LH&RB Programs Announced
Laura Ray

The Legal History & Rare Books SIS has particularly distinguished itself in the program proposal process for the 2008 AALL Annual Meeting in Portland. Four programs have been accepted for the formal program.

The full-day workshop Yikes! What’s In This Box? Managing Archive Collections will explain the principles of organizing archival collections and creating finding aids, as well as walk participants through the creation of a finding aid with Encoded Archival Description tags. The LHRB SIS is co-sponsoring this workshop with the Technical Services SIS. It will be coordinated by Janice Anderson, Georgetown University Law Library Associate Director of Collection Services, and Heather Bourk, Georgetown University Law Center Archivist. Speakers will include Anne Mar, Georgetown University National Equal Justice Library Project Archivist, and Michael Widener, Yale University Law Library Rare Book Librarian.

Beer and the Law: A Legal History of Beer, Brewing and Government Regulation from the German Purity Law to the Microbrew Movement will feature a Full Sail Brewing Company Brewmaster as well as Mark Podvia, Dickinson School of Law Associate Law Librarian, Legal Research Professor, and Archivist. Mark, a respected PubCrawler.com reviewer, will also coordinate and moderate this program describing and explaining the history of beer and brewing, the brewing process, and brewing regulations.

Oregon’s Death With Dignity Act (DWDA): A Legal History will trace the legislative history

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From the Chair
Karen Beck

Hello, everyone. The theme of my first “From the Chair” column can be summed up in two words: Thank you. And now for some variations on that simple theme:

Thank you to everyone who submitted program ideas for the Portland Annual Meeting in July 2008. Several terrific historically oriented programs were selected, and you’ll be hearing more about them in the months ahead. For a preview, please read Laura Ray’s article in this newsletter. And thank you, also, to everyone involved in the program planning process. As you may know, program planning takes place in a few frenzied weeks in August, and we could not have submitted such a fine slate of program proposals without the hard work of the Education Committee and especially its Chair, Laura Ray.

Thank you to Mark Podvia and Kurt Metzmeier for providing the inspiration and perspiration for a new LHRB e-journal. The new journal will be called “Unbound: An Annual Review of Legal History and Rare Books” and the first issue will appear this year on our SIS’s website. For more on this exciting new venture, see Mark’s Editor’s column in this newsletter.

Thank you (in advance) to Chair Glen-Peter Ahlers and his colleagues on the LHRB’s Publications Committee for agreeing to create a new brochure for our SIS. As a new SIS chair, I was pleasantly surprised to learn that AALL will design and pay for new SIS brochures once every three years; SISs are

Continued on Page 3 CHAIR
LH&RB

LH&RB is published three times each year by the Legal History & Rare Books Special Interest Section of the American Association of Law Libraries.

Submissions for publication are strongly encouraged. We have been known to beg. Correspondence can be sent to the appropriate editor at the following address:

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only responsible for printing costs. The LHRB-SIS does not have its own brochure – yet – and I know that once we have it, it will be a wonderful way to market our SIS and recruit new members. More information about our nascent brochure will be forthcoming in future newsletters.

Thank you to everyone who answered my call last month for LHRB committee volunteers. The SIS could not function without you! Here is a list of committees, their charges and their members:

**Education Committee**
Charge: Solicit, review, submit and rank proposals for Annual Meeting educational programming, including regular programs, workshops, roundtables and other educational opportunities.
Laura Ray, Chair
Marianne Alcorn
Karen Beck (LHRB-SIS Chair, ex officio)
Warren Billings
Daniel Blackaby
Joe Custer
Stacy Etheredge
Joel Fishman
Rob Mead
Kurt Metzmeier
Mark Podvia
Amy Taylor
Sarah Yates

**Newsletter Committee**
Charge: Responsible for writing and soliciting content for the LHRB-SIS Newsletter, published three times per year. Also responsible for compiling and mounting on the LHRB-SIS website an annual e-journal consisting of featured articles and book reviews from the Newsletter: *Unbound: An Annual Review of Legal History and Rare Books.*
Mark Podvia, Editor and Chair
Kurt Metzmeier, Webmaster and Articles Editor
Jennie Meade, Articles Editor
Joel Fishman, Book Review Editor
Daniel Blackaby, Columnist: Legal History
Fred LeBaron: Columnist: Member News

Anne Mar, Columnist: Recent Acquisitions
Amy Taylor, Columnist: Special Collections Exhibits
Sarah Yates, Columnist: Special Collections Cataloging

**Publications Committee**
Charge: Spearhead, review, and provide advice about print and electronic publication projects of the LHRB-SIS. Special project for 2007-2008: create a brochure for our SIS.
Glen-Peter Ahlers, Chair
Stacy Etheredge
Lucinda Harrison-Cox
Joni Herbst
Kurt Metzmeier

Thank you to the hardworking LHRB-SIS leadership for keeping our SIS moving forward every day. We are a small SIS but we get a lot done, and we couldn’t do it without these folks: Stacy Etheredge, Vice-Chair 2007-09, is fairly new to our SIS but has already done an outstanding job of bringing newer members into the fold. Sarah Yates, Secretary/Treasurer 2007-08, has provided wise leadership, expertly guiding us through revisions to our bylaws and spearheading our elections. Laura Ray, Immediate Past Chair 2007-09, served as Chair with distinction from 2005 to 2007, most notably increasing the quality and quantity of our SIS’s educational programming. Mark Podvia, Newsletter Editor, continues to put together a terrific newsletter for our SIS; with its combination of substantive scholarly articles and news items, I daresay it is an exemplar of what an SIS newsletter can be. And Kurt Metzmeier, our Webmaster, has handled the often thankless task of maintaining and enriching our SIS’s website with aplomb; check it out at [http://www.aallnet.org/sis/lhrb/](http://www.aallnet.org/sis/lhrb/).

And last but not least, thank you to YOU for allowing me to serve as your Chair. I look forward to meeting and working with many of you over the next two years. If you have any questions, comments or suggestions about how our SIS might better serve you, please get in touch with me anytime; I would love to hear from you. And if you want to get involved with a current project, or have an
idea for a new one, I am all ears. You’ll find that we are a small, collegial SIS and there are plenty of opportunities large and small to jump right in, make a difference, and have a good time. Carpe diem!

Karen

Incoming Chair Karen Beck (left) and Outgoing Chair Laura Ray

From page 1 PROGRAM

of the DWDA, subsequent legal challenges to it, and Oregon’s experiences under it. This program will be coordinated by Etheldra Scoggin, Loyola University New Orleans College of Law Associate Professor and Reference Librarian, and it will be moderated by Etheldra and Stacy Etheredge, University of South Carolina Coleman Karesh Law Library Reference and Special Collections Librarian.

Finally, Explore the New World of Legal History Research – Be Prepared to Wiki! will review how to create a dynamic changeable wiki to display their library’s research assets, focusing on traditional and non-traditional legal history research tools. Conceptualized by Lee Sims, University of Connecticut School of Law Library (UCSLL) Head of Reference Services, this program will be coordinator and moderated by Darcy Kirk, UCSLL Director, and the speaker will be Andrea Joseph, UCSLL Reference/ILL Librarian. Congratulations to everyone involved in this great line-up of formal programming!

Our SIS will also offer a Roundtable at the 2008 AALL Annual Meeting. Evolution of a

Research & Legal History Web Site: From Funding Through Implementation will review how to plan and design a web site as part of a legal history or legal research project, as well as discuss how to write a grant to obtain funding for a digitization project. The speaker will be Joel Fishman, Duquesne University Center for Legal Information / Allegheny County Law Library Assistant Director for Lawyer Services, and we will again offer light refreshments during this noon time slot. At virtually the last moment, our SIS was asked – and we stepped forward – to take over another informal program – Law Library Journal at 100: the Evolution of a Publication. Look for details on this program in future communications.

Our Business Meeting will be early Sunday evening, well before the dinner hour, so you should be able to attend this important reporting and planning meeting. Following our Business Meeting, we have planned a LH&RB Reception at The Lucky Labrador Brew Pub! What a fabulous follow-up to the Beer and the Law program, and what a great way to gather with current LH&RB colleagues and encourage other colleagues to join us.

Finally, I want to extend my personal appreciation to everyone involved with our four programs at the 2007 AALL Annual Meeting – Taking Up the Gauntlet: the Duel in Southern Legal History, Rome: the Power of Film to Teach Foundations of Roman and Civil Law, Huey Long, the Press, and the Fourteenth Amendment: Louisiana’s Contribution to Modern Constitutional Law; and our Roundtable Celebrating the 400th Anniversary of Cowell’s Interpreter. All were well received and well attended, and the Rome program was featured in the September/October 2007 issue of AALL Spectrum. I thoroughly enjoyed working on the Rome program, and hope the rest of my LH&RB colleagues also found their programs rewarding. Thank you Jennie Meade, Stacy Etheredge, Etheldra Scoggin, Joel Fishman, and Warren Billings!

A bountiful Fall to one and all,

Laura Ray
Do You Like Beer?

Well, you have joined the right SIS! In what is rapidly shaping up to be a very beery Annual Meeting, the LH&RB-SIS invites you to join us for an afternoon and evening of beer-related festivities in Portland:

On Sunday July 13, join us at program B-6: Beer and the Law: A Legal History of Beer, Brewing and Government Regulation from the German Purity Law to the Microbrew Movement. Coordinated and moderated by Mark Podvia, the program will feature a speaker from Full Sail Brewing Co., a microbrewery in Portland, Oregon.

After our (completely sober) LH&RB-SIS Business Meeting later that afternoon, we will reconvene at the Lucky Labrador Brew Pub from 7 to 9 pm for an LH&RB reception. Complimentary food and drink will be provided by our SIS. More information will be forthcoming, but mark your calendars now and plan to join us! To learn more about Lucky Lab, visit http://www.luckylab.com/.

It is going to be a great Annual Meeting! Mmmmm...Beer...

Finally, I am very excited about our newly approved on-line journal, Unbound: An Annual Review of Legal History and Rare Books. Details on this new endeavor follow on this page.

The deadline for the Winter issue of LH&RB is February 25th. I will look forward to hearing from you!

Mark Podvia

LH&RB to Publish New On-Line Journal

This newsletter, LH&RB, has featured many substantive, scholarly articles and book reviews over the years. Unfortunately, LH&RB is not widely available to researchers and scholars; this valuable material tends to “disappear” into the newsletter.

In an effort to make these articles and book reviews more widely available, the Legal History and Rare Books SIS will soon begin publishing a new on-line journal: Unbound: An Annual Review of Legal History and Rare Books. It will be published on an annual basis in a PDF format. Unbound will reprint the substantive articles and book reviews from LH&RB, omitting news items and columns. The new annual will be consecutively paginated so that researchers can easily cite to them. It will be hosted on the LH&RB section of AALLNET, where issues of LH&RB are currently housed.

It is our hope that Unbound will eventually be indexed in ILP and LRI, and we will contact Hein Online about including it in their database. This will broaden its reach, and provide publicity to our SIS.

Our Newsletter Editor and our Webmaster will provide labor for this project. They may be calling upon members of our Newsletter and Publications Committees for assistance.

The first issue of Unbound will appear in early 2008.

Editor’s Corner

I am very excited about this issue of LH&RB! I would like to thank all of our editors—Jennic, Kurt, Joel, Dan, Fred, Anne, Amy and Sarah—who have done such wonderful work. I would also like to thank all of you who wrote articles and who contributed news for our columns.

I am also excited about the programs and events that our SIS has planned for Portland.
Our new LH&RB mascot Hughes-Humphreys the Bison (left) sits on our Chair, Karen Beck

LEGAL HISTORY AND RARE BOOKS SIS BUSINESS MEETING
17 JULY 2007 MINUTES

1. Welcome & Introductions by Laura Ray.


3. Reports:
   a. Treasurer's Report: Sarah Yates reported that the Section has a balance of $13,446.32 as of March 31, 2007. Its income for the fiscal year ending September 30, 2006, was $1,740.00; expenses for the fiscal year were $608.38. No income or expenses were recorded from October 2006 through March 2007.

   b. Report on Bylaws Changes: Sarah Yates reported that the changes to the bylaws voted on at the July 2006 Business Meeting were approved unanimously.

   c. Report on the Election of Officers for 2007-2009: Sarah Yates reported on the Section's e-mail election, which was conducted from March 7, 2007 through March 31, 2007. Stacy Etheredge was elected Vice Chair/Chair Elect.


   e. Report of the Newsletter Committee: Mark Podvia reported that the newsletter's new frequency of three issues per year is working well. He announced two new articles editors: Jennie Meade and Kurt Metzmeier. Mark has agreed to continue as editor at least through 2010/2011.

   f. Report on the Web Site: Kurt Metzmeier was not able to attend to give the Web site report. Laura Ray mentioned that the Web site experienced some problems last year due to disruptions at AALLNET and that it is hoped that these AALLNET issues have been resolved.

4. Old Business
   a. Thomson/Gale Sponsorship of Essay Contest: The essay contest is very close to being approved. The AALL Executive Board raised the following questions about the contest, which need to be addressed before it gives final approval: Will the presentation of the winning paper at the Annual Meeting be an SIS official program? Where is the prize money coming from? How does the contest fit in with AALL's awards policy? The Board will consider the contest proposal at its November 2007 meeting. If it is approved, the essay contest committee can begin marketing the contest during spring semester 2008.

   b. Bibliographies of State Court Reports: Joel Fishman will continue to work on this with Glen-Peter Ahlers, Chair of the Publications Committee.

   c. Legal Biography Web Site: Joel Fishman has about 15,000 names, which should be up on the site by this fall. Joel is working with Kurt Metzmeier on figuring out how to load and maintain the database.

   d. LHRB SIS History: Laura Ray wrote a history of the Section, which appeared in the May 2007 issue of Spectrum. Copies of the history were also displayed at CONELL and at the activities table in the Exhibit Hall.

   e. SIS VIP Program: Laura Ray deferred discussion of this agenda item to the
discussion of AALL SIS Council Meeting under New Business.

f. SIS Signs: AALL keeps an inventory of signs for SIS meetings and programs that are not sponsored by the AMPC. The sign for the LHRB SIS Business Meeting is missing, and a new one will need to be ordered.

5. New Business
a. AALL SIS Council Meeting: Laura Ray and Karen Beck attended the SIS Council meeting, and Karen attended AALL’s Leadership Training program. AALL is beginning to podcast selected educational programs at the Annual Meeting; we will report on whether any of our programs at the 2008 Annual Meeting are appropriate for podcasting.

The meeting matrix and AMPC program scheduling have been challenges for SISs this year, especially given the shortened conference schedule. Next year there will be as many as six programs scheduled concurrently, which will even further increase the risk of a single SIS’s programs running opposite each other.

AALL’s current policy is that program speakers who are not members of AALL must register for at least one day of the Annual Meeting. Laura Ray proposed that we could use the VIP program to pay for a speaker’s registration costs. The VIP program covers registration costs only, not lodging or other expenses.

b. LHRB SIS Mascot: Mark Podvia proposed that the Section adopt a mascot: Hughes Humphreys the Bison. The suggestion was voted on and approved.

c. 2008 Annual Meeting Program Proposals: The deadline for program proposals for next year’s annual meeting is August 15. Members of the Section’s program review team are: Joel Fishman, Mark Podvia, Rob Mead, Karen Beck, Warren Billings, Kurt Metzmeier, Amy Taylor, and Stacy Etheredge. Several program ideas were suggested, including some that members of other SISs are working on and seeking co-sponsorship for. Our AMPC Liaison, Barbara Golden, suggested that one way to reduce the risk of two or more of our programs being scheduled at the same time is to propose programs of different lengths.

6. Transfer of Chair to Karen Beck.

Respectfully submitted,

Sarah Yates
Secretary/Treasurer

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2007-2008 Officers

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Rare Book Cataloging Roundtable Roundup

The first official Rare Book Cataloging Roundtable, sponsored by the Technical Services SIS, took place at this summer's annual meeting in New Orleans. "Wait a minute!" you say. "Last year at this time weren't you telling us about the 2006 Rare Book Cataloging Roundtable?" Yes, but that one wasn't an official, i.e., SIS-sponsored, event. This year we had a room at the convention center and everything!

Despite being scheduled for late Saturday afternoon—earlier than many conference attendees had even arrived in New Orleans—the roundtable was well attended. What was really remarkable about the group was not just the number of participants, but the diversity of their job responsibilities and the rare and special collections they work with.

The collections that roundtable participants have at their libraries have origins spanning centuries and continents. One cataloger reported that he works with mostly Anglo-American rare and archival materials. Another works with special collections that are mostly related to her law school's state laws and to Native American materials. Two people mentioned rare canon law collections in their libraries.

Several participants are responsible for cataloging archives. A few mentioned that they are specifically interesting in learning about how to manage archival collections using finding aids and encoded archival description (EAD). If you, too, are interested in these and other archives management tools, you'll be happy to see that a workshop has been scheduled for next year's annual meeting: What's in This Box? Managing Archival Collections. Keep an eye out for announcements about this workshop as the 2008 annual meeting approaches.

Susan Karpuk, catalog librarian for operations at Yale Law Schools' Lilian Goldman Library, and Nuchine Nobari, director of library services at the New York County Lawyers' Association, both spoke in depth about special issues with their rare collections. Since rare and special collections are, by definition, unique, it was no surprise to hear that the collections Susan and Nuchine are working with are very different. But there was at least one similarity, one that many librarians with special collections responsibilities have to deal with: large chunks of uncataloged materials.

Susan told us about a collection of over one thousand Roman and canon law titles that Yale had recently acquired on permanent loan from the New York City Bar Association. The exact number of titles was not known because, even though the bar association had provided a list of the titles, at two-thirds of the way through the project (the stage of the project as of Susan's report to our group in July), 150 titles had been discovered that were not on the list!

The titles were published in the sixteenth through nineteenth centuries, and a large number—the majority of the nineteenth century titles, in fact—are in German. And in Fraktur, no less. Luckily there are Fraktur charts available, including this online one from Yale’s own music cataloging department: http://www.library.yale.edu/cataloging/music/fraktur.htm. (Susan did mention the use of a Fraktur chart; she didn’t mention whether it was this particular one.)

Susan shared some of the questions she had to consider before being the cataloging; they are questions that anyone having to decide what to do with a large donated collection would want to ask: Who will catalog the collection? How should the work be prioritized? Where will the books awaiting cataloging be stored, and how should they be arranged? And, of course, what level of cataloging should the titles receive?

One factor Susan had to take into account when addressing these and other questions was a stipulation in the agreement with the bar association, namely that the collection was to be cataloged within a specific (and short) number of months. One of the biggest impacts of the imposed timeframe was that full-blown, bells-and-whistles cataloging was
not an option.

Susan has graciously agreed to write in more detail about this ongoing project for the next issue of *LH&RB*. [Thank you, Susan!] But if you can't wait that long to learn more about the collection, check out this record for the entire collection: http://morris.law.yale.edu/record=b638746.

You can also look up records for individual titles in the Yale catalog (http://www.law.yale.edu/library/) by searching for “Roman-Canon Law Collection of the Association of the Bar of the City of New York” as an author.

Nuchine Nobari inherited what she describes as a “wonderful old and discontinued collection” when she joined the New York County Lawyers’ Association, a membership association that will be celebrating its one-hundredth anniversary next year. Some of the treasures Nuchine described to us included a large collection of Story books, Irish law books, and a 1651 book of New Amsterdam laws.

Nuchine is not a cataloger, but she was hoping the group could give her some tips about how to handle her rare books. While the library’s old shelflist included very detailed cataloging, not all the older materials are represented in the OPAC yet.

Cataloging is not the only attention the older collections require. Some of the books are in poor physical condition due to flooding or fire. With a small library staff, the association’s executive board has decided that they don’t have the resources to do justice to the books themselves. Therefore, Nuchine was looking at outside options for everything from taking an inventory to digitizing certain texts to providing a good home for some of the books. She was also curious whether other attendees had any suggestions regarding grants that might be available to help with funding for the care of the collection. Thanks to the collective expertise of the group, Nuchine was able to gather several helpful and specific suggestions.

Susan and Nuchine are both perfect examples of why you should come to the 2008 Rare Book Cataloging Roundtable in Portland. If you have been working on an interesting or unusual project, come to the roundtable to share your experiences. We would love to learn from you! If you have a project looming and don’t know where to begin, come to the roundtable to solicit suggestions. We would love to help!

And there is even more good news! A rare book cataloging e-mail list is being set up at the time of this writing. As soon as it is running, subscribers won’t have to wait for the roundtable to ask a question or share an experience with the group. If you would like to join the list and haven’t yet, e-mail me at yates006@umn.edu. I’m looking forward to hearing from you!

Sarah Yates
University of Minnesota
Law Library

**To Collect the Minds of the Law:**
**Rare Law Books, Law Book Collections and Libraries An International Symposium**

On June 19-21, about 34 legal historians, rare book librarians and interested others gathered in Lund and Malmö, Sweden, for a conference on various aspects of rare law books and legal history. Seventeen invited speakers, including a number from our SIS (Karen Beck, Morris Cohen, Joe Luttrell, Rob Mead and Mike Widener), presented papers during the day. Evenings were spent visiting a spectacular rare book collection formed by Einar Hansen, examining books at the Lund University Library that belonged to Hugo Grotius, and enjoying a dinner at the historic Old Bishop’s House at Lund University.

The summer solstice was a delightful time to visit Sweden. Daylight lasted until around 11 pm, and nights were only a few hours long. Conference attendees stayed at the Hotel Concordia in the charming university town of Lund. The small town featured a large park, striking architecture, wonderful museums, lots of good food, friendly people, and many, many bicycle riders making their way across
cobblestone streets. Attendees were bussed to the nearby town of Malmö every day, where the conference took place at Fridhemsborg, a villa owned by the Einar Hansen Foundation. The Foundation also sponsored this conference.

Much credit goes to the conference organizers for planning such an interesting and enriching experience. They include: Professor Kjell Å Modéer, Professor of Law at Lund University, Anna Hogevik Wilske, a law student at Lund University, Michael H. Hoeflich, Professor of Law at the University of Kansas, and last but not least, our SIS's own Michael Widener, Rare Book Librarian at Yale Law School's Lillian Goldman Law Library.

The presentations were grouped into seven sessions, as follows:
Session 1: Law Libraries and Legal Culture
Session 2: Law Book Dealers and Collectors
Session 3: Individual Lawyers' Libraries
Session 4: Medieval and Early Modern Law Books
Session 5: Law Books and Legal Practice
Session 6: To Collect the Minds of the Law
Session 7: Rare Law Books and Libraries in Legal Culture and Legal History: Concluding Panel Discussion

Below are summaries of some of the papers. All of the papers presented at the conference will be published in a volume of proceedings.

**Session 1: Law Libraries and Legal Culture**

 Reported by Rob Mead

The first session of the conference concerned the topic of law libraries and legal culture. In his presentation entitled "Literary Libraries of Antebellum Lawyers: A Study in the Leisure Reading of American Jurists," Professor Michael Hoeflich summarized this topic as an examination of lawyers as "people of the book". He explained:

Books are the lawyer's stock in trade. Lawyers surround themselves with books and papers and have done so since the beginnings of the legal profession. And for some lawyers there can never be too many books. For them books move from the realm of workmen's tools and become objects to be acquired, displayed, and desired. All lawyers are book people, but only some lawyers become obsessed with books to the point that they become collectors.

Hoeflich gave a wide variety of examples of lawyers as book collectors, including Philadelphia lawyer Frederic Charles Brighty who died in 1888 with over 8,000 volumes in his collection; Sir Georg Mackenzie, whose collection formed the heart of the Advocates Library in Edinburgh; and Justice Joseph Story and Samuel Livermore whose collection become the foundations of the Harvard Law Library. Beyond simple collecting, Professor Hoeflich further suggests that the compulsive nature of book collecting is likely to travel in tandem with the compulsions that drive authors:

To become a jurist, however, requires a far greater mastery wish of the law and of literature in general. Further, most lawyers who wish to obtain this level of mastery wish to do so to become authors themselves, a status, as Walter Benjamin has noted, which is itself closely related to collecting...The origins of some of our greatest libraries lie in the book obsessions of some of our greatest jurists.

Thus, books beget books, and the foundational motivation of authors who collect and collectors who write are likely so intertwined that to understand either is to understand the heart of scholarship.

Carolyn J. Clark, the Collections Analyst and Research Librarian at the Arthur J. Morris Law Library at the University of Virginia, expanded upon the theme of legal book culture in her examination of legal ephemera. She quoted ephemelist Maurice Rickard's
definition of ephemera as the "minor transient documents of everyday life" and then explained that in law collections, ephemera can consist of anything from diaries, letters, and manuscripts to advertisements, photographs, and broadsides. Ephemera is usually flimsy or insubstantial and produced for a specific purpose thus "not intended to survive the topicality of its message or event to which it is related." She concluded by calling on law libraries to collect, catalog, and digitize ephemera in order to add richness to the historical study of law.

Session 2: Law Book Dealers and Collectors Reported by Morris Cohen

On the afternoon of the first day of the conference, June 19, 2007, a session entitled, Law Book Dealers & Collectors, was presented by three speakers - John W. Cairns, Professor of Law, University of Edinburgh; Morris L. Cohen, Emeritus Professor of Law, Yale Law School; and Joe Lutrell, Rare Book Dealer and proprietor of Meyer Boswell Rare Books, San Francisco.

Professor Cairns opened the session with a talk on Alexander Cunningham, Scottish scholar of Roman law, collector, agent and book dealer in the late 17th and early 18th centuries. He described how Cunningham developed his knowledge of rare books and the book trade through his own research and through his extensive travels on the Continent with noblemen and the sons of noblemen for whom he often acted as tutor. Born in the 1650s, he was already a noted bibliophile and book scholar while pursuing law studies in Utrecht. Cunningham helped many major British collectors build their libraries, particularly with the acquisition of early printings of classics and rare law books. As a significant scholar in his right and as a highly effective book agent and dealer, he was unusual in moving with ease in both the learned intellectual circles of that time and the world of wealthy and aristocratic collectors. Many of the great collections Cunningham helped build survive intact in important research institutions. The question period following Professor Cairns talk focused on the book world of Cunningham's time and on several of the leading collectors he advised and assisted.

The second speaker, Professor Emeritus Morris L. Cohen of the Yale Law School, spoke on several American lawyers of the late 19th or early 20th centuries who built noteworthy collections of law books, which survive today either intact in research institutions or as important bibliographies or catalogs. Professor Cohen prefaced his description of these lawyers and their collections with some thoughts on the psychology of book collecting. The collectors and their collections included New York lawyers Charlemagne Tower and Russell Benedict, each of whom collected the laws of the original thirteen American colonies and states; Hampton Carson of Philadelphia who collected books and manuscripts illustrative of the growth and migration of the common law; John Marshall Gest, also of Philadelphia, who focused on early volumes of Roman, Canon and Medieval Law, which were referred to in Robert Browning's long poem, The Ring and the Book; Henry Ess III, New York lawyer, whose huge library of over thirty thousand volumes included approximately one thousand rare law books, half of which were English law books printed before 1601; Magrane Cox, New York lawyer and diplomat, who collected the writings of William Blackstone and works based on those writings; and, lastly, Thomas M. McDade whose collection of early American crime literature was particularly noteworthy for its extensive holdings of American homicide cases. Professor Cohen's talk was illustrated with a power point presentation of images of the collectors, their collections, and bibliographic records of their holdings. The question period dealt with the psychology of book collecting and with the details of several of the collections that had been described.

The last speaker was Joe Lutrell, rare law book dealer and proprietor of Meyer Boswell, Ltd. Rare Law Books. Mr. Lutrell's talk was entitled, Collecting the Law - A Dealer's Perspective, and dealt largely with the collection of the distinguished American trial lawyer, Clarence Darrow, and Mr. Lutrell's role in the disposition of that collection. Using the Darrow collection as a case study, the speaker traced the dealer's discovery and assembling of the collection from many
sources (in this instance, many years after Darrow’s death), the dealer’s efforts to keep it intact sell it as a unit, and finally its sale, with great satisfaction all around, to a distinguished academic law library. To further illustrate the role of the rare book dealer in collecting the minds of the law, Mr. Luttrell then spoke about four other collections he had handled. Their collectors were Samuel E. Thorne, legal historian and late Professor at the Harvard Law School; Charles E. Wyzanski, American federal trial court judge and legal scholar; Colonel Frederick Bernays Wiener, distinguished appellate advocate (particularly before the Supreme Court of the United States) and authority on military law; and Toronto history professor, T. A. Sandquist. In addition to explaining, from his personal experiences, the varied roles of rare book dealers in the disposition of collections, Mr. Luttrell adroitly described the manifold difficulties that dealers encounter and the unexpected pitfalls that can ensnare them. The question period that followed his talk pursued some of those arcane difficulties and pitfalls, and elicited comments from several of the participants on their own experiences with the rare book trade.

Session 3: Individual Lawyers’ Libraries
Reported by Mike Widener

The session on Wednesday morning, June 20, 2007, was devoted to "Individual Lawyers’ Libraries," and featured papers by one American and the three Scandinavians on the program.

Robert Mead, State Law Librarian of New Mexico, led off the session with "The Law Library of Thomas Benton Catron: Using Donated Collections to Analyze the Legal History of the American Southwest." Catron played a prominent but checkered role in territorial New Mexico, as a leading lawyer, political boss, land speculator, and finally U.S. Senator. He was also a voracious collector of books who built a substantial library on history, the Southwest, common law, and Hispanic law. Catron declined an opportunity to acquire Hubert Howe Bancroft’s huge library, missing his chance for lasting bibliographic fame. Using surviving catalogues and books that still bear Catron’s marks, Mead demonstrated how Catron’s library reflected his legal career and the history of New Mexico.

Per S. Ridderstad, the Einar Hanaen Professor of Book History at Lund University, presented "Early Swedish Enlightenment: Law Professor David Nehrmann Ehrestråle's Library." Nehrmann (1695-1765) was Lund University’s law professor for 32 years and was Sweden’s leading authority on jurisprudence. A substantial portion of Nehrmann’s 3,000-volume library survives in the Municipal Library of Linkoping, Sweden, which Ridderstad himself has augmented with another 24 volumes from Nehrmann’s library that belonged to an ancestor of Ridderstad’s. By studying the imprints, the subject matter, and the bindings, Ridderstad concluded that Nehrmann’s library was that of a working scholar and not a bibliophile. Most of the books were law or the closely related fields of history and political science.

From Ditlev Tamm, Professor of Legal History at the University of Copenhagen, came a fascinating comparison of the law libraries of three very different people. Peder Kofod Ancher (1710-1788) was a law professor who is considered the founder of Danish legal history. He took a great interest in the common core of Western European law, especially natural law, and wrote a guide for law students with the intriguing title, "A Letter to Nobody About Nothing in the Law." His 6,000-volume library was strong not only in Danish law and natural law, but also foreign law. The second figure, Mathias Knutzen, is an ancestor of Professor Tamm’s. He was a small-town judge in the 1820s who left a catalogue of a 1,000-volume library that including not only a practitioner’s library but also volumes on Roman law, the Code Napoleon, English law, and the works of Kant and Fichte. Anders Sandoe Ørsted (1778-1860) was an important jurist and politician who served as Denmark’s prime minister. The books he authored on Danish law often drew on foreign law for comparisons or solutions. His 4,500-volume library, auctioned at his death, was strong in foreign law, classics, and German authors.
The session concluded with a presentation from the conference's organizer and host, Kjell Å Modéer, Professor of Legal History at Lund University. His paper, "To Live With the Books - The Private Research Law Library of the Swedish Legal Historian Gerhard Hafström (1904-1985)," paid homage to Modéer's teacher and mentor. Modéer described Hafström as "a devoted booklover and book collector" who patronized Sweden's antiquarian dealers and book auctions. He collected Swedish law and books authored or owned by famous Swedish law professors. The collection spanned the 16th to the 19th centuries and included a few manuscript volumes. At Hafström's death most of the collection was acquired by the Olin Foundation in Stockholm, and the remainder were gifts to colleagues and students. The collection is a record not only of Hafström's research, but also of his teaching, since he regularly brought rare books to class as teaching aids and often loaned them to students. Hafström was a man after the hearts of today's rare book librarians.

**Session 5: Law Books and Legal Practice**

**Reported by Karen Beck**

On Thursday morning, June 21, the conference attendees reconvened for the fifth session of the conference, entitled "Law Books and Legal Practice." Alain Wyffels, professor of Comparative Law and Legal History, Universities of Brussels, Leiden and Louvain, Research Director CNRS, France, served as Moderator. Three speakers - all law librarians and members of AALL - presented their papers.

The first paper was presented by Karen Beck, Curator of Rare Books / Collection Development Librarian at the Boston College Law Library. My paper was entitled "The Working Lawyer's Law Library in Nineteenth-Century America: A Look at the Evidence." As a collection development project for our library's Daniel R. Coquillette Rare Book Room, I looked at the private law libraries of 15 American lawyers who lived and worked in the northeastern part of the country in the first two-thirds of the nineteenth century. The focus of our collection is on books owned and used by working lawyers. A very generous donor has given our library books owned by working English and American lawyers of the fifteenth through eighteenth centuries; our library's job is to round out the collection by purchasing books owned and used by working nineteenth-century American lawyers. This study was primarily an effort to identify those books.

Beyond that, I was able to use the data gathered to make several observations and speculations about nineteenth-century lawyers' libraries, including the size of a "typical" law library (there is no such thing); the proportion of American vs. English imprints (the percentage of American imprints increased throughout the century), the most commonly owned titles (not surprisingly, Blackstone and Kent topped the list), and the most popular formats and subject areas (again not surprisingly, form books, dictionaries and works of practice and procedure topped the list, as well as the subjects of equity, admiralty and real property).

The second program of the morning was presented by Thomas H. Reynolds, currently General Editor of the Index to Foreign Legal Periodicals and formerly a Professor of Law and Law Librarian at the University of California, Berkeley. His program was entitled "Hostile Takeovers?: Acquisition of a Roman Law Collection by the Robbins Collection." Reynolds began his talk by describing the ways that rare books get into library collections: through book dealers, auctions, gifts, and "opportunity purchases" of large collections that arise on rare occasions. These latter can greatly enrich a library's holdings if the library can pounce on the opportunity quickly.

The Robbins Collection is a special collection within the Law Library at Boalt Hall, the School of Law at the University of California at Berkeley. Its primary focus is on canon and religious law, with strong holdings in medieval law, Roman law, civil law, and international law. The Robbins Collection is entirely funded by an endowment and, unlike most academic libraries, is able to move quickly to purchase and pay for large acquisitions that come its way.
Reynolds devoted most of his paper to an interesting account of his library’s efforts to acquire the Library of the Faculty of Procurators in Glasgow. (In Scotland, procurators are roughly equivalent to English solicitors.) This opportunity purchase was made possible by Dr. Douglas Osler, a frequent visitor to both Berkeley and Glasgow. Dr. Osler had been working on a catalog of the Glasgow library since 1986. In 1992, when the librarian at Glasgow informed Dr. Osler that the Roman law books were going to be deaccessioned, he in turn informed the librarians at Robbins. Thanks to Dr. Osler’s bibliography, the Robbins staff had a reliable description of the entire collection, which enabled them to act quickly, well in advance of other potential purchasers. The happy result was that the Robbins Collection acquired the collection en bloc, and in one fell swoop acquired almost 500 titles focused on Roman law, Roman-Dutch law, canon law and civil law – nearly all in excellent condition.

Mike Widener, Rare Book Librarian at the Yale Law School’s Lillian Goldman Library, presented the final paper of the morning: “Roman and Canon Law Books in the Texas Supreme Court Library, and More Broadly the Nature of ‘Usefulness.’” Mike began his paper by provocatively noting that this was the story of “an unused collection of law books, one that did little to shape the minds of its intended users; an ‘un-library.’”

The story of this “un-library” began in 1854 when the Texas Supreme Court Library was formed thanks to a $15,000 appropriation from the Legislature. The chief justice had sole authority over acquisitions, and from 1840 to 1858, that role was occupied by John Hemphill - a great admirer of the Spanish legal system and civil law in general. Widener argued convincingly that Hemphill created the civil law collection in the Texas Supreme Court Library to promote civil law in Texas. He surmised that Hemphill acquired the collection (probably en bloc) in New Orleans, an important port of entry for foreign law books. Sadly, the collection languished almost as soon as it was born. Hemphill’s departure from the court marked the beginning of “the dark age of ignorance” of Spanish and Mexican law, which lasted until the 1950s.

After Hemphill left the court in 1858, the library never acquired another book in a foreign language. The 323 volumes that were eventually transferred to the Tarlton Law Library at the University of Texas, where Widener first encountered them, appeared little-used.

After tracing the history of the collection, Widener turned to the question of usefulness. This question bedevils all of us who work in special collections and grapple with the problem of how to justify purchasing, cataloging and housing books that may be rarely, or never, consulted. How do we keep our libraries’ special collections from becoming the next “un-library”? Widener made a strong case for special collections, calling them “interactive hands-on laboratories” for legal and cultural history. During the question and answer period, several librarians agreed with Widener’s arguments about usefulness. They also raised the point that special collections are actually becoming more “special” in the digital age: when most libraries all own the same digital collections, it is our special collections that will set us apart and add distinction to our institutions and value to our users.

Mike Widener’s paper and presentation were fascinating. Most of us who work in special collections appreciate a good story of bibliographical detective work, and it was inspiring to end the morning’s presentations with a validation of the work we do to make our special collections relevant and useful.

Karen Beck
Boston College Law Library
Morris Cohen
Yale Law School Library
Rob Mead
New Mexico Supreme Court
Law Library
Mike Widener
Yale Law School Library
Another Early Pennsylvania Legal Periodical: *Journal of Jurisprudence* (1821)*

In 1821, John Hall published the *Journal of Jurisprudence*, "a new series of The American Law Journal." It is sometimes cited under the former title or as volume seven of the *American Law Journal* that was the first law periodical published in the United States. The new volume had 542 pages, divided into three issues of 136, 136, and 270 pages. Mathew Carey & Son, one of the leading Philadelphia printers of early, nineteenth-century Philadelphia, was the printer of the *Journal*. 

In antebellum Pennsylvania, Philadelphia served as a major printing center, hosting a number of Irish émigrés that became book sellers, printers, and book publishers of legal materials, such as Mathew Carey, John Boren, and Patrick Byrne. These individuals were followed by notable book companies like T. & J. W. Johnson Co. and Kay & Brother.

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

As a periodical published in Philadelphia, a number of articles and cases dealt with Pennsylvania law and history. The trial of William Penn in 1670 provided the third major article in the first issue. The trial is well-known not only for the freedom of Penn for his preaching against a charge of unlawful assembly, but as the lead-in for the history of juries in the succeeding *Bushel’s Case* against the jury who had freed Penn. A second Pennsylvania article dealt with the biographical information on the history of the judiciary in Pennsylvania from the colonial period to the 1830s.

In the history of legal education, the issue contained the opening address of Peter Du Ponceau, noted Philadelphia lawyer, who supported the creation of a new educational institution through the creation of a Society for the Promotion of Legal Knowledge and Forensic Oratory and a complementary organization, the Law Academy of Philadelphia. On January 12, 1821, the Society was incorporated in Philadelphia with William Tilghman, Chief Justice of the Pennsylvania Supreme Court, as President, William Rawle as Vice President, Du Ponceau as Provost of the Law Academy, James Gibson as Vice-Provost, five lawyers as trustees, John J. Kane as Secretary, and Benjamin Tilghman as Treasurer. The Academy gave law students and lawyers recently joining the bar the ability to participate in moots in which the instructors and judges of the local courts heard cases and provided instruction to the students. Usually once a year, a person was invited to present an annual address to the Academy. Over the next hundred years, changes were made to the constitution and bylaws of the Academy, but it continued well into the twentieth century.

Du Ponceau also presented the first lecture with the opening of the Law Academy of Philadelphia which became an annual affair. Du Ponceau wanted to raise the standard of legal education in the United States by establishing a national legal educational institution. He wanted Philadelphia, and the leading members of its bar, to take the lead in creating such an institution similar to its highly regarded medical school. He wanted to institute moots and readings, and follow up with professors of law giving lectures. Critical of both English legal education and the role of the judiciary in offering court opinions, and the large number of legislation and court cases published by federal and state jurisdictions, Du Ponceau felt that a national law school
could eliminate some of these concerns by having important professors leading the way, stopping legislative innovations, making uniform case law decisions, and creating a judiciary free from competition (as in English common law jurists vs. civilian judges and lawyers). Lamenting James Wilson's inability to continue his law lectures at the University of Pennsylvania, the recent closing of the Judge Reeves' Law School, and Charles Hare ending his lectures at Harvard, he found there was a need for a new educational institution. He ended his speech urging the students to participate in the new organization, appealed to their pride as the founders of a new national law school, and urged them to promote the organization to other students.

The last issue contained Jared Ingersoll's 1813 report to the legislature dealing with reform of the penal laws. Early colonial legislation under William Penn provided relatively mild punishments for criminal actions that was repealed in a 1718 act that followed the stricter English law of punishments which lasted until an act of 1794 abolished the death penalty in all cases except murder by first degree. The report represented Ingersoll's moderate suggestions reflecting contemporary viewpoints on the need for penal reform.

The Journal published several Pennsylvania cases from both the Supreme Court and the county courts. By 1820, there had been published only twenty volumes of Supreme Court cases by Alexander Dallas (4 vols.), Horace Binney (6 vols.), Jasper Yeates (4 vols.), and the first two volumes reported by Thomas Sergeant and William Rawle and one volume of county cases by Alexander Addison Hall published a transcript of an early case, Cooke v. Rambo (Philadelphia Co., 1866), in which John Rambo invaded the house of Bridget Coke, had sexual intercourse with her, and was now found guilty and fined ten pounds and charged to marry her before her child was born (she was charged ten pounds as well). Of the more recent cases, four of the five were not published elsewhere: Com. v. Young (1818), Commonwealth ex Relatiune Joseph Chew et al. v. John Carlisle (1821), Dickey's Case (Franklin Co., 1820), Sharpnack v. Wilson (Franklin County, 1820).

In the Case of Accounts of Pleasants (Orphans' Court, Philadelphia).

Com. v. Young (1818), unpublished in the nominative state reports of the period, was an appeal from the Mayor's Court of Pittsburgh for the right of Young, an auctioneer, to sell a particular piece of land. Under the federal act of August 2, 1813, the President could sell lands in Pennsylvania which had been assigned to the proprietary by which the jurisdiction has been ceded by the state. There was statutory law against violation of state statutory law regulating auctions. William Wilkins served as counsel for the commonwealth and Henry Baldwin, future Justice of the U.S. Supreme Court, served as counsel for Young. Chief Justice Gibson, one of the leading state judges of the era, commented on the balance of powers doctrine between federal and state governments.

Before the establishment of a federal government every state possessed full, complete, and absolute sovereign power. By the federal constitution a portion of that sovereignty was, for national purposes, transferred to the general government: the residue remained to the states. The sovereignty of the United States is derivative; that of the individual states inherent but the authority of both is limited, being restricted to the exercise of powers applicable only to particular subjects; neither being sovereign to every purpose, and in every aspect, but only so, when acting within the prescribed limits of its authority. For all national purposes the United States is completely sovereign: for all domestic purposes, unless where there are express or strongly implied exceptions, each state is so. The jurisdiction of both, in the particular aspect in which each possesses the attributes of sovereignty, may, for
national and state purposes, be exercised on the same subject and at the same time. In other cases the jurisdiction is exclusive.\textsuperscript{33}

A lower court county case from Franklin County, Dickey's case (1820), was printed from the manuscript notes of Charles Smith, President Judge of the Third Circuit.\textsuperscript{34} In a second case, Sharpnack v. Wilson (1819)\textsuperscript{35} was cited by the defendant's attorney shortly after it was published in the case of Gorgas surviving partner of Warner Against Douglas, 6 S.&R. 512 (1821). A third unreported case of an executor,\textsuperscript{36} heard in Orphans' Court of Philadelphia, asking "to direct an issue to try disputed facts," was not in the power of the Orphans' Court, since it was a court of limited jurisdiction and its authority was determined by acts of the legislature.

Hall reported two Connecticut Supreme Court cases of Andrews v. Pardee (1811)\textsuperscript{37} and Nichols v. Palmer (1811).\textsuperscript{38} The first case has little importance being cited only a couple of times in later cases; the second case dealt with the granting of property by the husband to a trustee for the use of the wife during her lifetime which a divided court upheld.\textsuperscript{39}

In other cases reported in this volume the Louisiana the Supreme Court heard the case of Phillips v. Rogers et al. (1818). Thomas Phillips died, leaving his brother, the appellant, the nearest relative who was an alien of England, while Rogers et al., as collaterals, were only relatives and citizens of the United States. The lower court supported the collaterals to inherit real estate in Louisiana. The Supreme Court, however, reversed and gave the property to the deceased brother's.\textsuperscript{40}

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

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

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

It is unclear why Hall published Judge Thomas Bee's opinion in 1821, unless related to the recently decided case of \textit{U.S. \textit{v.} Willberger} (1820), first decided in the Third Circuit case held in Philadelphia and reversed by the U. S. Supreme Court, in which the Robbins' case was cited as well as reprinting Marshall's Congressional speech.\textsuperscript{47} Although Marshall's speech appeared as a defense appendix, it might have been added by the reporter, Henry Wheaton.\textsuperscript{48}

The case of \textit{Phillips \textit{v.} Insurance Company of Pennsylvania} (1799)\textsuperscript{49} was decided by a jury in favor of the plaintiff who contended the value of a rupee at 52½ cents rather than 47½ cents over the cost of cargo purchased with rupees in India. In the case of \textit{Lessee of Potts \textit{v.} Gilbert} (1819),\textsuperscript{50} a claim of adverse possession in Pennsylvania was overturned because the defendant's possession of land
for less than twenty-one years could not attach a previous owner’s possession to his own to claim ownership contrary to the statute of limitations. Also, the claimant could only hold land confined to a specific land. Interestingly, the unreported case was overturned shortly in Overfield v. Christie, 7 S.&R. 173, 177 (1821), but was cited in Miller and others v. Shaw (Pa. 1821)51 and more than 40 other cases including two U.S. Supreme Court cases and 40 other state cases chiefly at the highest court level.

There are two federal admiralty cases reported in the volume. First, in the Case of the Tigre, Associate Justice Bushrod Washington of the U.S. Supreme Court sitting as the circuit judge in New Jersey, upheld payment of money for public officers for going beyond their duties in stopping the ship before it was taken out of port and lost to its owners and owed money as salvors.52 Second, in Hernandez v. Aury (D. S.C. 1818),53 District Judge John Drayton dismissed the case for want of jurisdiction, since both plaintiff and defendant were foreign nationals in this prize case and the person bringing the case, Hugh Vincent, had no standing to bring the case.

There were other short articles dealing with various aspects of other states’ laws. The Louisiana laws of attachment from 1805 to 1811 were published with no commentary.54 A letter from D. Barton to Justice Samuel Roberts in 1821 described the Missouri statute dealing with taxation of land in response to Roberts request to Barton.55 A short letter from Samuel Chase, Associate Justice of the U.S. Supreme Court, to the governor of Maryland, dated October 6, 1794, argued that someone committing a crime could not be charged with both federal and state charges for one violation.56 This was probably written in response to the Whiskey Rebellion going on in western Pennsylvania, wherein the federal government had to send it troops to quell the “rebellion.”57

Of foreign law, there were several articles dealing with English law, three cases, and digest of cases. Two short articles dealt with the publication of English laws. Citing a 1729 criminal law against corruption of the members of the House Commons that required this law to be published, the article pointed out that generally the English people did not have access to their statutory law on a continuing basis.58 A second article detailed the 1651 Cromwellian act to provide for the translation of English laws from Latin to English and appointing Mathew Hale, the leading jurist of the period, to head a committee to reform English laws.59 Unfortunately, Hale did not have much success with the committee. There also was Lecoline Jenkins’ charge in a 1668 grand jury dealing with admiralty jurisdiction within the Cinque Ports.60 He discussed the English laws, Laws of Oleron, and admiralty laws that needed to be investigated by the grand jury. It is not clear why this charge was printed at this time.

The Journal published three contemporary English cases: two Chancery cases of Wood v. Griffin (1818)61 and Dunning v. White (1818)62 and one common pleas decision (Harding v. Gardner (1819).63

Another English publication was the reprinting of the digest of cases published in 1 Broderip and Bingham Common Pleas Reports.64 Issue three contained an anonymously published extensive digest of English cases for 1820.65

In the first issue only, there was a section called Literary Intelligence wherein the editors announced that Mathew Carey & Sons proposed to republish a series of Chancery Reports.66 It was suggested that the expansion of equity cases in various jurisdictions made this set a valuable set for the profession: “We are fully persuaded that this collection will form a valuable acquisition to the professional library, and we trust that the enterprising publishers will find a reward in the increasing demand for such books, arising from the gradual changes in the administration of justice in the court of equity and common law.”67 The use of the assumpsit action had become “the most common of all actions,” and was “co-extensive in its principles with those formerly belonging exclusively to courts of equity....” Pennsylvania had not had a court of chancery since 1736 and had incorporated equity into common law forms.68
Recommending such a work of English cases was an important change in Pennsylvania, since just a decade earlier, Pennsylvanians were strongly against citing English sources.69

Finally, there were notices of three new publications: John B. Moore and John E. Hall, *Digested Index of the Term Reports from 1785 to 1815, A Law Glossary of foreign languages cited in Blackstone’s Commentaries and various American reporters, and Edward Ingersoll’s Digest of the Laws of the United States of America, from 4th March, 1789, to 15th May, 1820.*70

In the area of international law, Hall had published several articles and Peter Du Ponceau’s English translation of Cornelius Bynkershoek’s *Law of War* in volumes three and four of *American Law Journal.*71 It is not surprising then that Hall continued to provide translations of important admiralty treatises, providing a translation of selections from the Military Ordinance of Louis XIV in 1681 with commentary by René-Josué Valin.72 In the first selection, the chapter dealt with mariners while the second selection dealt with the haring and wages of seamen (LIV III. TIT. IV.).73 Chancellor Kent held Valin’s work in high esteem in his Lecture 42, *Of the History of Maritime Law.*74

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

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

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**NOTES**

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


2. See EARL L. BRADSHAW, MATHEW CAREY, EDITOR, AUTHOR AND PUBLISHER; *A STUDY IN AMERICAN LITERARY DEVELOPMENT* (1912); KENNETH WYER ROWE, MATHEW CAREY, A STUDY


6. Byrne is less known than Carey or Bioren. He was a publisher in Ireland in the 1790s before he came to Philadelphia in 1801. He was a bookseller in both Philadelphia and Baltimore. He printed a catalog in 1802 of which twenty-one pages were legal titles (This will be another article). Besides republishing English works, he published the second edition of volume 1 of Alexander Dallas's Reports in 1806 and sold at least one collection of six titles to President Jefferson in 1805. He died in 1814. 2 JEFFERSON'S MEMORANDUM BOOKS 1147 n.48 (James A. Bear, Jr. And Lucia C. Stanton, eds. 1997)(The Papers of Thomas Jefferson Second Series).

7. 1 JJ iii-viii.

8. Id. at viii.

9. Id. at 1.

10. The Trial of William Penn, Id. 33-41.


13. Du Ponceau was one of the leaders of the Philadelphia bar in the early nineteenth century, holding not only the position of Provost of the Law Academy, but also President of the American Philosophical Society, noted author (1824), linguist and other interests. For a biographical sketch, see Gerard W. Gawalt, Du Ponceau, Pierre Étienne," AMERICAN NATIONAL BIOGRAPHY, February 2000, at http://www.anb.org/articles/11/11-00256.html, and my sketch in forthcoming BIOGRAPHICAL DICTIONARY OF AMERICAN LAW (Roger Newman, ed. 2008).


15. An Address delivering at the opening of the Law Academy of Philadelphia, before the Trustees and Members of the Society for the promotion of legal knowledge, in the Hall of the Supreme Court, on Wednesday, the 21st of February 1821. 1 JJ 211-22.

16. Id. at 213-14.

17. Id. at 216-18.

18. Id.

19. Id. at 218-19.

20. Id. at 222.

21. Report, Made by Jared Ingersoll, Esq. Attorney General of Pennsylvania, in compliance with a resolution of the legislature, passed the 3d of March, 1812, relative to the penal code. Communicated to the legislature, January 21, 1813, Id. at 325-44 (1821).

22. 1 Sm. L. 105; for the text online, see the first three volumes of Smith's Laws available at the Pennsylvania Legislative Reference Bureau, at http://www.palrb.u

24. The legislature did not respond positively to his proposals; nor did succeeding legislatures over the next four years with nothing being accomplished by 1816. See Carroll C. Moreland, The Legislative History of Statutory Revision in Pennsylvania, 1 AM. J. LEGAL HIST. 197, 198-99 (1957).


26. Id. at 323-35. For a collection of seventeenth-century cases, see Samuel Pennypacker, Pennsylvania Colonial Cases (1893). This was an address before the Law Academy of Philadelphia for that year.

27. Id. at 47-56.

28. Id. at 223-30. This was a habeas corpus case and dealt with conspiracy among journeymen to increase wages. It was reported in Brightly’s Reports 36, but is not found in the nominate reports of the state and is cited once in Moores & Co. v. Bricklayers Union et al., 10 Ohio Dec. Reprint 48 (1889). Brightly’s Reports cover Supreme Court cases heard in nisi prius in Philadelphia. The volume was published in 1851, 30 years after the publication of Hall’s Journal.

29. 1 JJ 49-53.

30. Id. 93-96. It is cited in only one contemporary opinion, Gorgas surviving partner of Warner v. Douglas, 6 S.&R 512 (1821). Bradford, defense counsel, cited this case in his argument concerning lien laws.

31. 1 JJ 314-23.

32. Id. 46-56.

33. Com. V. Young, Id. 48.

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

35. Sharpnack v. Wilson, 1 JJ93-96 (1821).

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


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

39. The case was later cited in Walker v. Walker Executor, 76 U.S.743 (1870) and more recently in Boland v. O’Neill, 72 Conn. 217, 221 (1899).

40. Id. 69-89 Phillips v. Rogers. The running title at the top of the article was “Aliens May Inherit Real Estate in Louisiana.”

41. State v. Munson (Del 1817), 1 JJ 257-61 (1821). This case is unreported in both Lexis and Westlaw.

42. Id. at 196-210 (1803).

43. Id. at 211.

44. Id. at 13-32; also reported in 1 Bee’s Reports 266 (1810), 27 F. Cases 825. See the Ruth Wedgwood, Revolutionary Martyrdom of Jonathan Robbins, 100 YALE L.J.229-368 (1990).
45. Wedgwood, 100 YALE at 262-68.

46. Id. at 333-53. A Shepard’s check on this article shows 60 law review citations to this article since its publication (last viewed on October 28, 2007).

47. U.S. v. Wiltberger, 18 U.S. 76.

48. Finding this citation was completely serendipity. I shepardized the case and was browsing through the articles and found the following article with the reference. H. Jefferson Powell, The Founders’ and the President’s Authority Over Foreign Affairs, 40 WM. & MARY L. REV. 1471, 1511-1512 and corresponding notes, esp. 152.

49. 1 JJ 250-54 (1821), 19 F. Cases 214 (C.C.Pa. 1800).

50. 1 JJ 254-57, 3 Wash. C.C. 475, 19 F. Cases 1203 (1819).

51. Miller and others v. Shaw, 7 S.&R. 129 (June 1821).


53. 1 JJ 131-33 (1821), 12 F. Cases 33 (1818). It is interesting that this case is cited in the amicus curiae brief in the recent case of Hamden v. Rumsfeld, 126 S. Ct. 2749 (2006), cited in the BRIEF FOR AMICI CURIAE CENTER FOR NATIONAL SECURITY STUDIES AND THE CONSTITUTION PROJECT SUPPORTING PETITIONER ON THE EFFECT OF THE DETAINEE TREATMENT ACT OF 2005, 2005 U.S. Briefs 184 n.18. Also, Drayton cited to a Rose v. Himely first cited in 2 HALL’S L. J. 11 before it was published in CRANCH’S REPORTS.

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

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

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


58. Of the Promulgation of the Laws, Id. 241-43 (1821).

59. A New Model of the Law, Id. 243-45 (1821). It was reprinted from an unidentified “old pamphlet.”

60. Id. at 264-72.

61. Id. at 96-105 (1821).

62. Id. at 150-62 (1821).

63. A Charge Given at a Session of Admiralty within the Cinque Ports, 2 September 1668, Id. at 264-72 (1821).

64. Id. at 113-31. An Index to the Principal Matters contained in the first volume of Broderip and Bingham’s Reports, of cases argued and determined in the court of Common Pleas, and other courts, from 59 Geo. III to 1 Geo. IV, both inclusive. April 1819 to Feb. 1820. The editor noted this was the latest volume received and that there were no cases from the volume that needed to be reprinted in this country.

65. An Analytical Digest of the Reports of Cases Decided in the English Courts of Common Law and Equity, of Appeal, and Nisi Prius, in the year 1820, Id. at 417-537.

66. Id. at 135.

67. Id.

68. An early history of equity in Pennsylvania is ANTONY LAUSSAT, AN ESSAY ON EQUITY IN PENNSYLVANIA (1826; reprint Arno Press, 1972), a dissertation published by the Law Academy of Philadelphia discussed above. It is also reprinted in 1 REPORT OF THE FIRST
ANNUAL MEETING OF THE PENNSYLVANIA BAR ASSOCIATION... [221]-332 (Philadelphia: Published for the Pennsylvania Bar Association, 1895).


70. 1 JJ 135-36 (1821).

71. Brainerd, supra note 1 at 64.

72. Commentary on the Ordinance of Lewis XIV—From the French of Valin, of Mariners, Commentary, 1 JJ 176-96, 273-314. The actual title is RENÉ-JOSUÉ VALIN, COMMENTARY ON THE MARINE ORDINANCE OF LOUIS XIV. It was first published in 1760 as NOUVEAU COMMENTAIRE SUR L'ORDONNANCE DE LA MARINE, DU MOIS D'AOUT 1681. (La Rochelle, J. Legier [etc.]} 1760).

73. 1 JJ 176-96, 273-314.

74. JAMES KENT, COMMENTARIES ON AMERICAN LAW (1826-30), went through more than 16 editions in the 19th century, including Oliver Wendell Holmes 12th edition of 1873; the text of the Commentaries is available at http://www.law.cornell.edu/kent/kent-42.htm#fn30d.

75. 1 JJ 344-378 (1821).


77. Brainerd, supra note 1 at 64.

Book Reviews
Edited by Joel Fishman


John Reed (1786-1850) was the founder of the Dickinson School of Law in 1834. As the president judge of the Ninth Judicial District, Reed prepared his work probably in anticipation of using it as a coursebook for the new law school that he was creating. Reprinted for the first time by Law Book Exchange, Professor William Butler and Mark Podvia of Dickinson Law School, the former Professor of Law and the latter Associate Law Librarian and Archivist, present a useful introduction to the work to place the author and the books in their proper historical perspective.

The authors provide a short biography of Reed, drawn from his own reminiscences as a young man, his early career, judicial career as President Judge of the Ninth Judicial District, and following his judgeship and Professor of Law, his return to the practice of law. He served as a trustee of Dickinson College (1821-28) and took part in the planning of the expansion of the College. On June 8, 1833, upon the 50-year anniversary of the college, the Board of Trustees met to approve Reed's plan to begin a law curriculum with him as the "Professor of Law in connection with Dickinson College."

Reed's book was announced for publication in December 1830, and it was available for sale by July 1831. The authors posit that the huge success of Blackstone's Commentaries
in the United States led Reed to use it as the basis of his work. In 1803, St. George Tucker adapted the *Commentaries* for his treatise on Virginia law that was a leading treatise in antebellum America. The authors recognize Hugh Henry Brackenridge’s contribution to legal literature in his *Law Miscellanies* and his unfilled promise to compile a work similar to Tucker’s. (p.xi). They conclude that “Reed produces not a version of Blackstone’s Commentaries, but an original work of comparative legal scholarship in which the law and legal developments of a republican commonwealth are superimposed upon and injected into the intellectual legal bedrock from which they originated.” (pp. xi-xii).

Because of Brackenridge’s higher visibility, he has sometimes been referred to as the “Pennsylvania Blackstone” by those who may not know of Reed’s work. But Reed should be credited with that title because of the extensive work he provided for in the three volumes. His work reprinted much of Blackstone’s *Commentaries* first three volumes (omitting criminal law of the fourth volume) interspersed with commentary upon Pennsylvania law. Though St. George Tucker has received much more recognition and discussion by legal historians for his similar work on Virginia law; Reed’s work still needs to have full-length treatment. A cursory read through the three volumes shows an erudite work, with Reed’s commentary interspersed throughout each chapter along with citations to a multitude of Pennsylvania cases from the nominative reports of the period along with treatises like Kent’s *Commentaries*, and Samuel Robert’s *A Digest of Select British Statutes*... (1817), etc.

The editors recognize that the effect of the book on legal scholarship was “problematic.” (p.xii). It is uncertain how many copies were published and distributed throughout the United States. Although they cite only twenty-five libraries in OCLC possessing hard copies, OCLC holdings show that there are at least another 75 libraries with microform or internet copies. But even 100 copies available in paper or fiche is not a significant number, and other libraries may not have cataloged it yet (including my own).

The editors also posit the possibility that Abraham Lincoln had used Reed’s work to learn the law which has been a topic of discussion for many decades, since Lincoln never identified which edition he had used. (pp. xiv-xvi).

Of George Fleming, printer of the original volumes, the editors recognize him as a leading printer of newspapers, religious works, etc in Carlisle. The editors note that Reed’s work was the largest publication that he printed in his career. In 1833, Fleming made another contribution to legal literature by publishing the first edition of volumes 2 and 3 of Charles Penrose & Frederick Watts, *Reports of the Supreme Court of Pennsylvania* that consisted of 1,154 pages.

In conclusion, the editors have provided an important introduction to Reed’s work and the work itself still awaits full analysis. As a reprint, it is expected that Reed’s contribution to the legal literature of antebellum America will be more fully recognized in future legal scholarship. Professors Butler and Podvia and the Law Book Exchange are to be congratulated for reprinting this important early nineteenth-century work.

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This book is the result of its author reading and sifting through about every South African legal and political text available for the first four decades of the 1900s. The author is careful to point out that he is analyzing these many texts to show a broader view of South African legal developments than one would get by reading only judicial opinions from that time period. Many archival
and printed primary sources are used to flesh out the political and legal culture during those years. Administrative law and process in particular are contrasted with what the South African judges were saying (or ignoring) about the creation of the country’s laws.

The author’s main theme is that a correct understanding of South African law requires an expanded awareness of these four decades. In particular, the author points out how the whole machinery of government was used to keep the minority whites in power over the majority black natives. South African legal history is not just the white’s court opinions and decisions, but the whole interplay of laws and rules being applied to whites and blacks. For example, the white minority imported the British model of law, but modified it to make certain the black native majority did not have any access to governmental power. The language of precedent, ancient Roman law and early Dutch jurist writings were altered by the white South African Supreme Court judges as part of the government’s unified control of the blacks, but the whites wrote almost as if the blacks were not present or having any role in the development of South African law. Dr. Chanock shows painstakingly step-by-step how the white court decisions do not tell the whole story of South African legal development. Instead, the legal culture of “fear, favor and prejudice” applied to the police, criminal law, prisons, marriage, the legal profession, land law, labor, trade, and so forth. All these various facets of South African legal culture are covered by the author in 571 pages of methodic detail, to show that looking at just the court opinions is insufficient to understand South African law in this time period (and since). In many ways, it seems like the author is intent on rebutting the decisions of the South African Supreme Court from 1902-1936 (and any later interpretations based on them). He wants to show that the executive and other branches of government were interpreting, applying and developing law right along with the courts, and that extensive evidence exists to prove that the courts should have been aware of these developments.

The book is for the advanced scholar or individual already familiar with South African law, politics and history. There is little here to help a beginner—no maps, no glossary, no list of prominent individuals. There is a table of cases cited, an index, and a sixteen-page bibliography (including this Australian author’s nine prior works on African history and law). Libraries with large comparative and international law collections could consider this 2006 paperback reprint if they do not already own the 2001 hardcover edition.

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


Between 1736 and 1762, the British colonies negotiated a series of treaties with the Native American nations that occupied the lands which now comprise the Commonwealth of Pennsylvania. Most of these treaties were between the Indian nations and Pennsylvania’s Proprietary government, although representatives of four other colonies—Connecticut, Maryland, Massachusetts and Virginia as well as representatives of the British Crown—participated in the negotiation of several of the treaties.

The treatise and the minutes of the various conferences, negotiated in Carlisle, Easton, Harris’s Ferry (present day Harrisburg), Lancaster and Philadelphia, were originally printed and sold by Benjamin Franklin. In 1938, they were republished in a 500-volume limited-edition printing. Now Dr. Susan Kalter, Associate Professor of U.S. and Native American Literature at Illinois State University, Normal, has again made this material available in a treatise that will be a necessary addition to any Native American or Law collection.

In her Introduction, Dr. Kalter provides
extensive background material, including the sacred legend of the origin of the Iroquois people, the historical background of the formation of the Iroquois Confederation, and the influence that the Iroquois had on the political formation of the United States. She also provides historical background on the Lenapes (Delawarcs) and Shawnees, and describes the encroachment of the Swedish, Dutch, French and, finally, English settlers into the region. She details relations between the Proprietary government of the Penns and the various Indian nations, particularly noting Franklin's many contributions. These were often on the side of the Native Americans and against both the settlers and the Proprietors. The Introduction is heavily footnoted.

These intercultural treaties read like a dramatic script, with the speakers frequently interrupted by exchanges of Wampum. Thus, the reader is provided with insight into not only the issues under discussion, but also into the Native American culture. Franklin was more than a publisher of these documents; in several cases he was present for the negotiations. In two cases, Franklin included extraordinary material in his publications showing his personal intervention. As with the introduction, the treaties are heavily footnoted. The treaty language has been modernized and standardized.

The publication includes a glossary of the individuals persons and groups that are mentioned in the treaties, as well as a detailed index.

Mark W. Podvia
The Dickinson School of Law of the Pennsylvania State University

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Edward the Confessor (1042-1066) is famous in English history as a national king and lawgiver before the Norman Conquest. He became memorialized throughout the following centuries especially through his laws published as *Leges Edvardi Confessoris*. Greenberg's aim is to "examine the transformation of the Confessor from a medieval symbol that sacralized the kingship into an early modern weapon that utterly defaced it." (p.2). St. Edward's Laws along with the *Modus tenendi Parliamentum*, and *Mirror of Justice* became a trinity of texts that represented ancient constitutional thought. Edward's Laws included a prologue that included William I's "acquisition" of England rather than "conquest" and chapter 17 that stated that a king who failed in his duty "loses the very name of king." (p.62) The *Modus tenendi*, written during the reign of Edward II, presented the view that William agreed to rule by Saxon laws, that it included a council of lords and common people, provided for the order of parliamentary business, and the exaltation of parliament. The *Mirror of Justices*, only first published in law French in 1642 and English in 1646, also expounded the role of parliament beginning in the reign of King Alfred and sanctioning the use of force against the king.

These texts were used throughout the medieval period to describe English government down to the Tudor century. This historiography became important during Tudor-Stuart era as a means to debate the constitutional debates of the time—the rebellion, deposition, regicide of Charles I—and the events of the later seventeenth century culminating in the Glorious Revolution of 1689.

In four detailed chapters, Professor Greenberg details the use of these works in the writings of Tudor-Stuart historians, polemicists, lawyers, etc. The Tudor period witnessed an expanding interest in the historical past, first to validate the English throne's takeover of the church, the new influence of the common lawyers who dealt with custom and case law, and the introduction of the Society of Antiquaries. Throughout the century, the emphasis upon English origins of government emphasized the English origins derived from the Saxon past, with the Norman Conquest only serving as a temporary and incomplete interruption.
of Saxon laws and institution (p.115).

In the beginning of the seventeenth century, Greenberg emphasizes the increasing importance of these debates in the discussion of union with Scotland that first introducing Norman conquest theory that did away with Saxon institutions that led to Stuart absolutism (pp.119-33) Of English lawyers, Edward Coke emphasized the ancient constitution of pre-Conquest laws in his introductions to the Institutes of the Laws of England (4 vols) that “transformed a largely unreflective cultural practice into an ideological weapon.” (p.142) John Selden recognized the Modus Tenendi of medieval origins, but still supported ancient constitutionalism. Greenberg argues that this debate expanded rather than decreased as the century moved forward under the reign of Charles I (p.157). Controversies over extralegal taxation, the Petition of Right, and Ship Money case reflected ancient constitutional arguments.

With the coming of the Civil War in 1642, Greenberg argues that the ancient constitutional texts have been “underestimated” and they remained central to the controversies radicals used to justify rebellion and regicide. Greenberg shows that royalists used the conquest theory to justify the king’s position (pp. 187-193). More importantly, Charles I’s Answer to the XIX Propositions of August 1642 played into the opposition’s hand because Charles defined the government as one of the three estates of king, lords, and commons–different from the past theory that made the king above the lords spiritual, lords temporal, and commons–in which the king could be ouvoted by the other two houses. Furthermore, he posited the theory of a mixed monarchy in which there was an equality between King, Lords, and Commons in the lawmaking function rejecting his position as source of government (p.195). This admission became an important part of the rebels’ thought, gave them a powerful ideological weapon to use against the king in future writings throughout the rest of the century. The parliamentarians used St. Edward’s Laws also to refute the king by distinguishing between the medieval concept of the king’s two bodies–the king’s office versus the person of the king—to combat his position. The Long Parliament could claim the right to make law in the absence of the king. Greenberg draws on the works of William Prynne, Nathan Bacon, the Levellers, and later John Sadler and John Milton during the Interregnum (pp. 230-42).

Following the succession of Charles II, royalists continued to argue for the sovereignty of kings in early Restoration writings, but most notably during the Exclusion Crisis when Robert Filmer and Robert Brady supported the monarchy by arguing that the house of commons came into existence after the time of memory (coronation of Richard I in 1189) and therefore the doctrine of pre-scription ran against the Whigs who wanted Prince James excluded from the throne. Brady argued kings predated parliaments and the Norman Conquest placed the kingship in an absolute position apart from parliament. Whig writers countered these arguments and some extremists, like Algernon Sidney, advocated a government of republicanism (p.264). This was followed by the Glorious Revolution, of James II’s departing and William III and Mary II as king and queen of England based on their acceptance of the Bill of Rights. The polemical controversy for the next three years was one of the largest in the century. Greenberg argues that although the trinities of works were not always specifically detailed in polemical controversies and in parliamentary debates, and faults other historians for not recognizing the discussions “of resistance, deposition, and parliament’s right to choose a new king–radical notions all.” (P.275) There was a connection between the coronation oath of the new kings and that of the Confessor’s Laws. Whig writers like William Atwood, James Tyrrell, and Robert Atkins continued to use the trinity of texts to maintain the right to depose the exiled king.

Professor Greenberg’s work is an important corrective on how one views and understands the constitutional debates of the sixteenth and seventeenth centuries based on the medieval sources available to them. Her wide reading of primary and secondary sources shows that the concept of the ancient constitution was an important element in
constitutional thought and her work will become an important source for this period.

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After nearly two centuries of scholarship, it is perhaps impossible to forward a new idea about the motivations behind the founding of the U.S. Constitution, but University of Texas law professor Calvin H. Johnson has brought a new emotion to the debate: "righteous anger." Johnson's general thesis is that the Constitution was a reaction to the inadequate funding of the national defense by the Continental Congress. The founders, embodied by James Madison and Alexander Hamilton, blamed this on the self-interested parsimony of the states, and they designed the Constitution with a primary purpose of creating a fully funded nation-state able to directly tax its citizens. This idea is not entirely new, first argued by Roger H. Brown in Redeeming the Republic Federalists, Taxation, and the Origins of the Constitution, but Johnson focuses on the moralist nature behind the founders determination to recast the American experiment, making a powerfully argument for renewed attention to the taxation power in Constitutional studies.

Johnson's argument for his thesis is the subject of Part One, which takes up the bulk of Righteous Anger. He begins with a critique of the Continental Congress and its inability to fund the new nation. He discusses the method by which the Congress would "requisition" funds from the states. After the Revolutionary War, the states stopped sending money to Philadelphia; the 1786 requisition asked for $3.8 million but the states sent only $633. The financial crunch—the U.S. owed $1.7 million to foreign borrowers—led Congress to pass impost bills mandating funds in 1781 and 1783. However, since acts of the Continental Congress could be vetoed by a single state, the impost bills were nullified.

The crisis led many Americans to fear for the survival of the independent states. Johnson notes that James Madison, Alexander Hamilton and George Washington all expressed anxiety that this would lead to war as England, or other European powers, would exploit the weakness of the new state. These critics were also angry that the failure of the states to fund the nation meant that Continental Army soldiers and veterans were left unpaid. Washington was particularly concerned, fearing anarchy and noting at one point that the "General Government is now suspended by a Thread." (p.24). In many minds, the current situation dredged up bitter memories of the states' niggardly funding of Washington's troops during the late war.

Johnson sees James Madison as both a guide to the politics of the era and as the most important of the founding fathers. The Virginian, he argues, was the motivating force in pushing for a new government with the power to lay taxes, laying out his views in two privately circulated memoranda: the Notes on Contemporaneous and Ancient Confederacies (1786) and Vices of the Political Organization of the United States (1787). In the documents, Madison critiques the current confederate system of government, arguing implicitly for a more centralized form of government. Among Madison's ideas, which he expounded further in Federalist No. 10, was that a larger "expanded government" was less likely to be captured by any faction. Johnson discusses one of the sources of Madison's fear of faction: his political struggles in Virginia with Governor Patrick Henry, in particular Madison's battles with Henry over debt relief and over Henry's closing of Virginia courts to legal claims by British citizens—in direct violation of the Treaty of Paris.

Johnson examines Madison's key role in the Constitutional Congress, while tallying his "partial losses." In general, Madison succeeded in creating a centralized
government that derived its power from the people, not the states, and that had a permanent power to tax for its own defense. The Constitution failed, however, to give the federal government control over the entire sphere of government, leaving significant powers to the states. Symbolic of Madison’s partial success is the failure of his proposed federal veto over state laws.

Johnson’s discussion of the ratification struggle focuses on the disparate views of the foci of the 1787 Constitution who are traditionally known as the Anti-Federalists. What drew these men together, he argues, was opposition over whether the federal government should have the power to impose direct or internal taxes. In many ways, the Anti-Federalists were drawing on a general aversion to taxation; populists like Patrick Henry played to these emotions. The Anti-Federalists raised other issues—Bill of Rights, democracy, slavery—but Johnson sees them as side-shows to the main act.

In the brief Part Two of Righteous Anger, Johnson critiques alternate theories concerning the motives of the founders of the Constitution. In short order, he dismisses theories that make the prime force either the need to regulate commerce, to curb subversive forces as were seen in Shays Rebellion, to manage conflicts between states, or to assure that creditors could recover their debts. Johnson sees these factors as “peripheral” to the central issue of providing the new American state with the ability to tax for the common defense.

The even briefer Third Part of the book discusses Madison’s turn from his federalist views in the midst of profound discontent over Alexander Hamilton’s role in the government of George Washington and John Adams, and its legacy in Constitutional jurisprudence. Johnson sees the late turnabout as irrelevant to discussion of the motives of the founders because the “ink had dried and the original meaning had become fixed.” (p. 161). Nonetheless, Madison’s flip and the adoption of the Eleventh Amendment serve as Johnson’s coda to the founding period.

Although Righteous Anger at the Wicked States is framed as a traditional history, it is clear that Johnson’s intended audience is not professional historians; instead, his target is the legal community and his goal is to refocus the debate over founder’s intent away from the view favored by the intellectual descendants of the Anti-Federalists. As the proponents of the “New Federalism” on the Supreme Court continue to read an “original” Constitution they imagine was written to limit the federal power, it is valuable to look again at some of the founders who were mad as hell about the states’ abdication of their duty to protect the commonweal and were not going to take it anymore. Johnson argues that the result of this “righteous anger” was the founders’ Constitution.

Kurt X. Metzmeier
University of Louisville Law Library


It is generally accepted by scholars that the ecclesiastical courts in England entered into a period of decline after Henry VIII’s reformation although this dramatic change was not exclusively due to these events. This in no way detracts from the importance of these courts in the life of those living outside London for many social functions belonged exclusively to these courts such as probate, care of the poor, and more importantly, its criminal jurisdiction over certain immoral conduct or sex crimes. During the period covered by this book (1500 - 1860), the local Englishman could make several appearances before these courts in his life time. The costs and other financial demands contribute to the unpopularity of these courts and their abolition in the Nineteenth Century.

There never was just one ecclesiastical court but several hundred, all established by the authority of the local bishop ordinary in each diocese of the Church, some with picturesque titles such as the Court of Arches in London, which had jurisdiction of appeals from the
other ecclesiastical courts within the province of Canterbury. The other courts within the diocese included the Consistory Courts, the archdeacon courts and the Bishop’s Court of Audience. The author classified the functions of these courts as having a corrective function, an adjudicative function, courts for verification and record, and licensing function.

The author has examined a number of records of these courts and as other scholars have done, extrapolated from their findings to reached conclusions on their business in the Kingdom of Great Britain. No one can quarrel with this approach for this is only possible method to reach any understanding of the work of these judicial bodies performed in different periods.

Its corrective function extended to both cleric and laymen, for as the author argues, this area of their work maintained a social harmony in the community. The church wardens were urged by the bishop to report those who swore at their neighbors or assaulted them in any way, either verbally or physically. The individual who was intoxicated or failed to attend Church, or was caught playing cards during Church services, or was accused of adultery, were surely summoned before the Bishop or his representative. The author notes that the greatest number of cases were for sexual offenses, some of which were later made into a criminal offenses such as the unexplained death of a newly born child or adultery or sodomy but with what success is a matter of continued debate.

The one responsibility which impacted the greatest number of citizen was its jurisdiction over probate matters and this lead to abuses. At death, the priest was liable to be the last person to see the deceased before his final passage beyond this world and allegedly would urge a substantive gift be made to the Church which would assure better treatment in the next world. This led some American states to require such gifts be made a period of time in writing before death.

The most intriguing cases were those involving tithes but these cases were not limited to money or goods owed the Church. However, many of these cases were obligations to receive or pay tithes which went with certain properties purchased after Church properties were confiscated and sold to the laity. These obligations accompanied the ownership of real estate.

Not only did the bishop or his delegate licensed ministers, but school teachers and midwives. The author used this as an example of how Church functions could support the civil authorities. The midwife was obligated to have the mother name the father to prevent her from becoming a burden on the county as required under the poor laws. The Church issued marriage licenses which accounted for a substantive income.

Over the period of years, scholars have offered their suggestions why these courts declined in importance after the Reformation in the Sixteenth Century, but many of these theories are unpersuasive. The author has examine many of them and offered evidence on their validity, often based upon a count from the original records of the decline in the number of such cases at different periods. After the Reformation [1640 according to the author] these courts were subject of many complaints over the centuries. Often in legal history, a certain minor chance have consequence unanticipated at the time. One such example was a statute giving justices of the peace jurisdiction of tithe cases where the amount was less that 40s, which certainly eroded the business of the ecclesiastical courts. As becomes evident in this account of the several Parliamentary acts adopted over the period of the three centuries of this coverage, had the effect of making it possible for individuals to go into other forums, namely the Chancery Courts.

It is highly unlikely that many suitors were sophisticated enough to prefer one forum over the other and hence, the legal profession made the choice. This reviewer would not offer a historical analysis of this interplay but with the number authorized to appear before any English court limited, it is possible that the profession would prefer to take a case to the court in which he is qualified to appear, a factor which the author explores. To follow the decline of these Ecclesiastical courts, the
author takes classes of cases such as defamation suits and punishment of dissenters, and follow their decline by statistics in number of this type of cases. All of this interplay between all these factors are difficult to recount but the author and editor [for the author died and the manuscript was completed by Prof. R. H. Helmholtz] have done a masterful job in using such a vast amount of original records in producing a readable and scholarly book. The history of ecclesiastical courts is an interesting part of the judicial history of English courts which in turn, impacted judicial bodies in the American colonies.

Erwin C. Surrency
University of Georgia


Professor Ted White is a well-known legal historian from the University of Virginia Law School. He wrote Oliver Wendell Holmes: Law and the Inner Self (1993) which was a well-received professional biography of Holmes. Now, he has written a much shorter work of a more general nature for the general public and that will serve well for undergraduate and graduate history courses and for those who wish to gain an excellent overview of Holmes's life.

Holmes (March 8, 1841-March 6, 1935), was the son of a famous father who was a doctor and poet in Boston, Massachusetts. Junior wished to become as famous as his father throughout his early life and did not feel that he accomplished this until late in life. He participated for three years in the Civil War and was injured three times in action. He attended Harvard Law School from 1864 to 1866 and then practiced as a lawyer in Boston for approximately 15 years, until appointed to the Supreme Judicial Court of Massachusetts, where he served from 1882 to 1902, the last three years as Chief Justice. His appointment occurred just six months after he had accepted a teaching position at Harvard Law School which he left immediately upon accepting the judicial position. After twenty years on the court, however, he had not gained the professional recognition that he desired. White explains how court decisions may be good if unanimous; however, in Holmes's case it restricted his writing and his capability of recognition. In 1902, President T. Roosevelt appointed Holmes to the United States Supreme Court. Holmes came on the court by being a friend of Roosevelt and agreeing with the president's policy towards the territories brought under control as a result of the Spanish-American War. However, he soon began to disagree with the President in his progressive policies such as dissenting in the Northern Securities Co. v. U.S. (1904). Holmes's went on to write a number of dissents in influential opinions that reflected his viewpoint that law was decided on intellectual grounds not political grounds. (pp.84-85) He became an "unlikely informer" (ch. 7), in his later opinions from 1905 to 1920s—Lochner v. New York, Adair v. U.S., Cogpage v. Kansas, and Adkins v. Children's Hospital—because his dissents represented "Progressive" movement of the period. It was the association with Felix Frankfurter and other progressives during the same period that led to his growth in reputation among the legal profession and general public. Also, Holmes received the Roosevelt (now Presidential) Medal of Freedom from President Coolidge in 1924 (p.114). Frankfurter spent twenty years expanding Holmes's reputation to become known as the 'Yankee from Olympus.' White nicely explains Holmes's contribution to First Amendment law through the Schenck v. United States in which he used the "clear and present danger" language, upheld the Debs’ case in 1919, and in Abrams v. U.S. (1919), following Zechariah Chafee in a famous Harvard Law Review article, gave greater importance to the protection of free speech (ch. 9). Holmes served on the court until January 1932 when he resigned for health reasons, living another three years until his death in 1935.

White describes Holmes's writing contributions. In his early years, Holmes
served as coeditor and contributor to *American Law Review*, wrote his 12th edition of Kent's *Commentaries* and other essays before publishing *The Common Law* (1881), with the famous sentence: "The life of the law has not been logic; it has been experience." In his court opinions, Holmes quickly understood issues in a case, tended to write short opinions, and wrote them quickly, within a couple of days of being assigned to them. He liked to write opinions "with style," using memorable language to give his readers something to think about." (p.79).

Finally, White takes into account various private activities of Holmes such as his "love letters" to Claire Castletown, the importance of his 1921 radio address, and how his law clerks took care of him at the end of his life. White includes a chronological listing of Holmes's life, a short annotated bibliography, and index. For those interested in Holmes, this work is highly recommended.

Joel Fishman, Ph.D.  
Duquesne University Center for Legal Information/Allegheny County Law Library

...  


Are politics involved when federal judges are appointed? Two professors have provided an answer in this book that is best suited for students and the public. The "overriding objective of making the seemingly arcane process of appointing federal judges more transparent..." is accomplished with clearly presented historical data. (p.vii). Lee Epstein teaches law at Northwestern University and Jeffrey A. Segal teaches political science at Stony Brook University. Both authors have written numerous books and articles on constitutional law and been interviewed by newspapers and television news programs regarding the research findings discussed in this particular book.

The Introduction presents a historical view of the controversy. From John Adams and the Senate of 1800, Woodrow Wilson's nomination of Louis Brandeis in 1916, and George Bush and the Republicans in 2005, there is evidence that politics plays a large role in the process. While books have been written focusing exclusively on candidates to the Supreme Court, this work takes a broader approach reviewing nominees to all federal courts-district, circuit, and the high court.

The role of politics in the judicial appointment process was alive and well at America's Constitutional Convention in Philadelphia in 1787. While little debate was centered on how federal judges ought to be tenured, it took more than three months before the delegates could agree on how they should be selected. Chapter 1 not only gives a historical look at the evolution of the law, the authors also include charts explaining worldwide practices, the flow of litigation, the process within the different levels of federal courts, and a sketch of the process of judicial appointments in 2005. To illustrate the importance of judicial appointments, an explanation of the 2000 presidential election shows how the case *Bush v. Gore* resulted in the U.S. Supreme Court's five most conservative justices seemingly deciding the election in favor of the Republican candidate.

The process of judicial appointments begins either with a vacancy on an existing court or a new seat to be filled. Vacancies arise from death, elevation to a higher court, retirement or resignation. While death and elevation to a higher court are involuntary reasons for vacating, resignation is where the data shows the level of politics involved in the process. Research shows that circuit judges will remain on the bench even if they are ill or eligible for retirement, to prevent a president from appointing a successor of a different political party. Examples of Supreme Court justices who refused to retire until the current administration matched their political party are Robert
Grier, Nathan Clifford, Earl Warren, and Sandra Day O'Connor. Vacancies are also created by new seats on the bench. The Judiciary act of 1801 and the so-called Evart Act of 1891 are examples where legislators created new seats for the courts. While both Acts were justified with back-logged courts and the need to increase the number of courts to handle the dockets, the precise timing could have been motivated by one political party to pack the courts. It happened again in 1937 when Democrat Franklin D. Roosevelt asked the Democratic Congress to pass the now infamous court-packing plan. Thus, vacancy-creation schemes are almost always the product of the same factor: politics.

Nominating federal judges and justices is more complex than meets the eye. Some presidents nominate personal friends to the bench: Lyndon Johnson nominated his friend Abe Fortas. Harry Truman nominated four close friends in Harold Burton, Fred Vinson, Tom Clark and Sherman Minton. Three-fifths of those seated on the Supreme Court personally knew the president who put them there. The authors are clear, however, in adding that qualifications and professional merit matter a great deal.

Other presidents are fulfilling campaign promises: Ronald Reagan appointed Sandra Day O'Connor after promising to appoint a woman to the court. As for the lower courts, some administrations pay more attention than others to appointments. The authors also cover the roles of ideology and senatorial courtesy in the nomination process.

Since 1789, the Senate has confirmed eighty-two percent of U.S. Supreme Court nominees illustrated in charts showing qualifications and ideology of nominees along with percentage of nominees confirmed in the lower courts. The confirmation process is riddled with the use of power in the committees, the partisanship and the ideology of the senators and the nominee. Robert Bork's qualification rating was higher than Rehnquist's in 1986. Qualifications are almost always necessary and can be used as a deciding factor when there is a conflict between the senators and the president. While Bork was qualified, the opposition focused directly on his ideology which was incompatible with the Senate and ultimately kept him from the bench.

Do presidents get what they want? Epstein and Segal use systematic evidence to show a president and his nominee will almost always share the same ideology. And once confirmed the judge or justice’s opinions will more than frequently follow that same ideology shared with the nominating president for at least the first four years. Again, the authors provide charts showing the correlation between ideology of presidents, nominees, and opinions. However, after sitting for ten or more years, the relationship drops by nearly half. Some politicians and commentators would like to end the life tenure of the federal bench as a way to eradicate the politics involved in the federal judicial branch. Epstein and Segal show that politics have always been involved and will remain in the judicial appointment process with or without life tenure.

Stephanie Marshall
Dee J. Kelly Law Library
Texas Wesleyan University


Professor Levinson, University of Texas Law School, has been described as “the most imaginative, innovative, and provocative constitutional scholar of our day.” (Walter Dellinger, back cover of book). Levinson’s thesis is simple. There are structural problems in the federal Constitution that create unjust or ineffective government that need to be addressed by the population at large through an ongoing debate and referendum.
Professor Levinson opens the volume with a substantial quote from Thomas Jefferson who wrote “Each generation is an independent as the one preceding, as that was of all which had gone before. It has then, like them, a right to choose for itself the form of government it believes most promotive of its own happiness.” (p.ix).

Starting with an introduction in which he stresses the incompatibility of the Preamble in relationship to various sections of the Constitution, he rejects the veneration that people have for the Constitution, observing the views of Madison, Jefferson, and others that change could be done after a period of time. According to Donald Lutz, a noted authority on constitutionalism, under Article V we have the most difficult constitution to amend today.

In five chapters, Levinson lays out the structural problems with the Constitution that he summarizes in his conclusion (p.167):

• The allocation of power in the Senate
  • The almost certain presidential dictatorship that will follow any catastrophic attack on members of Congress
  • Excessive presidential power
  • The Electoral College
  • The hiatus between the repudiation of a sitting president and the inauguration of a successor
  • The inability to get rid of an incompetent president
  • The functional impossibility of amending the Constitution with regard to anything truly significant.

He also is critical of life tenure for U.S. Supreme Court justices and the creation of second-class citizens. To remedy these deficiencies, Levinson recognizes that some of the problems can be addressed through constitutional amendments. More importantly, Levinson recognizes that ordinary politics will not solve the problems outlined in his work. He believes people first have to realize that there is abuse (and a problem), and that secondly, something must be done about it (p.172). He calls for a national referendum upon the problem, influence the state governments to petition to call a constitutional convention upon the approval of two-thirds (34) of the states, or following the work of James Fishkin of Stanford University, he suggests a series of “deliberative polling” of groups throughout the country that would lead to a national referendum.

Professor Levinson’s arguments are based on a broad knowledge of history and contemporary affairs as demonstrated throughout the book. He goes beyond the pure academic discussion with his attempt to initiate change. President Bush’s increasing use of executive authority and the inability of the Congress and Court to address executive powers has drawn significant attention through more popular books upon the same matters as Levinson; see John Dean’s Broken Government (2007) and Naomi Wolf’s End of America: A Letter to a Young Patriot (2007). Although not the final word on the subject, Professor Levinson presents a cogent, lawyer-like, reasonable arguments for his position. This is a must read for all of us.

Joel Fishman, Ph.D.
Duquesne University Center for Legal Information/Allegheny County Law Library
Legal History Update

Compiled by Dan Blackaby

Hello! My name is Dan Blackaby, and I've been lucky enough to be asked to contribute to the newsletter, chronicling the monthly highlights in the world of legal history. I will attempt to get you off of the beaten track, hopefully leading you to articles and events of which you may not be aware. We'll be going outside the pages of the Journal of Legal History, The Journal of Supreme Court History or Law and History Review and into your local law reviews and conferences.

October has been an exciting month in the world of legal history, with a major conference, several interesting articles, and two symposium issues dedicated to the topic. Perhaps the most exciting event of the month is the annual meeting of the American Society of Legal History (http://www.aslh.net/) in Tempe, Arizona on Oct. 25th-28th. Panels this year include such topics as “Grassroots Lawyers in the Twentieth Century”, “Making Places, Making People: The Legal History of the Southwest”, and “Telling the Story: Legal History and the Art of Documentary Filmmaking”. More information is available at the Society’s website.

Three law reviews issued symposium issues this month focusing on legal history topics. The Alabama Law Review put forth a symposium issue entitled "Legal History Symposium Honoring Professor Wythe Holt”,¹ a highlight of which is Holt’s own article on his namesake, George Wythe, a leader in the American Revolution,² while the Indiana Law Journal has issued a symposium on the topic of history of children as witnesses, including an intriguing discussion of the practices of the Old Bailey.³ The Chicago-Kent Law Review has dedicated a massive issue to the 150th anniversary of the Dred Scott decision, which includes many in depth articles on various aspects of the controversy.⁴

Other law review articles of note this month include two studies of the career and jurisprudence of Judge Henry Friendly and his impact on the modern courts: One by current U.S. Appeals Court Judge Michael Boudin,⁵ and another by Daniel Breen that specifically examines the impact of Friendly’s judicial temperament on Chief Justice Roberts.⁶

Also this month we find two articles focusing on the interplay of history and the law – Harold P. Southerland’s article in The Western New England Law Review makes a strong argument concerning the relation of history to legal doctrine, and the gap in relating that connection to modern law students,⁷ while Bruce G. Peabody’s article in The Akron Law Review reflects another aspect of that argument, examining how modern interpretations recast past history.⁸

There was no shortage of legal history to be found in October. Here’s hoping the same holds true in the months to come! If you’re working on something yourself or come across any articles you think your colleagues should know about, please tell us and we’ll do our best to get the word out!

NOTES

1. Symposium, Legal History Symposium Honoring Professor Wythe Holt, 58 Ala. L. Rev. 945.


The University of Oregon Law Library Rare Books Room

By Joni Herbst

Law librarians of the John E. Jaqua Law Library at the University of Oregon hold an annual luncheon for their law school faculty. This newly established tradition is a time for Mary Ann Hyatt, Director, to highlight services and developments in the Law Library. In September 2007, law librarians provided tours of two new library spaces. Looking to the future, as we focus on providing access to electronic resources and multimedia formats, we have furnished rooms with the latest equipment and comfortable seating for group viewing and multimedia production. In contrast, looking to our past, we created a Rare Books Room to provide space to use and preserve our rare and valuable print resources.

The Rare Books Room, an idea long in the making, was a collaborative effort by the entire law library staff. We reclaimed an internal room with no windows, which was previously used for storage space. We cleared the contents and installed unused shelving from a library alcove. The room features a portrait of Matthew P. Deady, one of the first Federal district court judges for the Oregon Territory who was instrumental in founding the law school. We salvaged a refinished student carrel and dictionary stand from Fenton Hall, the location of the Law School on the University of Oregon campus from 1932 – 1970. A lamp once used by Dean Orlando J. Hollis completes the furnishings.

The end result is an inviting room with links to the Law Library’s past. Located in the suite of law librarian offices behind the circulation desk, the room affords both security and easy physical access by all law library staff.

Several librarians had a hand in selecting materials for the Rare Books Room collection. Most recently, Dennis Hyatt, former director, identified materials that have value and are of historical interest for the Law School. Henry D. Sheldon discusses the early role of Judges Matthew P. Deady and William D. Fenton in his *The University of Oregon Law Library 1882-1942* (n.d.): “from 1886 to 1889 Judge Matthew P. Deady, chairman of the board, a great lover of books, chose the volumes.” (p.5) Sheldon on the creation of the Law Library: “Since the law library was in a certain intimate sense a laboratory and since the books were strictly technical in character, unused by students in other departments, this collection was set aside as a separate unit in a separate building in 1916.” (p.17) He further notes, “The Library from the beginning had been the recipient of gifts from alumni and friends. Since World War I a number of gifts of fundamental importance have expanded the book resources. The first was the Fenton law library of 10,000 volumes, presented by Judge W. D. Fenton of Portland in 1921 in honor of his son, Kenneth L. Fenton.” (p.17) Few volumes from the original Deady or Fenton collections remain. Over time, volumes were replaced or rebound as they deteriorated.

As other selection and moving projects evolved, the law librarians identified additional volumes from the existing collection that warranted special treatment and new materials needed for the collection. Examples of materials collected in support of faculty research include the works of William O. Douglas, Laws of the Forest, Indians of Oregon, and legal dictionaries. Criteria for inclusion are age, fragility, rarity, association copies, autographed copies, inscriptions, limited editions of important works, and materials with fine bindings or illustrations. The selected
volumes were reprocessed by technical services staff and students and moved to the new location.

The Rare Books Room collection now consists of nearly 600 volumes and includes 257 volumes of early English law, 100 volumes of U.S. federal law, 45 volumes of U.S. state and territories law, and 48 volumes related to the University of Oregon Law School history. All the materials housed in the Rare Books Room are cataloged and accessible through the online catalog.

We plan to add to the Rare Book Room collection in support of teaching, scholarship and research at the UO Law School. In her article “Rediscovering Rare Books in an Electronic Age” Cornell Law Forum, Claire M. Germain writes “rare books provide historical context to the modern study of law” and “through contact with rare books student can gain a true sense of the evolution of law.”

Researchers can make appointments to access the materials in the Rare Books Room by contacting a law reference librarian:

Mail: John E. Jaqua Law Library
1221 University of Oregon
Eugene, Oregon 97403-1221
Phone: 541-346-1554
Email: lawref@uoregon.edu

The John E. Jaqua Law Library also houses special collections located outside the Rare Book Room. Law library visitors can explore the Ocean and Coastal Law Collection, the Rennard Strickland Indian Law and Culture Collection, the George J. Tichy Employment Law Section, the papers of Orlando J. Hollis, and a collection of courtroom art.

Sandra Day O'Connor College of Law, Arizona State University

The conference offered 34 panels and more than 100 papers on United States English, European, Asian and Latin American legal history from some of the top scholars in the world. Topics include grassroots lawyering, intellectual property, legal history and the art of documentary filmmaking, religion and activism in 20th century law, American Indians and the federal government, Latin American public law and others.

Retired U.S. Supreme Court Justice Sandra Day O'Connor introduced the plenary speaker, Paul Brand, a renowned legal-history expert from All Souls College at the University of Oxford. The topic of his speech was “Thirteenth-century English Royal Justices: What We Know and Do Not Know About What They Did.”

Loyola University Chicago Law Library
Fred LeBaron, formerly Head of Reference Services, has been appointed Head of Faculty Services and Collection Development, as of August 15. In this new capacity, Fred will have responsibility for the Library’s Rare Book Room and Special Collections, including the newly created Law and Popular Culture Collection, focusing on legal fiction and graphic novels with legal themes and lawyer/superhero characters. The Rare Book Room recently received the papers of Mary Ann McMorrow, a Loyola alum and former Chief Justice of the Illinois Supreme Court, who is now at Loyola as a Distinguished Visiting Jurist in Residence.
EXHIBITS

Compiled by Amy Taylor

This edition's column spotlights a trio of exhibits focusing on historical figures - St. Thomas More, Louis XVI, and Wiley Austin Branton, Sr.

Karen Beck (Boston College Law Library) announces an exhibit featuring works by and about St. Thomas More in the Daniel R. Coquillette Rare Book Room at Boston College's Law Library.

The More Collection was purchased in the early 1960s by the Boston College Law School from the estate of Arthur Brown, who taught at BC Law from 1941 to 1949. It contains approximately 100 titles focused on the life and work of Sir Thomas More, patron saint of lawyers and ardent defender of the Catholic Church. It includes several very special editions of More's landmark work, UTOPIA, including a beautifully illustrated 1518 edition and an 1893 edition published by William Morris' famed Kelmscott Press.

The exhibition features selections from the More Collection arranged by themes, including episodes from his life, his writings and his legacy; visit http://www.bc.edu/schools/law/library/about/rarebook/exhibitions/thomasmore07.html to see selected highlights, plus a handout of the entire exhibit. It was curated by Laurel Davis, BC Law class of 2006, with assistance from Karen Beck, Curator of Rare Books. The exhibit will remain on view through mid-December 2007. Please visit us if you can!

In addition, the Boston College Law Library has a new virtual exhibit called "A Brief History of Anglo-American Case Reporting, 1272-1885." This exhibit evolved from presentations that Karen Beck, the library's Curator of Rare Books, has given for first-year Legal Reasoning, Research & Writing and Advanced Legal Research classes over the past few years. Dorothea Rees, Law Library Assistant, put it up on the web and made it look nice. Check it out at http://www.bc.edu/schools/law/library/about/rarebook/exhibitions/HistAngloAmCases07.html. Feel free to link to it if you think it would be useful for your students' legal research or legal history classes. Hope you enjoy it!

Jennie Meade (Georgetown Washington University, Jacob Burns Law Library) announces an exhibit entitled "How to Try a King: The Trial of Louis XVI." The exhibition ran from mid-June to late September, 2007, in the main hall of the Jacob Burns Law Library. Included were representative works from the French Collection pertaining to the 1792 trial of the King, among them:

de Seze, Raymond. Defense de Louis prononce a la barre de la Convention nationale: le mercredi 26 decembre 1792. De Seze was Louis XVI's lead counsel in his trial for treason and presented a moving defense of the King:

Robespierre, Maximilian. Second Discours de Maximilien Robespierre sur le jugement de Louis Capet [Louis XVI] (1793). The notorious French Revolutionary's speech on the floor of the National Convention aimed at convincing his colleagues of the necessity of executing Louis XVI;

Necker, Jacques. Reflexions presentees a la nation francaise (1792). Louis XVI's former minister of finance presented an eloquent defense of the King.

The text of the exhibit described the issues faced by the French National Convention while conducting the trial, as well as reproductions of formal portraits of Louis XVI and his queen Marie Antoinette as young monarchs and Robespierre at the height of his powers; the last portrait of Louis XVI before meeting his death by decapitation in 1793; the last sketch of Marie Antoinette as she was carried to the guillotine in a tumbrel; and a miniature wooden model of a guillotine, accurate in
detail and nearly identical to the model at the Place de la Revolution (now Place de la Concorde).

Kathryn Fitzhugh (UALR/ Pulaski County Law Library) announces an exhibit on the life and work of the Civil Rights figure Wiley Austin Branton, Sr. at the University of Arkansas at Little Rock William H. Bowen School of Law. Branton was chief counsel to the Little Rock Nine in the case of Aaron v. Cooper, 358 U.S. 1 (1958); this case precipitated the desegregation of Little Rock Central High School. The exhibit, which opened on September 20, 2007, features a Wiley Branton timeline, Professor Judith Kilpatrick’s 2007 biography of Branton, There When We Needed Him: Wiley Austin Branton, Civil Rights Warrior, and photographs from the 1950’s. In addition to being in private practice most of his life, Branton served as a special assistant and adviser in the U. S. Department of Justice during President Lyndon Johnson’s administration, a voter education project director, and Dean of the Howard University Law School.

If you have any exhibit information that you would like to share, please email me at amt54@law.georgetown.edu. Have a wonderful, peaceful holiday season!

Recent Acquisitions
Compiled by Anne Mar

Karen Beck, Curator of Rare Books at Boston College Law Library, reports on a selection of books recently acquired for the Daniel R. Coquille Rare Book Room:

Recent Acquisitions for the Boston College Law Library
The Great Domesday Book

The BC Law Library recently purchased a magnificent facsimile edition of the Domesday Book, which was published in 1986 to celebrate the 900th anniversary of its completion in A.D. 1086. Domesday was a comprehensive census and survey of medieval English landowners and their property. William the Conqueror commissioned the work in 1085 as a means to record all property in the land to facilitate the collection of taxes. The original Domesday Book was completely handwritten on vellum. This edition consists of two volumes of facsimiles, two volumes of translations, an introduction to the set, maps of each county showing landowners and boundaries in England as they existed in 1085, and indexes to people and place names. Domesday has already been a big hit with our English Legal History students.

Giles Jacob, A Treatise of Laws: Or, A General Introduction to the Common Law ... (1721)
The BC Law Library purchased this book to enhance its strong collection of books by Giles Jacob. Our Jacob collection was started by Kitty Preyer, a devotee of Jacob who bequeathed a number of his works to us (among many others) a few years ago.

Truman Capote, In Cold Blood (1965)
Our library does not own very many signed first editions, so we were pleased to receive this book, complete with its dust jacket in immaculate condition, as a gift from our newest Legal Information Librarian, Karen S. Breda.

Stroud, Sketch of Laws Relating to Slavery (1827), and Wheaton, Enquiry into the Right of the British Claim to a Right of Visitation and Search of American Vessels Suspected to be Engaged in the African Slave-Trade (1842)
These two books add to the BC Law Library’s growing collection of works pertaining to slavery in America, especially in the New England states.

The Charter Granted by Their Majesties King William and Queen Mary, to the
Inhabitants of the Province of Massachusetts-Bay in New-England (1726)
Our library already owns a copy published in 1759, so we were pleased to purchase this copy published several decades earlier.

Document admitting Daniel Webster as a Justice of the Peace in Suffolk County
This beautiful document was signed by Levi Lincoln, a former Governor of Massachusetts. The BC Law Library owns several books that once belonged to Lincoln.

..., Mike Widener, Rare Book Librarian, gives us the rundown on the latest at Yale Law School's Lillian Goldman Law Library:

Blackstone, Italy, Inquisitions, and Illustrations:
Rare Book Acquisitions at Yale Law Library in 2007

When I arrived at Yale Law Library in August 2006, I assumed there would be little opportunity to add to the library's outstanding William Blackstone Collection. How wrong I was. Blackstone items added in 2007 include a manuscript containing a summary of the first volume of Blackstone's Commentaries, prepared by Ralph Dunn of Yarm, North Yorkshire, in 1786. We acquired the first edition of Jeremy Bentham's famous critique of Blackstone, A Fragment on Government (London, 1776), as well one of Bentham's oddest productions, his English translation of Voltaire's Le Taureau Blanc. Published in 1774 as The White Bull, it includes a lengthy, rambling preface with frequent attacks on Blackstone. Finally, we added the January 1937 issue of The Atlantic Monthly, which contains the first printing of "Newton on Blackstone," the speech given by the famous American book collector and lawyer A. Edward Newton when the University of Pennsylvania awarded him an honorary Doctor of Laws degree.

At the end of World War II, the Yale Law Library bought a private collection of over 900 volumes of early Italian statute s, including nine incunables and 52 manuscripts. In 2007 the collection resumed its growth with 11 new titles: statutes of Ancona (1734), Brescia (1722), the Cisapline Republic (1798), Genoa (1567, 1669), Milan (1605, 1743), Naples (1605-08), Novara (1719), Riviera di Salo (1626), Sardinia (1729), and the statutes of the lawyers' guild of Montecagale, Statuta sacri venerandique Collegii jurisconsultorum incitae civitatis Montis Regalis (1696).

Among the more notable additions to Yale's collection of American trials were Report of the Trial of John Quay (New York, 1817), where the question of a witness's status as free or slave played a key role; an execution broadside for Stephen Merrill Clark (Salem, Mass., 1821); and six items relating to the blasphemy trials of the radical journalist Abner Kneeland (Boston, 1834-36). My personal favorite is Proceedings of a General Court-Martial in the Case of Lt. T.J. Spencer, Tenth Cavalry (1877). Spencer was charged with beating his wife, described by Spencer's commanding officer as "a lady a thousand times too good for him."

Our collection of illustrated law books continued to grow. To mention but a few highlights... The Opera Geometrica of Jean Borrel (Lyons, 1554) contains the first writings on geometry geared specifically to lawyers. Johann Friedrich Blanck's Sammlung der bey der Stadt Hamburg eingeführten Feuer-Veranstaltungen und Ordnungen (Hamburg, 1760) is a compilation of the fire ordinances of the city of Hamburg, along with an illustrated catalogue of the fire department's equipment. The Tractatus de aquaeductu (4 v., Pavia, 1700-13) of Francisco Maria Pecchio contains dozens of woodcuts explaining riparian rights and aqueducts in Roman and Italian law. The Life, Trial & Defence, of Her Most Gracious Majesty, Caroline (London, 1820), with a colored folding plate of the queen's trial in the House of Lords, joins six other published accounts of this sensational trial in our collection. The Punishments of China, Illustrated by Twenty-two Engravings (London, 1808) is colorful but heart-rending. Last but not least, The Institution, Laws & Ceremonies of the Most Noble Order
of the Garter (London, 1672), compiled by Elias Ashmole, has a splendid folding plate of Windsor Castle; it was the gift of a Yale Law School alumnus.

A few final unusual acquisitions to mention: eight docket notebooks of Stephen T. Hosmer, from his service as judge of the municipal court in Middletown, Ct., 1784-1797; Mr. Lex, or the Legal Status of Mother and Child (Chicago, 1899), a legal treatise in the form of fiction by the attorney and early feminist Catherine Waugh McCulloch; and a little book I've lusted after for several years, The Trial of Farmer Carter's Dog Porter, for Murder (London, 1771), a satire on the English game laws.

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