration tribunal in commercial matters. At one point the Metz Parlement ordered a French translation of portions of the Shulhan Arukh (the definitive restatement of Jewish law) to facilitate its involvement in litigation between Jews (i.e. situations in which a French forum would be deciding a case based on Jewish law).

Since Metz had been a relatively late addition to French rule, the secular legal system and a unique blend of Roman, customary and royal. For Jewish, Jewish law was part of the mix. While Jews as a community tried to maintain legal autonomy, it was always necessary to work with local courts. Many legal documents needs to be filed in French translations (including wills and marriage contracts). Jewish courts could enforce judgments on their own. Cases involving non-Jews would almost always end up in the French courts. French legal concepts found their way into Jewish proceedings even if in theory the matter was governed by Jewish law.

The work is obviously a valuable source of social and economic history of Jews, and to a lesser extent Metz. It is an excellent case study in how legal pluralism works in a relatively western society. After the generation of warfare set off by the French Revolution, most European Jews outside of Russia lost autonomy (being “emancipated” and give nominal legal equality with non-Jews). While most Orthodox Jews have resigned themselves to having no legally binding autonomy (which isn’t to say Jewish courts stopped functioning simply because they can no longer use the local sheriff to enforce judgments), many Muslims have been arguing for the sort of legal autonomy the Jews of Metz had before 1789. This is the closest one will find to a modern community with a legally autonomous minority.

Any law library interesting in Jewish or French legal history would want to acquire the first volume. The second volume would really only be usable by someone with familiarity with traditional “rabbinic” Hebrew. However the publisher appears to be selling the book only as a set.

Aaron Kuperman
Law Cataloging Section
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Anyone involved in international law, particularly the law of the Soviet Union and the various post-Soviet Republics, is familiar with the books, articles, reviews, translations and other works of Professor William E. Butler. *International and Comparative Law: A Personal Bibliography* provides a bibliography of Professor Butler’s works, excluding a few of his early writings that are no longer available to him.

The book is the fifth installment in the Studies in Russian and East European Law series. However, the bibliography extends beyond the field of Russian and Soviet studies just as Professor Butler's interests extend beyond that field. It includes references to his works in the fields of legal history, legal education, bookplates, wood engraving and beekeeping.

*International and Comparative Law: A Personal Bibliography* belongs in the library of all law schools and schools of international affairs. It would also be a helpful addition to the personal libraries of anyone with an interest in international law.

William Butler is the John Edward Fowler Distinguished Professor of Law and International Affairs at the Pennsylvania State University and Emeritus Professor of Comparative Law in the University of London (University College London). He is also a Foreign Member of the national Academy of Sciences of Ukraine and National Academy of Legal Sciences of Ukraine. He is an Associate of the International Academy of Comparative Law. In 2012 the Supreme Court of Ukraine conferred the Medal for “Loyalty to Law” on Professor Butler.

Mark W. Podvia
Associate University Librarian
West Virginia University College of Law Library
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*Lizzie Borden took an axe and gave her mother 40 whacks. When she saw what she had done, she gave her father 41.*

Few crimes in American history have captured public imagination as firmly and as relentlessly as the murders of Andrew and Abby Borden in Fall River, Massachusetts on August 4, 1892. Testimony transcripts, newspaper articles, books, films and even popular music all join in the panoply of witness and commentary on the brutal crimes. Unfortunately, until recently scholars avoided devoting more than article-length examinations to the subject. Full, monographic treatments tended toward the sensational and conspiratorial. The editors of University of Kansas Press’s *Notable Trials Series* determined to address this lack of scholarly attention by inviting Joseph A. Conforti, Fall River native and Distinguished Professor Emeritus of American and New England Studies at the University of Southern Maine, to tackle the subject.

From the perspective of both the author and the editors, the Lizzie Borden trial, while neither altering nor challenging the law, serves as a window to late nineteenth-century New England. Conforti argues that multiple factors played parts in the trial and acquittal of Lizzie Borden. Obviously the criminal and legal issues surrounding the crime had an impact. But anyone trying to understand the case and its outcome must also consider the social and economic setting of Fall River, as well as nineteenth-century conceptions of womanhood and class.

Conforti begins with a short history of the Borden family and the town of Fall River. The family’s heritage traces back to the Puritans’ 1630 “Great Migration” from England to Massachusetts. Half of Fall River’s founding families were Bordens, and the families prospered as Fall River developed and grew. Bordens also formed the vanguard of men who recognized and took advantage of the power of the region’s waterways for industrial purposes. Over time, the Bordens and their cousins formed more than forty corporations and developed nearly a hundred mills in and about Fall River. The invention of the steam engine added to the industrialization of the town and to the substantial wealth of the Borden clan. By the latter half of the nineteenth-century, the Borden name was recognizable throughout the Northeast.
Fall River itself became known as “Spindle City” in recognition of its national prominence as the production site for cotton cloth. This production relied upon a steady influx of cheap immigrant labor, and the growing numbers of immigrants touched off racial and ethnic discord with the established, wealthier Yankee natives. Leading Fall River families lived on “The Hill,” geographically above the mills and the immigrants who worked within them. Lizzie’s particular branch of the family, while respectable, was not among the most exclusive ones, nor did she reside in the best part of town. Nevertheless, as events unfolded her wealthier cousins rallied around her, unwilling “to concede that one of their own, a genteel Christian woman, wielded a hatchet to commit the horrendous act of parri-cide.”(p. 6)

Victorian notions of genteel womanhood also played a role in Lizzie Borden’s case. While the new ethnic groups expanded through new immigrants and a healthy birth rate, New England Yankee women produced fewer children than before. This group of women no longer needed to work inside or outside their homes. Their lack of personal activity, coupled with the declining birthrate, led to the perception that upper class Yankee women were fragile or delicate. This view of the delicate woman had a direct impact on perceptions of Lizzie Borden’s guilt. Was she physically capable of wielding the hatchet? As a testament to the ethnic and societal prejudices of the time, Lizzie’s lawyers and supporters continued to argue that the crime had to have been committed by a large, male immigrant rather than a petite, delicate woman.

After setting the historical scene, Conforti next uses the wealth of available resources to paint a picture of the members of the Borden household. The victims, Andrew Borden and his second wife, Abby, had been married for twenty-seven years at the time of the murders. A self-made man, Andrew Borden lived a mostly frugal life despite having an estate worth well over $300,000 -- $8 to 10 million today.(p. 25) He could be unforgiving, unrepentant and hard, but also had moments of generosity. By contrast, many who knew her described Abby Gray Borden as warm and generous. However, despite nearly three decades living with Andrew’s daughters, Emma and Lizzie, Abby’s relationship with them was strained.

Emma and Lizzie Borden, at the ages of 41 and 32 respectively, were both beyond the normal age for matrimony in 1890s New England. Emma may, in fact, have chosen “spinsterhood” to continue to fulfill a promise to her dying mother that she would take care of Lizzie. Of the two, Lizzie developed the more dominant disposition, and she was described as occasionally sullen. Their difficulties with
their stepmother probably resulted from concerns about her perceived influence over Andrew in financial matters. Enough tension existed between the family members that meals were infrequently shared, and bedrooms and belongings were kept under lock and key.

Moving from family dynamics, the author carefully works through the details of the murders, starting with the household’s first stirrings on the fateful day. Emma Borden was out of town. Andrew Borden and houseguest John Morse, brother to the first Mrs. Borden, left separately. The maid, Bridget Sullivan, went outside to wash windows after breakfast. Abby Borden climbed the stairs to attend to the guest bedroom sometime before 9:30. Within the next hour, she would be murdered by nineteen strokes of a hatchet. Lizzie’s whereabouts during the first murder were never conclusively established. She claimed to have been downstairs where she was oblivious to the attack upstairs.

Andrew Borden returned home around 10:45. Bridget unlocked the front door to let him into the house. Ten minutes later, she retired to her room to rest. At 11:10, Lizzie “discovered” Andrew’s body and alerted Bridget. He had been murdered by ten hatchet blows to the head while resting on the sofa in the sitting room.

Andrew’s death leads to the mystery in the murders. Lizzie would have had twelve to thirteen minutes to kill her father, clean or change her clothing, clean and hide the hatchet, and return to the sitting room to discover the body before she called Bridget at 11:10. This tight timing, the main argument of Lizzie’s defenders, would challenge the government’s case and spawn multiple theories regarding the “real” murderer.

After the discovery of Andrew’s body, Lizzie sent Bridget for a doctor. When she returned, Bridget and a neighbor went upstairs and discovered Abby Borden’s body. The coroner arrived by 11:45, and the police within minutes of that. Despite a sizeable presence at the home, the police neglected to rope off the crime scenes and areas of potential evidence such as the barn and backyard. Numerous people walked through the area, some tracking blood through the house. Regardless of police bungling of the crime scenes and evidence, Lizzie Borden was a suspect by the end of the first day of the investigation.

On the day of the murders, the police conducted multiple interviews of Lizzie, other members of the household, and nearby neighbors and shopkeepers. Although flawed, their investigation would
uncover inconsistencies, lies, plausible motives, destruction of potential evidence and thwarted poison purchases. Strong circumstantial evidence pointed to Lizzie’s guilt. The police never found another viable suspect.

The district attorney began an inquest on the Tuesday after the murders. On Thursday, only a week after the discovery of the bodies, the inquest ended and Lizzie was arrested. After the arrest, multiple criminal proceedings followed, including a preliminary hearing and a grand jury investigation within four months of the crimes. It would take another six months before the final act of the drama, the Superior Court trial for double murder that began on June 6, 1893.

Conforti’s discussion of the trial weaves together the earlier threads established regarding the social and cultural history of the time, ideas of Victorian womanhood, and the particular dynamics of Lizzie Borden’s family. The horrific nature of the crimes made the heightened nature of press and public attention inevitable. The prominence of the Borden family, the camps of Lizzie’s supporters and detractors – divided along social, ethic and sometimes gender lines – and Lizzie’s respectable, feminine demeanor throughout the proceedings all contributed to create the nation’s first real celebrity murder trial.

To these elements, Conforti adds a critical assessment of the trial itself. Painstaking research into the trial and the previous legal proceedings enables the author to highlight testimony changes, note critical inconsistencies, and debunk some long-standing perceptions regarding the case. He also notes two critical instances in which the court favored the defendant. First, evidentiary rulings by the three-member judicial panel so favored Lizzie that eminent scholar John Wigmore would strongly chastise the court in an article penned shortly after the trial. Second, in his charge to the jury, Justice Justin Dewey strayed far beyond judicial limits, injected personal opinion, and succeeded in undermining the prosecution’s case. In the end, the prosecution hoped for a hung jury. Instead, the panel reached a decision to acquit Lizzie Borden within ten minutes.

Conforti concludes his narrative with a quick summation of Borden’s life after the trial. Lizzie and Emma Borden split their father’s fortune and moved to the wealthiest part of Fall River. The sisters parted irrevocably ten years later, Emma still convinced of her younger sibling’s innocence. They died within nine days of each other in June 1927.
To finish his piece, Conforti follows the epilogue with a brief bibliographic essay in which he addresses some of the strengths and weaknesses of previous efforts. Unsurprisingly, multiple secondary sources examine the case, complemented by an abundance of primary material from the four legal proceedings, police interviews and notes.

While he never states definitively that Lizzie Borden committed the murders of her father and stepmother, Conforti clearly outlines her probable guilt. With his thoughtful discussion of the trial’s time and place, his explanation of the attendant gender and ethnic issues, and his systematic analysis of the primary materials, Conforti strongly suggests there can be no other conclusion. His is a compelling, highly credible account of this most infamous murder trial.

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Alfred, King of the West Saxons (ruled 871-899) is a shadowy figure today. Most common readers, if they think of him at all, view him as a Saxon barbarian who defeated hordes of even more barbarous Vikings, thereby saving England for its eventual (Norman) fate. Once upon a time, though, his life was the stuff of romantic folk tales—Alfred hiding in the marshes from his pursuers; Alfred scolded by a housewife for letting her cakes burn; Alfred on the eve of his definitive victory in 878, summoning his followers to meet at a standing stone near Ethandun. Embroidered from the fabric of persistent traditions, such tales thrilled the youth of nineteenth and early twentieth-century Great Britain and America. But today the warrior-hero market is crowded. Alfred has not competed successfully with his Celtic predecessor, Arthur the Once and Future King; his epic counterpart Beowulf the demon-slayer; or the wholly fictitious Aragorn King of Gondor.

National and institutional historians, however, continue to hold Alfred in high esteem. This has scarcely changed since 893 when Asser, a Welsh cleric who was part of Alfred’s inner circle, wrote a “very naïve but sincerely intimate biography”\(^1\) of his royal friend. Fast-forward more than a millennium to the Penguin edition of Asser’s *Life of Alfred*, in which historians Simon Keyes and Michael Lapidge observe that the latter’s reign was “among the most stirring periods of English history”; they describe him as one “whose practical intelligence and vision contributed both materially and spiritually to the future prosperity of his country.”\(^2\) A more recent biographer, Alfred P. Smyth, calls Alfred the “extraordinarily energetic and fortunate founder” of the “House of Alfred,” adding that he deserves to the called “the Great.”\(^3\)

While broad interpretations of Alfred’s reign have remained constant, more focused inquiries have added to our knowledge, often thanks to the efforts of archaeologists, linguists,

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book historians, classicists, and numismatists. To keep current, nonspecialists depend upon distillations like the one currently under review: *A Companion to Alfred the Great*, edited by Nicole Guenther Discenza and Paul E. Szarmach. This book’s first three essays are grouped together in a section titled “Context”—beginning with Simon Keyes’ overview (pp. 13-43) titled “Alfred the Great and the Kingdom of the Anglo Saxons.” Keyes surveys Alfred’s early training and travels, his ascent to the throne of Wessex during a decade (870s) of extreme crisis, his achievements as a soldier, diplomatist, politician, and lawmaker, and his ambitious plans for the revival of learning and religion—the latter including a program of classical translation and sponsorship of the *Anglo-Saxon Chronicle*.

There follows Leslie Webster’s chapter “The Art of Alfred and His Times” (pp. 47-81). She suggests how the few objects we possess of known Alfredan provenance convey an emphasis upon wisdom—symbolized by the wide-open “eyes of the mind”—such as that displayed by the biblical King Solomon. As a child Alfred had twice been taken to Rome, each time stopping to visit with Carolingian royalty. Whatever the boy Alfred experienced on these remarkable journeys, Webster believes that the Frankish scholars and craftsmen he later imported, plus his correspondence with Archbishop Fulk of Reims, inspired him to seek a *renovatio* of English religious life and provided his court with imagery supportive of such an undertaking.4 Next we see Rosalind Love’s chapter “Latin Commentaries on Boethius’s *Consolation of Philosophy*” (pp. 82-110), which describes widespread distribution of the Dark Age’s most influential work of philosophy. Love shows that there was a rich, fluid tradition of glossing the *Consolation*, and likewise that the work of continental glossators was important to Alfred and his circle of linguistic helpers as they produced their most ambitious work, now generally known as *The Old English Boethius*.5

Readers who have signed up for a conventional history might expect to find additional survey pieces on the significance of archaeological finds—perhaps with revelations concerning Alfred’s military resources, the social history of England’s population during an era of hostile migration, or changes in religious or political institutions. Discenza and Szarmach, however, hold no such brief.

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4 See 48-49, 57-58, 61-65 for Webster’s discussion of the mysterious, artistically original “Alfred Jewell,” an enamel figure beneath a rock-crystal covering, set in gold, its casing surrounded with the words “Aelfred Mec Heht Gewyrcan” (“Alfred had me made”).

Instead, and quite appropriately for scholars assembling one of Brill’s "Companions to Christian Tradition," they soon get down to their real business, which is to present discussions of the Alfredan "canon" in a manner that (to use an old term) is more or less straightforward "intellectual history." They approach this goal via two additional units, the first titled “Alfred as Author,” containing seven essays, namely “Alfred as Author and Translator” by the authoritative Janet M. Bately (pp. 113-142); “The Alfredan Prefaces and Epilogues” by Susan Irvine (pp. 143-170); the wonderfully titled “Searoðonca Hord”6 by Carolin Schreiber (pp.171-199); “The Old English Boethius” by Nicole Guenther Discenza (pp. 200-226); “Augustine’s Soliloquia in Old English by Paul E. Szarmach (pp. 227-255); “The Prose Translation of Psalms 1-50” by Patrick P. O’Neill (pp. 256-281); and “The Laws of Alfred and Ine” by Mary P. Richards (pp. 282-309). The final section is titled “Alfrediana,” and consists of three essays: “The Old English Orosius,” another piece by Janet M. Bately (pp. 313-343); “The Anglo Saxon Chronicle” by Susan Irvine (pp. 344-367); and “Alfredian Apocrypha” by David F. Johnson (pp. 368-395). “There is also (pp. 397-415) an “Annotated Bibliography on the Authorship Issue.”

Readers holding stereotypical views of the Dark Ages may be confused over the spectacle of a warrior king who was also a scholar and author. Alfred was both; and the study of his intellectual program begins with two documents. First is Asser’s Life, which asserts that on St. Martin’s Day (November 11) in 887, the thirty-nine year old Alfred was inspired to translate from Latin to Anglo Saxon. There is little reason to doubt that Asser told the truth—though some have taken the story to mean that Alfred was illiterate until late in his life, or that he had previously been unfamiliar with Latin.7 The second document is a preface or circular letter of circa 8968 or earlier that accompanied a translation of Pope Gregory the Great’s9 manual for clerics, his Regula Pastoralis. In this preface Alfred declares that the translation is his, and he proposes that “we also should turn certain books—those that are most necessary for all people to know—into that language that we can all understand.” As is clear from the translations that would emerge from his court,

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6 The expression means “Hord of Wisdom.” The essay’s subtitle is “Alfred’s Translation of Gregory the Great’s Regula Pastoralis.”
7 Of which more below.
8 See Keyes’ Chapter 1, 31.
9 Pope Gregory I, known as Gregory the Great, was Pope from 590-604. A prolific writer and liturgical reformer, he was responsible for sending Augustine (St. Augustine of Canterbury) to evangelize the pagan English. The mission reached England in 597 and was successful; see especially Bede’s Ecclesiastical History.
the king intended to make available Saxon versions of Latin classics. And why? So that all “free-born” youths could be taught these great works in schools run by the church, with Latin schooling available for the best pupils.

Perhaps the most evocative recurring image (Keyes, pp. 28-29; Batley, pp. 116-118; Schreiber, pp. 178-179, 196-197; Discenza, p. 204) in The Alfred Companion is that of Alfred and a group of “his helpers,” sitting down in the intervals of peace to read aloud and discuss works of late Classical/Christian antiquity. We know their names: Waerferth, Plegmund, and Waerwulf, all Mercians; Asser the Welshman; Grimbold of Flanders; and John the Old Saxon. This type of study was nothing new. The celebrated Frankish monarch Charlemagne had participated in similar sessions with clerical intellectuals, one of whom was Alcuin of York, a Northumbrian. The language of such discussions would have been Latin, the international and scholarly language of the Dark Ages—a language that the children of nobles learned, in church and elsewhere, as a spoken language. To monarchs like Charlemagne and Alfred, Latin reading-and-commentary sessions opened a gateway to intellectual sophistication. The fruit of Charlemagne’s studies included a project for the composition of a Frankish grammar. Alfred, for his part, launched an initiative designed to turn Anglo-Saxon into a literary and philosophical language.10

From the essays in the Companion’s third section, “Alfred as Author,” we learn which translations are now accepted as Alfred’s work—i.e., the Alfredan “canon.” These include Gregory I’s Regula Pastoralis; St. Augustine’s Soliloquia; a compilation of the first fifty Psalms; and the Old English Boethius. By means of Gregory’s Regula Alfred hoped to inspire his bishops to take on a teaching function—so necessary because Viking invasions had disrupted the church and killed or displaced many educated Saxons. The Psalms, in turn, would provide Saxon-language scripture in a world of diminished Latin. St. Augustine’s Soliloquies and Boethius’ Consolation were much-valued texts by which post-Roman readers came to self-knowledge and to renewed confidence that—whatever calamities might befall nations or individuals—God bends all toward the best.

Contributors to A Companion to Alfred the Great generally accept the king’s prominent role in the translations. They make sufficient

references to long-simmering arguments against his “authorship” (see the detailed bibliography noted above) without getting bogged down. Bately in particular finds (pp. 119-124) that variations of vocabulary, syntax, and linguistic structure among the Alfredan translations can be more realistically ascribed to differences in the Latin texts than to a multiplicity of advisor/translators. Examining the works that she views as canonical, she detects (pp. 125-134) numerous examples of shared vocabulary and grammatical constructions, all indicating the touch of a single individual—much more so than can be found in other roughly contemporary translations.\(^\text{11}\) Carolin Schreiber provides (pp. 196-197) a commonsensical and persuasive view of the manner in which Alfred and his circle worked. She observes that three of the “helpers” (Asser, Grimbold, and John the Old Saxon) were not native speakers of Saxon, and besides, they “spent long periods away from court.” Of the helpers, she says that “the role of these scholars, perhaps taking turns, consisted in orally explaining and paraphrasing difficult Latin passages (p. 196). But if the final Anglo Saxon voice is that of one person, as Bately has it, then who else but Alfred?

Several of the contributors point out that the works of the Alfredan canon are not literal translations, but honest efforts to present situations and lessons from an Anglo Saxon point of view. This could take the form of substituting one pagan concept for another, as when “Wyrd” takes the place of fate or Fortune in the Old English Boethius (p. 211). On several occasions a shift of meaning accompanies a change of verbiage. In the Latin Consolation, Boethius presents fame, honor, power, and worldly goods, even joy and beauty, as hollow goals, ultimately pointless and corrupting.\(^\text{12}\) Alfred’s OE Boethius, however, is much less puritanical. Discenza concludes that “Power, honor, fame, and wealth emerge . . . as ambivalent goods, things of worth that have their proper place in the world but must not be overvalued” (pp. 215-216). Sometimes the translator-king allows readers into his innermost concerns. One such moment is revealed when Szarmach (pp. 233-235, in his chapter on Augustine’s Soliloquia) points out Alfred’s image of a builder scouring the countryside for materials and tools. Later (p. 240), we read a list of

\(^{11}\) Among other translations ascribed to Alfred are two histories: the Old English Bede (the translation of Bede the Venerable, Historia Ecclesiastica Gentis Anglorum) and Paulus Orosius’ Historiarum Adversum Paganos, Libri Septem. Each has a chapter in the Companion, as noted above.

virtues that must have greatly appealed to Alfred: “Wisdom, humility, honor, moderation, righteousness, mercy, prudence, constancy, benevolence, purity, and abstinence.”

Mary P. Richards’ chapter on “The Laws of Alfred and Ine” is of interest to historically minded law librarians because it reveals Alfred’s conscious attempt to apply an historical principle to law-making. His code (Domboc or doom-book) includes an impressive succession of materials. Among them are long excerpts of laws from the Book of Exodus; the “Golden Rule” and other Christian writings; and laws chosen from the dooms of previous Saxon kings, including Aethelberht of Kent, Offa of Mercia, and Alfred’s somewhat remote predecessor Ine of Wessex. Alfred also provides commentary on his selection process—explaining that he had, with the approval of his council (Witan) kept the dooms that he liked, with some modifications, and omitted those he didn’t like. (pp. 292, 296, 299-304). To the casual reader, Alfred’s Domboc may seem a dreary, blood-soaked recitation of offenses and compensations. Richards, citing the scholarship of Patrick Wormald,13 sees the Domboc as influenced by Carolingian legal thought, especially that of the ninth-century archbishop Hincmar of Reims (Archbishop Fulk’s predecessor), who believed that laws should “respond flexibly to the needs of a people” and that rulers should write down laws, including “the laws of their predecessors” (pp. 293, 301). Richards points out that Alfred’s laws were preserved for centuries in a standardized form. Often cited, they conveyed the status and authority of the Kingdom of Wessex through and beyond the final two centuries of the Saxon era (pp. 284-286, 292).

What are we to make of the mind of Alfred as revealed in this Companion? Discenza comes close to stating the “take home point” when she says (p. 201) of the OE Boethius that it “presents a powerful synthesis of classical, late antique, and Anglo-Saxon literary forms and techniques. It explores practical and theoretical philosophy, with particular interest in hierarchies, earthly and divine.” This reviewer would like to suggest that in the broadest interpretation of his intellect14 Alfred was a postcolonial figure, an admirer of late Roman and Post-Roman (Carolingian) thinking, but determined to link the older cultures to something indigenous—toward modes of expression that were essentially Saxon.

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14 That is, including military and administrative activities as being to some extent intellectual.

Fisher is currently the Scholar in Residence at the Constitution Project, and is well known for his many years as Senior Specialist on Separation of Powers at the Congressional Research Service and as Specialist in Constitutional Law at the Law Library of Congress. He has extensive experience testifying before Congress on topics that include Congress and the constitution, war powers, executive power and privilege, and several aspects of the federal budget and its processes. He has written numerous books on these topics, including (to name only a few) *The President and Congress: Power and Policy* (1972); *Defending Congress and the Constitution* (2011); *Constitutional Conflicts between Congress and the President* (6th ed., 2014) and *Political Dynamics of Constitutional Law* (5th ed., 2011). He is without a doubt a renowned scholar on constitutional law.

In *Congress: Protecting Individual Rights* Dr. Fisher has written a history analyzing how the Congress, the Supreme Court and the President have acted, or failed to act, to protect the rights of individuals. This relatively brief book is divided into chapters that highlight the various areas where the protection of individual rights have been at issue throughout U.S. history. Chapters include the Rights of Blacks (Chapter 3), The Rights of Women (Chapter 4), The Rights of Children (Chapter 5), Protecting Religious Liberty (Chapter 6) and The Rights of Native Americans (Chapter 6). Each chapter traces the history of some of the most significant issues in our nation’s past, using brief explanations of significant Supreme Court cases and instances where the exercise of Presidential power failed to protect individuals and highlighting when Congress exercised or attempted to exercise its political will to protect those rights.

Dr. Fisher argues that Congress has a long but unrecognized history of protecting these rights, especially in response to holdings in Supreme Court decisions. He highlights legislation such as the Lilly Ledbetter Fair Pay Act\(^1\), when Congress passed legislation overturning a 5-4 Supreme Court decision\(^2\) that found that Ledbetter had not filed her claim within the allowed statutory period. Congress reset the statute of limitations for filing an equal pay suit to

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each paycheck, directly in contravention of the Supreme Court decision, which had held that the statute began tolling at the first instance of a discriminatory wage decision, not on its discovery. He also describes Congress’s long battle to regulate child labor that culminated in the 1938 passage of the Fair Labor Standards Act. In another example of Congressional power to protect individual rights, Fisher details Congress’s efforts to protect religious liberty by passing legislation that allowed members of the armed forced to wear clothing that satisfied the tenets of their religious belief(s) in response to the Supreme Court’s holding in Goldman v. Weinberger, 474 U.S. 503 (1986) that denied a Jewish Air Force officer the right to wear a yarmulke when in uniform in a holding saying that members of the military do not enjoy the same religious rights protections as civilians do.

In the area of the exercise of executive power by the President, Fisher decries how many political science and legal scholars argue that only executive power can respond to a crisis quickly and correctly. Particularly in the areas of national security and the exercise of war powers, Fisher provides a long list of examples of how different Presidents acted with little regard to the rights of individuals and sometimes with a total disregard for the facts. Congress, Fisher infers, must be consulted in these areas and has the ability to make reasoned, timely and politically savvy contributions to national security actions and policies.

Dr. Fisher provides several suggestions for remedying Congress’s recent inability to act to protect individual rights. First, he suggests that the case method of teaching in both law school and political science degree programs is inadequate to the task and does not allow for explaining congressional authority in this area. He also argues that Congress is not working enough hours in session and that they should convert to a 3 week work session with one week in their home districts to give them enough time to consider complicated and significant legislation. He also notes that the CRS, Congress’s own non-partisan research agency has been mismanaged through the hiring and use of non-expert specialists who are not able to brief Congress to the fullest extent possible. He argues this inadequate staffing makes Congress “unable to serve the Nation”. Fisher makes a similar argument that Congress contributes to its own dysfunction when it reduces its operating budget. This

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4 Congress: Protecting Individual Rights at 135.
5 Id at 5.
6 Id. at 165.
reduces the size of committee staff, resulting in an over-reliance on outside organizations who seek to influence legislation to their own ends.\textsuperscript{7} He also argues that the gerrymandering of Congressional districts has impaired Congressional powers by insulating and protecting incumbents, making representatives less responsive to the needs and interests of minorities.\textsuperscript{8} In the area of campaign finance, where the Supreme Court’s opinion in Citizens United\textsuperscript{9} put a halt to Congressional limits on spending, Fisher argues that the Court made its decision without “deference to ...elected branch judgments and analysis.”\textsuperscript{10}

This book is written for those who are familiar with Supreme Court decisions, Presidential actions and those who have a deep grasp of the history and legislative processes of Congress. In particular, the description of Supreme Court cases, while well written and very interesting reading, are quite brief. Those readers who do not have a legal background focusing on the intricacy of Supreme Court history will have difficulty understanding the significance and meaning of the holdings of the cases. But this book is intended to persuade us that a strong and informed Congress has acted and can continue to act as the guardian of individual rights, when it has the political will to do so.

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\textsuperscript{7} Id. at 166.  
\textsuperscript{8} Id. at 167.  
\textsuperscript{10} Fisher at 173.

Originally conceived as a project on the Roberts Court and the Fourth Amendment, the authors concluded that it would be difficult to explain the Fourth Amendment decisions of the Roberts Court without an analysis of the preceding U.S. Supreme Courts addressed Fourth Amendment cases. They note that an understanding of how Fourth Amendment law evolved, and the factors influencing that evolution, is essential to making sense of the sometimes conflicting decisions of the Roberts Court in Fourth Amendment cases.

Their argument is presented in four parts: first, the Roberts Court’s jurisprudence of Fourth Amendment decisions is rooted in the jurisprudence of crime control; second, the seemingly contradictory pro-defendant decisions of this Court are best understood as minor corrective measures to prior pro-state decisions in order to restore balance, but are still very much within the framework of the jurisprudence of crime control; third, the small group dynamics of the Supreme Court, in particular, the increasing idiosyncrasies of Justice Scalia, are an important component of the Court’s Fourth Amendment decisions; and fourth, that cases in which digital privacy rights are at stake are handled by the Roberts Court differently than other types of Fourth Amendment cases, possibly reflecting a broader societal push for privacy in technology issues.

A brief examination of the pre-Burger Court cases provides a valuable foundation for understanding the Court’s evolving Fourth Amendment jurisprudence. *Boyd v. United States*¹ and *Weeks v. United States*² are briefly outlined and set the stage for *Olmstead v. United States.*³ In this 1928 decision, involving the wiretapping of a phone line, the Court defined a search as requiring a physical trespass on a constitutionally protected area – one’s person, house, papers, or effects. This trespass doctrine significantly limited the scope of what constituted a search or seizure. In dissent, Justice Brandeis predicted that advances in science would one day permit the government means of access to one’s personal areas that would not require a physical trespass. He saw the Fourth Amendment as

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¹ 529 U.S. 616 (1886)
² 232 U.S. 383 (1914)
³ 277 U.S. 438 (1928)
focused on individual privacy against unwanted governmental interference writing the Fourth Amendment applies to "all invasions on the part of the government and its employees of the sanctities of a man’s home and the privacies of life. It is not the breaking of his doors, and the rummaging of his drawers, that constitutes the essence of the offense." 4 This discussion of the physical trespass doctrine is important to the later discussion of Justice Scalia’s later approach to Fourth Amendment cases.

The Fourth Amendment in Flux then turns to how the Warren Court’s decision dramatically shifted the Court’s approach and resulted in outcomes that favored defendants and individual due process. Three early cases of that Court, Draper v. United States5, Mapp v. Ohio6, and Katz v. United States7 all expanded the rights of the accused. However, it is also worth noting the most cited Fourth Amendment decision of the Warren Court, Terry v. Ohio8 expanded police power and permitted what has come to be known as a “stop and frisk” or a Terry stop.

But the cases of that era that resonated most with the public, and generated political backlash that underlies the book’s argument of the jurisprudence of crime control that influenced later Supreme Courts, were Gideon v. Wainwright9, Escobedo v. Illinois10, and Miranda v. Arizona11; cases that established a defendant’s right to counsel, the extension of the guarantee against self-incrimination to state criminal proceedings, and the mandate to police to read these rights to suspect prior to custodial interrogation, respectively. The authors state that these were key issues during the presidential election of 1968, with candidates promising to appoint stronger “law and order” justices if elected. President Nixon’s opportunity to name four such justices to the Supreme Court during his tenure set the stage for the Rehnquist Court. The following section in Flux provides extensive background on how the Nixon (and subsequent Reagan) administration’s focus on the war on drugs would influence the Burger and Rehnquist Courts in providing law enforcement with great latitude in searches and seizures.

4 Olmstead, at 474-475
5 358 U.S. 307 (1959)
6 367 U.S. 643 (1961)
7 389 U.S. 347 (1967)
8 392 U.S. 1 (1968)
9 372 U.S. 335 (1963)
10 378 U.S. 478 (1964)
11 384 U.S. 436 (1966)
Part II of the *Fourth Amendment in Flux* covers the Roberts Court in flux and ably applies the groundwork dug in Part I. Part II provides a concise, yet comprehensive, look at the last ten years of Roberts Court decisions on the Fourth Amendment and puts them in the context of the evolution of Fourth Amendment cases pre-Burger Court, the jurisprudence of crime control established during the Burger and Rehnquist Courts, the effect of new appointees on the Court’s Fourth Amendment decisions, and finally, the tensions created by science and technology’s effect on search and seizure law. Of particular interest in this section is what the authors term “the idiosyncratic evolution of Justice Scalia” and his change from a consistent, reliable conservative who voted for the state 79% of the time in the first five years of the Roberts Court to one who voted for the defendant in over half of the search and seizure cases in the last five years. Curiously, Justice Scalia turned to the older (and largely discredited) physical trespass doctrine in his interpretation of the Fourth Amendment, particularly in *United States v. Jones*. The book’s earlier coverage of the physical trespass doctrine assists the reader in placing Justice Scalia’s interpretation in context and is well-placed.

The last section looks to the future as the number of Fourth Amendment digital privacy cases are sure to increase on the Court’s docket. Gizzi and Curtis do a good job of tying the past, present, and future of Fourth Amendment jurisprudence together, noting that both future appointments and the legacy of the jurisprudence of crime control will continue to play a large part in the Roberts Court’s Fourth Amendment decisions. Certainly, broader political issues regarding the overextension of police power, excessive police force, and the use of racial profiling in traffic stops continue to dominate American politics. This clear and concise book is an excellent primer on the more recent history of Fourth Amendment jurisprudence and will provide the reader with a good foundational knowledge of the issues and case law. Additional sources are provided and case citations are clearly presented; all serve to provide a reader interested in delving in more depth into any single issue or case with the resources to do so.

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John Nance Garner, Vice President of the United States under Franklin D. Roosevelt, once described his office as being “not worth a bucket of warm piss.”¹³ That statement was not entirely true—Vice Presidents had been taking on limited executive duties over the years and, during the presidency of Warren G. Harding, had begun attending cabinet meetings. Nevertheless, the office remained relatively insignificant until the latter portion of the last century.

The Office of Vice President saw major changes during the vice presidency of Walter Mondale, 1977 to 1981. He and President Jimmy Carter designed and implemented a new substantive role for the Vice President. No longer would the Vice President simply serve as an officer of the legislative branch of government with few executive duties. Instead Vice President Mondale would serve as an “arm of the President,” taking an important role in both domestic and foreign affairs. He served as a senior advisor to President Carter, functioning as a troubleshooter, spokesman and foreign emissary.

Vice President Mondale was regularly “in and out of the Oval Office several times a day,” and was always free to phone the President. He regularly attended various presidential meetings, ranging from budget reviews to sessions with foreign leaders to President Carter’s weekly foreign policy breakfast. He gave numerous speeches in support of Carter’s programs. He traveled the world representing the United States.

Although not mandated by law, the “White House vice presidency” established by Mondale continued into succeeding vice presidencies. Vice Presidents George H.W. Bush, Dan Quayle, Al Gore, Dick Cheney and Joe Biden have all exercised substantive powers, serving the President in a variety of ways.

In *The White House Vice Presidency: The Path to Significance, Mondale to Biden*, Joel K. Goldstein examines the vice presidencies of these six men. While all six Vice Presidents have had important roles, their responsibilities and duties have not been uniform. The role of Vice President continues to evolve and change.

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¹³ The phrase has usually been quoted somewhat more tactfully as “not worth a bucket of warm spit.”
In addition to discussing these individuals, Goldstein examines the vice-presidential selection process and vice-presidential campaigns. In addition, he examines the problems with the White House vice presidency.

The author of this excellent work, Joel K. Goldstein, is the Vincent C. Immel Professor of Law at Saint Louis University School of Law. He is a highly respected scholar of the Vice Presidency, the Presidency, and American Constitutional Law.

This well-written book belongs in every academic library, and is a must-read not only for all political scientists but for anyone with an interest in American government.

Mark W. Podvia
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Gomez-Rivas’ work consists of an analysis of the titular Islamic jurist’s *fatwas*, or legal opinions, preceded by a rather lengthy discussion of the economic, social, religious, and political situation of the ‘far Maghrib’ (the ‘Islamic West’, roughly corresponding to present-day Morocco) and *Al-Andalus* (as the Iberian Peninsula was known under Islamic hegemony) and the rise and rule over this area by the Almoravids from 1042-1147. The author describes the Almoravids as a “religio-political movement,” and “the first of its movement headed by “Muslims of Berber ethnicity,” a “population indigenous to North Africa from antiquity,” that, “at its core unified, for the first time, a region extending from the Senegal and Niger River Valleys in West Africa, to the Ebro Valley in northeastern Iberia.” (p. 1).

In his Introduction, Gomez-Rivas begins by challenging what he states is the prevailing view in twentieth-century Western historiography, that the Almoravids were unsophisticated, religiously intolerant barbarians clashing against a more cosmopolitan and refined Hispano-Arab culture already in existence in the Iberian Peninsula. He counters that the era of the Almoravids resulted in ‘the first articulation of a political community, that, in many ways, laid the foundations for the modern state of Morocco”, and which “transformed the region from [a] frontier zone to a regional center.” (p. 3). He goes on to recount the origin and expansion of the Almoravid movement, taking its ideological basis from the missionary activity of scholars of the Maliki school of Islamic jurisprudence, and its genesis with one Yahya Ibrahim taking control of a tribal confederation in the western Sahara. Gomez Rivas continues, relating the military expansion of the Almoravids, and the growth of urban centers such as Marrakesh and Fez. He discusses the economic impact of Almoravid expansion, noting Almoravid success in securing gold supplies from West Africa and stating that Almoravid currency “would become the gold standard of the western Mediterranean and be traded as far east as China.” (p. 5). Gomez Rivas also discusses the modern historiography of this period. He narrates a *curriculum vitae* of the Islamic jurist whose fatwas are analyzed in later chapters, provides further treatment of urban development in the far *Maghrib*, discusses various aspects of Islamic law and customs then applied in the region, and the growth of Islamic scholarship.
In the succeeding chapter (numbered as Chapter 1), “Fatwas to Marrakesh”, Gomes Rivas goes into further detail regarding the history and development of this particular Moroccan city, and discusses several opinions written by Ibn Rushd in response to questions posed to him by the city’s judges. Four of these involve commercial affairs. Two concern transactions in gold, one asking whether it is lawful for one owing another a quantity of gold coinage to repay the debt in gold jewelry, and another asking whether one may repay a debt owed in one currency with a different currency. In describing and explaining Ibn Rushd’s opinions on these matters, Gomez-Rivas stresses that the decisions focus on the “commodity central to the formation of the Almoravid state,” that they “bear witness to the appearance of a mechanism of exchange and mediation in the urban space of Marrakesh,” and suggest that “the developing institution of Malikism was especially useful and applicable in mediating commercial disputes, by presenting a respected, legitimate, and (significantly) a kind of self-imposed mechanism for maintaining standards and peacefully and fairly resolving differences.” (p. 65).

The other two commercial opinions concern disputes where one party to a transaction complains of having been shortchanged by the opposing party and focus on whether resolution of the dispute requires the taking of oaths. These opinions reveal Ibn Rushd’s skill in the “settling of juristic debates or confusion caused by contradictory opinions within Malikism.” (p. 70).

According to Gomez-Rivas, Ibn Rushd’s mastery of Maliki texts is further highlighted with the final two opinions of this chapter, one concerning how a judge should evaluate contradictory testimony on the number of times a husband has repudiated his wife, and another concerning the validity of the marriage of a man who served as a “professional witness” but concerning whom a document was found indicating that he divorced his wife three times previously, thus rendering his current marriage to her invalid. This would be particularly problematic because, if his marriage was invalid, that fact alone could invalidate previous decisions and documents involving his testimony. In setting a low bar for this man to establish his current marriage’s validity, Ibn Rushd reveals, according to the author, “an eschewing of legal literalism…that underscores the point that the Almoravid investment in legalism went far beyond symbolic pietism and often avoided overt strict adherence to the law in favor of a more subtle understanding.” The chapter’s final two opinions, concerning whether an ill man should be permitted to forego removing his turban and ritual washing with water prior to prayer and whether discovery of Christian religious objects in a Muslim convert’s home is sufficient to convict him of
apostasy, indicate the degree to which the judges of Marrakesh sought the counsel of the Cordoba-based Ibn Rushd, even in cases in which “they need not have done so” (p. 77), thus indicating the degree to which they deferred to Cordoban authorities as well as the degree of “their commitment to a social institution which did not depend on literalist adherence or summary application, but rather on cultivating the full system of learning to which Ibn Rushd himself was so committed.” (p. 84).

In Chapter 2 “Fatwas to the far Maghrib” Gomez-Rivas analyzes a number of opinions on various disparate subjects. In describing and analyzing an opinion by Ibn Rushd permitting the study of works of scholars of the Ash‘ari school of Islamic theology, and promoters of kalam, which the author describes as the application of “rational interpretation to the foundational religious texts of Islam” (p. 88), Gomez-Rivas challenges the notion that the Almoravids were intolerant ‘fanatical Malikis’ (p. 90). He goes on to relate Ibn Rushd’s opinion of jihad being a more critical duty for the Muslims of the Maghrib than performing the hajj pilgrimage to Mecca, an opinion Gomez-Rivas attributes not to the ‘fanaticism’ of the Almoravids, but rather to the region’s nearness to the Muslim-Christian frontier in Iberia, thus, this “centrality of jihad to regional identity should be seen, therefore, not a something that grew in the peninsula with the arrival of Almoravids…but as a phenomenon arriving in the Maghrib from the Iberian peninsula.” (p. 94). The final two opinions of this chapter concern the application of Islamic laws of retaliation to a group of individuals involved in a double homicide (pp. 101-04), partitioning communal grazing lands (pp. 104-07), and the legal status of cattle of desert tribes which were the offspring of cattle acquire from raids the tribes engaged in against one another (pp. 107-11).

The final substantive Chapter 3, “Fatwas to Ceuta,” describes the history and significance of this city on the southern shore of the Straits of Gibraltar, and the background of the city’s judge, who corresponded with Ibn Rushd concerning a property dispute between a mill owner, on one side, and the owner of an orchard, on the other, concerning rights to use the water of a stream. In so doing Gomes-Rivas discusses Islamic water law as well as procedural and evidentiary law.

In his Epilogue, Gomez-Rivas describes the replacement of the Almoravid state by its successors, the Almohads, and states that the rise of the Almoravid state “coincided with an urban transformation of the far Maghrib, that Andalusian-influenced Maliki legal institutions developed in these new urban spaces both responding to the administrative needs of the state...as well as, crucially, to the social
needs of these urban societies” (p. 150). He sums up his work as showing “how this Islamic legal tradition and institution of learning [Malikism], developed and adapted to real social needs beyond those of supplying political legitimation or identity construction and group cohesion.” (Ibid.) The appendix includes a table of fatwas broken down by topic and origin, and reproduced translated versions of the fatwas discussed.

As can be seen, Gomez Rivas’ work has a precise focus on law in a specific Islamic polity in a specific historical period. It supposes a fair amount of familiarity with Islamic, Iberian, and Northwest African history on the part of his reader. Dates are given according to both the Gregorian and Islamic calendars. Although a significant amount of space is devoted to providing introductory background to the city, region, or person the author discusses, little attention is paid to tying the themes propounded in the book to issues of a more global scope or of a more contemporary nature. This book would be a useful addition to an existing comprehensive Islamic Law or African Law collection.

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Waco, TX
John of Salisbury was a leading figure of the “twelfth-century Renaissance,” a cleric and important political writer during the second half of the twelfth century. The 800th anniversary of his death resulted in a major conference and publication back in 1984 (The World of John of Salisbury) and continued research in the past thirty years has resulted in the present volume.

In this “companion work,” twelve experts discuss John’s life in four parts: Historical Context, John of Salisbury as a Writer, John of Salisbury the Intellectual World of the 12th Century, and John of Salisbury and his Readers. The editors’ introduction reviews John’s life and the contributions of each of the chapter authors’ contributions to his life and scholarship. John (1115-October 25, 1180), studied in Paris from 1136 to 1147, attended the synod of Rheims in 1148, spent several missions for the popes before he returned to England in 1153-54 where he became a secretary and personal advisor to Theobald, Archbishop of Canterbury. As a supporter of Becket, Henry II exiled him in 1163, with Becket following soon after, until 1170 when he and Becket returned to England. From 1176 to his death, he served as Bishop of Chartres in France as a result of his friendship with William White Hands who went on to become Archbishop of Reims.

John’s major publications were the Polycraticus as a work of political theory and the Metalogicon as a work on education. The Polycraticus (1159) is made up of three parts: Books 1 to 3 is a criticism of curial life, Books 4-6 is a treatise of good government, Books 7-8 describes what an authentic philosophical life should be, leading to happiness, in contrast to the life of the court (p.16). It is his major contribution to political philosophy and the central part of the book. The Metalogicon (1159) is an introduction to the Polycraticus: “the choice of a liberal or humanistic education is the precondition for a philosophical life, as opposed to courtly life” (p.17). Historia pontificalis (1154) covers the period from 1148 to 1152 discussing the Council of Reims in 1148 and the Second Crusade. John also wrote a Life of St. Anselm (1162-63) to assist in his canonization and a Life of Becket (1172) based on his description of Becket’s murder. He also has a major collection of letters that also helps describe his life and writings (p.18).

The Historical Context contains three chapters dealing with the John’s relationship to the schools of the 12th century (ch. 1), his
role as a friend of Thomas Becket (ch. 2), and as an ecclesiastical administrator as Bishop of Chartres (ch. 3). Giraud and Mews discuss John’s role as he moved through the universities and his relationships with his teachers. Bollermann and Nederman discuss John and Thomas in which John was a follower under Archbishop Theobald’s court from 1148 to 1161 and a partisan of Becket while he was in exile in the mid-1160s. The authors contend that in the “Becket problem,” John’s attitude towards “was decisive at every stage in John’s intellectual evolution, as well as formative in his own decisions about how to behave when confronted with serious political choices before, during, and after Becket’s conflict with Henry II” (p. 64). Although John did not like some of Becket’s actions, he followed him into exile and served him “not out of personal loyalty to the Archbishop but rather out of devotion to the liberty of the Church and the supremacy of Canterbury.” (Id). Following Becket’s death, John wrote the first account of the murder in his Letter 305 to the bishop of Poitiers and then in his work *Vita et Passim S. Thome martynia* endorsed the role of Becket as a church martyr (p.81).

Julie Barra discusses John’s position as an ecclesiastical administrator from the late 1140s until his death in 1180. He served in the household of the Archbishop Theobald of Canterbury as his “confidential secretary” and “personal advisor”, later served in exile with Thomas Becket from 1163 to 1170. After the death of Becket he held several different positions in the English church, supported Richard of Ilchester’s promotion as Bishop of Winchester, before being raised to the bishopric of Chartres in France. Barra spends several pages detailing John’s good works as bishop (pp.119-44).

Part 2 contains three chapters illustrating John’s role as a writer, first as a writer in forefront of twelfth-century humanism in *Policraticus* and *Metalogicon* and in his *Life of Saint Anselm* and *Life of Becket* (ch. 4), his knowledge of classical antiquity (ch. 5), and his writing of history (ch. 6).

Part 3 deals with John and the intellectual world of the 12th century in five chapters: Salisbury and the law (ch. 7), Salisbury’s political theory (ch. 8), Salisbury on Science and Knowledge (ch. 9), Salisbury’s ethics (ch. 10), and Salisbury and Theology (ch. 11). The first two chapters are those mainly dealing with legal aspects of his writings. Yves Sassier recognizes Salisbury’s knowledge of civil law in the *Digest*, the *Institutes*, and the *Code of Justinian* as well as command of legal vocabulary shown in his letters. Yet, it is difficult to identify the sources that he learned from (p.237). His work on the *Policraticus* displays knowledge of ancient philosophy and sources, but also “is highly original because it is articulated with uncommon
power, and also because it uses the resources made available by the nascent science of jurisprudence, while retaining a critical and autonomous approach to it.” (p.240). John uses Roman law to emphasize the role of the ruler which is “to assert that the will of the human legislator is a captive will, totally subjugated to this objective principle of equity, coming directly from God” (p.246). Using the writings of Justinian, he supports the church and its members against a strong king (pp.250-53). Sassier also reflects that John also provides instructions to judges on how to rule: “to have a knowledge of law, a will to do what is right, the strength to execute it, and a rigorous awareness, too, of his responsibility before God” (p.255).

In chapter 8, Cary Nederman, as one of the major writers on John’s political theory, summarizes John’s writing of the Polycraticus as “the philosophical distillation of the experiences and wisdom of one of the most learned courtier-bureaucrats of 12th century Europe” (p.258). John’s inability to follow “a clear model or precedent in the ancient tradition of political theorizing on which to base his efforts,” led to “its unsystemic quality” compared to Greco-Roman thinkers proves to be one of the greatest strengths of the Polycraticus (p.288). Interestingly, John creates a forged document, the Instruction of Trojan” to provide novelty of ideas that contemporaries disliked. Nederman divides his chapter into John’s discussions of courtly conduct on how to conduct oneself within a court, the role of tyranny versus kingship in which he views monarchy as the principal type of government and the king answerable only to God. His view of tyranny expanded beyond the king: a tyrant is “anyone who employs the power he possesses to impose his own will arbitrarily upon another person,” be it private tyrant, ecclesiastical tyrant, and the public or private tyrant (p.266). John stresses the need for all men to seek liberty: Liberty judges freely in accordance with individual judgment” (p.268). Toleration also is a major component in the pursuit of liberty. Political disorder and lack of liberty leads to immoderate conduct of government. Under the topic of “the body politic,” John’ comparison of society as a person with a soul and human body is similar to other contemporary writers who emphasize the promotion of justice strictly to the monarch. Nederman contends that John, on the contrary, “describes a commonwealth in which the greater and lesser parts cooperate in the dissemination of justice within the total community; none is exempt” (p.278). Nederman then discusses John’s view of tyrannicide (pp.278-88) that it is lawful to take the life of a tyrant, based on “John’s treatment of tyrannicide suggests that he meant for the doctrine not to stand on its own, but to be seen as a direct and inescapable corollary of his understanding of the polity as an animate entity” (p.279).
In the three succeeding chapters, John’s view of science and knowledge, based on his work, *Metalogicon* (1159), which drew upon the recently discovered writings of Aristotle (ch. 9), his views on virtue and happiness to explain his ethical beliefs (ch. 10), and his views on theology, not based on any single work, but on his view of scepticism that leads to a political theology based on “following the law of God and the injunctions of those encrusted with its keeping, that is to say the priests” (p.373).

In part 4, *John of Salisbury and his Readers*, Frédérique Lachaud provides a wide-ranging discussion of how John’s writings, principally the *Policraticus*, were received in England in the 12th & 13th centuries, 13th century France, and the later middle Ages. English authors began citing him soon after its publication, but by the time of the writing of the legal treatise *Bracton*, although he finds similar texts, Lachaud concludes “although a direct connection between the two texts may be difficult to prove, Bracton fits into an intellectual tradition that John of Salisbury contributed to establish” (p.390). It was later cited in the baronial revolts of 1258-65 (pp. 390-93) and the works of John of Wales in the 1280s and by 15th century English clerics. John’s sending of the *Policraticus* to his friend Peter Celle in France in 1159 began its dissemination in France and elsewhere. By the fifteenth century following its translation into the vernacular in 1372, it was cited by French writers Christine of Pisan, Jean Gerson, and Jean Juvénal des Ursins in their political and moral advice to the kings of France. “Notably, they nevertheless realised that it was a text written in the context of a bygone age, and that not all of its aspects had to be taken literally” (p.433).

This anthology on John of Salisbury is an excellent work. The authors are all experts in their fields of study and presents the most recent scholarship on the life of John of Salisbury. Although the work is not specifically law-related, for those interested in an important medieval personage, this work is a recommended reading. This work is another important contribution to the Brill’s Companion to the Christian Tradition.

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With the appointment of Carla Hayden as the first woman and African-American as the fourteenth Librarian of Congress in 2016, this short biographical directory of the first thirteen librarians of Congress provides a useful survey to her predecessors. A short three-page introduction provides some history on the Library of Congress as an institution. Because each one had a different background, Christian Nappo assigns a name to each one reflecting their other professional activities/services.

1. John J. Beckley: Jefferson's First Librarian (1802-1807)
2. Patrick Magruder: The Unfortunate Librarian (1807-1815)
3. George Watterston: The Librarian of Letters (1815-1829)
4. John Silva Meehan: The Jacksonian Librarian (1829-1861)
6. Ainsworth Rand Spofford: The Transformational Librarian (1864-1897)
7. John Russell Young: The Journalist Librarian (1897-1899)
9. Archibald MacLeish: The Literary Librarian (1939-1944)
10. Luther H. Evans: The Diplomatic Librarian (1945-1953)

As one can see, terms of office varied significantly from three years (John Young) to forty years (Herbert Putnam). A quick review of titles reflects the type of librarian the person was in office or extra work that gave the person a particular title. Six librarians served during the nineteenth century. Beckley won the job for assisting Thomas Jefferson in his run for the office; Magruder was unfortunate to be in office during the War of 1812 and with the loss of financial records was blamed for possible embezzlement and had to resign from his office. George Watterston was a novelist who worked on restoring the library following the war. John Meehan was a Jacksonian political appointee who rebuilt the library following a fire in 1851, but he was not considered a major figure. John Stephenson served during the Civil War, but was a surgeon and spent most of his time on the battlefields. Ainsworth Spofford worked at the library before taking over in 1864. He succeeded in expanding the library into a national institution. He introduced a
new cataloging system, expanded the collection including international materials, succeeded in having the Copyright Act of 1870 passed by Congress, and had a new act passed in 1886 to build a new building.

Seven librarians served during the twentieth century into the current century. John Young was a well-known journalist who toured Europe with Ulysses S. Grant, and was later appointed by President McKinley to replace the aging Spofford. The new building opened during his administration as well as the introduction of telephones to retrieve books, and hiring more employees, including women and minorities, to work in the library. Herbert Putnam, son of G. P. Putnam, worked at several libraries including the Boston Public Library before he came to the Library of Congress. Because of his librarian background, he had the most experience up to that time in taking over the library. He moved the books from the old building to the new Thomas Jefferson building, introduced the new LC Classification system using the Dewey and Cutter systems, and sold LC cards to libraries. He expanded the collection over the decades and received large grants to build a music auditorium, created the National Union Catalog series, and increased the music and rare book collections. Archibald MacLeish was a Pulitzer Prize-winning author, a lawyer, a journalist, but not a librarian. Although opposed by the ALA, President Roosevelt appointed him as librarian with the approval of the Senate. He opened the Hispanic Reading Room at the very beginning of his term, reorganized the library into three departments (administrative, reference, and processing), helped draft the U.N. Charter in 1945, before resigning in 1947. Luther Evans held a doctorate in political science and worked for the WPA during the depression before becoming legislative reference service director and then chief assistant librarian under MacLeish and replaced him when he resigned. The library grew 28% under his leadership, while he also helped organize the return of millions of Jewish books to their rightful owners in Europe and a delegate to UNESCO that he eventually moved over to after his resignation. Lawrence Mumford was the first professionally-trained librarian at Columbia University, worked in the New York Public Library, and helped cataloging the backlog at the Library of Congress, before going on to work at the Cleveland Public Library before becoming Librarian. He succeeded in increasing the library’s budget by 250%, published the 250 volume National Union Catalog Pre-1956 Imprints, introduced the MARC system and automation, and hired more women and minorities using an affirmative action plan. His successor, Daniel Boorstin was a Pulitzer Prize-winning historian, who was opposed by the ALA but President Ford appointed him. Boorstin created the American Folklore Center and
created the Center for the Book (each state has an institution dedicated to this Center), Performing Arts Center at the Kennedy Center, and obtained Congressional funding to restore the Adams and Madison buildings. James Billington was a Russian scholar before being appointed by President Reagan and continued his professional writing during his term. He introduced the National Film Preservation Board, National Recording Registry, expanded the digitization of the library resources, and again increased the library’s budget.

Christian Nappo does an excellent job in compiling these biographies. Each biography is obviously short (between nine and twelve pages) based on scholarly research of historical articles. This work is a useful study of the librarians and recommended to anyone interested in the history of the organization.

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The title of the work derives from Edward Coke’s comment: “assur-edly out of the old fields must spring and grow the new corn” (p.12n.83).

Professor Bryan Fair of the University of Alabama Law School writes a short foreword stressing the importance of law students need “to analyze and write about legal issues” (p.4). He discusses some of his own work and of course endorses the essays contributed by the law students all who have graduated previously to 2014. A list of the contributors with short biographies and their present positions are noted. Paul Pruitt Jr.’s introductory essay, “Alabama Legal History as a Field of Study” (pp.1-12) asks Maitland’s analogous question of “Why has Alabama legal history not been written—until recently?” (p.1). He presents a bibliographical essay on writings on Alabama and Southern legal history in the past thirty years. I hope that he could expand this short introduction into a longer, more detailed bibliographical essay for the Law School’s Law Review or even a pamphlet in the Occasional Publications Series.

There are eight essays covering a variety of fields of study. Warren Hoffman discusses the concept of the open range in Alabama which was opposed to the common law tradition of enclosing land to keep animals in an area, rather than allow animals to openly travel throughout the land. Hoffman reviews both case law, statutory law, and constitutional law to show how law of open range ideas lasted into the twentieth century and it was not until legislation of 1951 that forbade livestock to run at large in any county.

Paul Rand provides a short history of equity and the law of trusts before engaging in discussing major cases between 1820 and 1890 that reflect the development of equity and trust law in nineteenth-century Alabama that still needs to be explored in other states as well.

Helen Eckinger discusses “The Militarization of the University of Alabama” during the Civil War. Landon Garland as president of the university had state legislation passed that introduced a military system such as living in tents and military discipline while they were students in school. Garland hoped the military departmentalization would help create officers for the war, have student’s serve as a national guard to protect the state, and had a supply of educated young men when the war ended.
Eddie Lowe describes economic growth in Blount County, Oneonta, beginning with the creation of a new county seat in late nineteenth-century, the history of the L & N Railroad and the Cheney Lime and Cement Company and the interaction between the two companies down to the 1990s.

Mike Dobson discusses the growth of the law firm Burr and Forman from a small Mississippi firm of the nineteenth century down to a major Southeastern law firm possessing offices in nine cities in five states. The firm changed its name nine times over the century until Burr and Forman (1986 to present). He discusses biographical information of the first members of the firm and some later partners.

Courtney Cooper discusses part of the history of the Alabama Constitution of 1901 that is the longest constitution in the world. She provides historical background to the development of the 1901 Constitution, especially concentrating on how the white elite eliminated voting rights for African-Americans and poor whites. She shows how neither the state nor federal courts provided protection that led the delegates to the constitutional convention to easily remove these voting rights.

Deidre Drinkard’s study of Justice Hugo Black emphasizes the Justice’s military role as an officer in World War I as a neglected part of his biography that was as an important influence upon his later opinions. Black is well-known as a supporter of free speech of the First Amendment, but opposed those rights in Korematsu v. U.S. (1944), Adderly v. Florida (1966), and a dissenting opinion in Tinker v. Des Moines Indep. Cmty. School Dist. (1969) against a minority vocal opponent to symbolic speech by students opposed to the Vietnam War. Drinkard argues that his military background provided reason for his views on conduct as opposed to free speech.

Ellie Campbell discusses the case of Strange v. State (1965) in which a white man was tried and found guilty for the first time for the racial killing of a black man in Alabama. Campbell provides background and description of the trial and its results. Although the trial did not radically change anything in the legal system, it still was a first step along the way to reform that developed in the 1970s by a new chief justice of the Alabama Supreme Court.

The essays in this volume are useful contributions to neglected areas of Alabama legal history. Dr. Pruitt and his colleagues are to be congratulated on the publication of this work.

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Welcome to a New Legal History Journal

*Jus Gentium: Journal of International Legal History*

The year 2016 brought a new legal history journal into being: *Jes Gentium: Journal of International Legal History*. Published by Talbot Publishing, an imprint of Lawbook Exchange. It is the first journal in the United States dedicated to the history of international law. William E. Butler, the John Edward Fowler Distinguished Professor of Law and International Affairs at the Pennsylvania State University, is the journal’s editor.

The journal, which will be published twice yearly, welcomes submissions, including articles, reviews of old or new literature, biographical or historiographical material on international lawyers, bibliographical essays, and memoirs or recollections of international legal practitioners. Submission instructions are available at https://www.lawbookexchange.com/jus-gentium.php.
Writing the Legal Record
Law Reporters in Nineteenth-Century Kentucky
Kurt X. Metzmeyer

Any student of American history knows of Washington, Jefferson, and the other statesmen who penned the documents that form the legal foundations of our nation; but many other great minds contributed to the development of the young republic's judicial system—figures such as William Letcher, Ben Monroe, and John J. Marshall. These men, some of Kentucky's earliest law reporters, are the forgotten trialbriers who helped establish the foundation of the state's court system.

In Writing the Legal Record: Law Reporters in Nineteenth-Century Kentucky, Kurt X. Metzmeyer provides portraits of the men whose important yet understudied contributions helped create a new common law inspired by English legal traditions but fully grounded in the decisions of American judges. He profiles individuals such as James Hughes, a Revolutionary War veteran who worked as a legislator to reform confusing property laws inherited from Virginia. Also featured is George M. Bibb, a prominent U.S. senator and the secretary of the treasury under President John Tyler.

To shed light on the pioneering individuals responsible for collecting and publishing the early opinions of Kentucky's highest court, Metzmeyer reviews nearly a century of debate over politics, institutional change, human rights, and war. Embodied in the stories of these early reporters are the rich history of the Commonwealth, the essence of its legal system, and the origins of a legal print culture in America.

Kurt X. Metzmeyer is professor of legal bibliography and the associate librarian of the Louis D. Brandeis School of Law at the University of Louisville. He is author or coauthor of several books, including United Ar Forces: The Judicial Article and the Struggle to Reform Kentucky's Courts and Kentucky Legal Research.

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