From the Chair

Karen Beck

Hello Everyone! Sitting here in the dead of winter, it is hard to believe that we're already beginning to gear up for next year's Annual Meeting in Portland...but we are! On that note, I wanted to share three items with you in this column: Service Projects, SIS Elections, and a brand new Morris L. Cohen Student Essay Contest.

**Service Projects:** Once again this year, members of our SIS will have the opportunity to participate in service projects in connection with the Annual Meeting. As we go to press, details are still being worked out, but it looks as if two projects will be offered: a weeding/gardening project and an opportunity to assist at the Oregon Food Bank. Our Immediate Past Chair Laura Ray has kindly agreed to be the point person for our SIS, and you'll be hearing more from her as the Meeting approaches. Meanwhile, if you think you would like to participate, please bear in mind when making your travel arrangements that the projects are scheduled for Friday July 11 – a day before the Annual Meeting begins in earnest. Please get in touch with Laura if you have any questions: laura.ray@law.osu.edu. Thanks to Laura for spearheading this important initiative for our SIS, and to those of you who choose to participate!

**LHRB-SIS Election:** Our annual election is right around the corner. This year, SIS members will have the opportunity to elect a new Secretary/Treasurer, who will replace Sarah Yates when her term expires in July of
LH&RB

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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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-2-
Continued from Page 1 CHAIR

this year. (Chair-Elect Stacy Etheredge and I are in the first years of our two-year terms.) I am delighted to announce that our candidate is Dan Blackaby, Reference & Cataloging Librarian at the Western State University College of Law Library in Fullerton, California. Many of us in the SIS have gotten to know Dan and are delighted that he has agreed to stand for election. By the time you read this, you will have heard from Sarah about our online election procedures, and please be sure to read her announcement elsewhere in this newsletter. I would like to take this opportunity to thank Sarah and Stacy for their hard work in making this election cycle go so smoothly, and of course thanks to Dan for standing for election. Please remember to vote!

Morris L. Cohen Student Essay Contest: The LHRB-SIS and Gale Cengage Learning is pleased to announce our new essay contest! This contest has been a long time in the making and I am delighted that it is up and running. Please see the article about it elsewhere in this Newsletter.

As always, I would like to close by thanking everyone who participates in the work of our SIS, and to invite all of our members to get in touch with me anytime with your comments and suggestions about how the LHRB-SIS can become even better.

Karen Beck

Editor’s Corner

Although this is our Winter issue of LH&RB, here in beautiful south central Pennsylvania it appears that Spring is upon us. The ice has melted from the nearby Conodoguinet Creek, the crocuses and daffodils are up and flocks of Canada geese have been winging their way northward.

I would like to thank all those who contributed to this issue of LH&RB. I think that this issue includes some particularly interesting and informative material, and I hope that you, our readers, agree.

In our last issue we announced that our new on-line journal, Unbound: An Annual Review of Legal History and Rare Books, would begin publication in 2008. We are now working on the first issue—watch your e-mail!

The deadline for the next issue of LH&RB is June 2nd. I look forward to hearing from you!

Mark Podvia

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A Frontier Justinian

An Introduction to the Life and Writings of Harry Toulmin, Territorial Judge of Mississippi and Alabama

Paul M. Pruitt, Jr.*

Introduction:

Harry Toulmin was neither the first nor the only territorial judge to hold court in the future state of Alabama, but his was the most significant record. Toulmin was appointed in 1804 by President Thomas Jefferson to preside over courts in Washington County, Mississippi Territory, a sprawling district of settlements north of Spanish-held Mobile along the Tombigbee and Alabama rivers. Surrounded by the tribal lands of Creek and Choctaw Indians, this eastern province of Mississippi was isolated and undeveloped; its few officials were hampered by the distances they had to cover. Toulmin continued in his office after the Alabama Territory was carved out (in all, 1804-1819). As late as 1815, he complained that his authority extended over an area that, by his generous estimation, was 340 miles long and 330 miles wide.¹

From the English Enlightenment to the Bluegrass State:

Toulmin’s early life had prepared him for vicissitudes. Born in 1766 at Taunton, England, he was the son of Joshua Toulmin, a Unitarian minister and a friend of the famous scientist and dissenting clergyman Joseph Priestley. Though he received little formal education, Harry Toulmin drew both information and an inquiring love of knowledge from the men of his father’s circle—even more, perhaps, from the works he read in a bookstore operated by his mother Jane Toulmin. Like his father, the young Toulmin became a Unitarian minister, serving two congregations in Lancashire from 1786 to 1793.²

The times were dangerous for Englishmen who were either religious or political nonconformists, and Priestley and the Toulmins were both. Indeed they were supporters of the French Revolution, men who applauded the fall of the Bastille and hoped that humanity would, in future, be guided by reason toward a state of republican equality and freedom of thought. The English government and the Church of England viewed such ideas as a serious threat to the status quo, if not treason; as a result the authorities did little to prevent violence against Unitarians and republicans. On the second anniversary of Bastille Day (July 14, 1791) a Birmingham mob burned down Priestley’s house, destroying his library, laboratory, and personal papers. Priestley began to plan a move to America, as did Harry Toulmin after “a burning effigy of the radical spokesman Thomas Paine disturbed the Joshua Toulmin family doorstep.” Toulmin’s investigations led him to believe that the newly created state of Kentucky was an ideal destination—in fact Toulmin began to write works promoting immigration there before he ever took ship. In the end, and with financial support from his congregation, he sailed to America in the summer of 1793.³

Arriving in Virginia, he won the good will of James Madison and Thomas Jefferson (who was a great admirer of Priestley). The Virginians were pleased with Toulmin’s republican enthusiasm; Jefferson would describe him as a “person of understanding, of science, and of great worth,” adding that the young Englishman was “a pure and zealous republican.” Armed with encouragement and letters of recommendation Toulmin and his family (he had sailed with his wife Ann and four children) traveled to Kentucky. There he made what one scholar calls a “complete redirection,” deciding to exchange the life of a clergyman for that of a scholar and teacher.⁴ He may have been concerned that a preacher’s salary would not bring in enough money. Or perhaps—now that he was away from the presence and expectations of his parents—he may have caught something of the ambitious, worldly spirit of the West.
In February 1794 Toulmin was elected president of Transylvania Seminary in Lexington, Kentucky. There he established a demanding curriculum of languages, science, mathematics, philosophy and political studies, which he taught to a growing student body. In these years Lexington presented a scene of intellectual and political ferment, with ongoing discussions of republicanism and deism. Thomas Paine's anticlerical *Age of Reason* was available in bookstores and was the object both of attack and defense. It was an atmosphere in which Toulmin might have flourished—might have become a patriarch of Kentucky educators. Yet from his first days at Transylvania he was closely watched by a Presbyterian faction of the school's board of trustees, who viewed him as a heretic and had opposed his election, and likewise by Federalists in the Kentucky legislature. The continuing intervention of these groups in Transylvania's affairs finally drove Toulmin to resign in April 1796.5

**Law and Politics in the West:**

As the academic door closed, a political door opened. Shortly after his resignation, Toulmin accepted appointment as Kentucky's Secretary of State. He would hold this post for eight years during the administration of Governor James Garrard, a Jeffersonian Republican. One of the Secretary's duties was to certify acts of the legislature, and as such Toulmin signed Kentucky's Resolutions of November 1798—by which Kentucky nullified the Federalist-inspired Alien and Sedition Acts.6 In the intervals of his official work he studied law and sold sets of Blackstone's *Commentaries*. The knowledge he thus gained stood him in good stead in 1801-1802, when the legislature provided for the appointment of two "revisors" of Kentucky's criminal law. The latter was derived from Virginia law, which in turn was an offshoot of English law—all modified by the statutes and case law of the new state. Toulmin (with attorney James Blair) was appointed to perform the revision and to "collect from the English reporters and from all such other writers on the criminal law as they think proper." The result, a minor classic of arrangement and codification, was the three-volume *Review of the Criminal Law of the Commonwealth of Kentucky*, published 1804-1806. These books represent Toulmin's first steps as a scholarly lawyer or (as he would later be called) "frontier Justinian."7

Toulmin and Blair laid out the criminal law in a manner similar to but not slavishly dependent on Blackstone. They moved from crimes against individuals (their "persons," their "characters") to those against property, subsequently taking up offenses against public safety, the "public peace," the justice system, religion and morality, and the "public trade" (i.e., usury and related crimes). They provided disquisitions on trial procedure, evidence, and indictments—the latter containing diverse examples intended to serve as forms. Unlike Blackstone, they stocked their volumes with lengthy verbatim excerpts from English reporters. It seems reasonable to assume that Toulmin had access to a more than adequate law library, and that he used its resources to provide other lawyers with more than statutory arguments.8 On the whole, like Blackstone's work, *A Review of the Criminal Law* is written in clear, even conversational prose.

The latter consideration was more than an academic matter to Toulmin, who was a Jeffersonian Republican and no partisan of "technical or cant" terminology. In a sense he and Blair had no choice, for the legislature had instructed them to use "no abbreviations, nor any Latin or French phrases." This was bound to cause some difficulties in dealing with long-established names of actions; but Toulmin met the difficulty by using language designed to provide a "general conception of the nature of the writ alluded to." He and Blair claimed to offer no opinion on the question of simplified language. But while Toulmin claimed "the same latitude as is usually given to our professional men," he admitted "that the obvious meaning of some of the provisions of our constitutions and laws is very different to a plain man, from that which may be placed upon them through the artificial reasoning and subtle refinement of technical men."9

Two goals—to state the law plainly and to make it accessible in a new country lacking a well-established legal profession—would provide the justification for most of Toulmin's subsequent writing. In the meantime he dreamed of making money through such
works, and it was doubtless with such thoughts in mind that he began to compile a self-help lawbook, which he published in 1806 through Mathew Carey of Philadelphia, one of America's first mass-distribution publishing houses. This pocket-sized book was the ambitiously titled *Clerk's Magazine and American Conveyancer's Assistant: Being a Collection Adapted to the United States of the Most Approved Precedents.* The book lived up to its title; in just over three hundred pages it delivered 286 forms patterned on those used in England, New York, Massachusetts, Connecticut, New Hampshire, Rhode Island, Pennsylvania, Virginia, Maryland, and (of course) Kentucky. Americans needed guidance, Toulmin wrote, in carrying out simple transactions, for they lived in "a country where property is in a state of incessant fluctuation" and where ordinary citizens carry on more "mercantile intercourse" than anywhere else on earth—with the sad result that "law-suits are multiplied to a most astonishing extent."¹⁰

If Toulmin seemed to have frontier on his mind it is not surprising. Prior to the publication the *Clerk's Magazine* he had moved to a neighborhood far more isolated than Kentucky. In May 1804 he had written to James Madison, asking for appointment to the recently created "Tombigbee" judgeship in Washington County of the Mississippi Territory.¹¹ While waiting he delivered a July 4th address at Frankfort, defending Jefferson's acquisition of Louisiana and portraying in darkest terms the ruin that might have followed had the French or English aggressively colonized the new territory. Fortunately a "republican" administration had carried the day though well-informed diplomacy, a method preferable to either force or guile—both of which, Toulmin implies, were favored by partisans of Federalism. Thus Toulmin laid out the pacific principles he would apply as a federal official serving on an unstable borderland. He was optimistic about the future of republican institutions (he was after all speaking on Independence Day); yet he understood the turbulence of frontier politics. Of the limits of republicanism he noted: "Some opposition to the will of the majority may be necessary for the purpose of keeping them within the bounds of reason, of justice, and of constituency."¹²

Toulmin's appointment came through in November. By the summer of 1805 he had brought his family down the Mississippi River by flatboat, then taken them by sailing ship from New Orleans to Mobile. From that Spanish-held port they journeyed upriver to Fort Stoddart, an American military post near the confluence of the Tombigbee and Alabama rivers. There they were just above the thirty-first parallel, the northern border of Spanish West Florida.¹³ There at the nerve center of controversy he would soon learn, if he hadn't known it already, that his new territory was large, populated sparsely if diversely by Native Americans, white settlers (of Spanish, French, British, and American descent) and African Americans. Toulmin's immediate predecessor described the population in less than enthusiastic tones as "illiterate, wild and savage, of depraved morals, unworthy of public confidence or private esteem." At least one faction of white settlers—led by one John Caller, member of an obstreperous frontier family, had unsuccessfully proposed their own candidate for the judgeship.¹⁴

**Law and Diplomacy: Flush Times in the Old Southwest:**

Toulmin's responsibilities in the Mississippi and Alabama territories were varied, and several had little to do with holding court. From 1806 to 1810 he "contracted to operate a mail route from Fort Stoddart to Natchez." At intervals prior to the long and intertemporately-awaited American military occupation of Mobile in 1813, he represented American citizens in their disputes with Spanish officials. The latter controlled the mouth of the district's extensive river system, routinely charging fees as high as 12 per cent of the value of crops and goods, and sometimes shutting off trade altogether.¹⁵ As the highest-rankng civilian in his jurisdiction he also presided over public functions and entertained dignitaries. In 1817 he would welcome French settlers, the beneficiaries of a federal land grant who came with the intention of establishing a "Vine and Olive Colony."¹⁶ Year after year he worked at routine judicial tasks: presiding over criminal cases, addressing grand juries, administering
oaths, and taking depositions. Certainly he heard many cases involving disputed titles to land, a type of litigation prevalent in frontier communities. Occasionally he referred to his colleagues in the Natchez district such points of law as "whether a writ of error could stop an execution upon property."

Toulmin’s commissions from Natchez included one task common to every phase of his mature career: namely, that he compile the young territory’s laws. The product of this assignment, his 1807 Statutes of the Mississippi Territory, revealed a great deal about both Toulmin’s understanding of his work and the varieties of legal business on the borderlands. Clearly, the judge was determined to blaze a clear path for judges in the future state(s), for within his topical arrangement he devoted more than 200 pages to laws and statutes pertaining to judicial proceedings, including such detail-oriented subject headings as “Demurrers, when frivolous” as well as an interesting section on the licensing and conduct of attorneys. The work is otherwise marked by its attention to land laws and criminal laws, especially the latter. Toulmin devoted more than eighty pages to territorial laws on “Crimes and the Public Police” and another forty to crimes punishable by the United States. Of the numerous federal offenses which he singled out for attention, several quasi-military offenses stand out—such as treason, manslaughter in a fort, violating a safe conduct or assaulting a foreign minister, accepting a commission from a foreign power, launching either a military expedition or a ship against a foreign government, confederacy to become pirates, burning a ship at sea, or participating in the international slave trade.

After completing the Statutes of Mississippi, Toulmin agreed to write a manual for use by the Territory’s justices of the peace, elected officials who in the far-flung communities of the Old Southwest were often the local personification of law. Justice manuals based on earlier English works were common in federal-era America. Most of them were notable for a commonsense blending of English and American traditions, so much so that one scholar has called them “the first text-books on Anglo-American law.” Toulmin’s contribution to the genre was titled The Magistrate’s Assistant: Being an Alphabetical Illustration of Sundry Legal Principles and Usages, Accompanied with a Variety of Necessary Forms. Like other manuals it contained many references to classical Common Law authorities (Coke, Matthew Hale) with few or no concessions to Spanish, French, or Native American practices. And like Toulmin’s Mississippi Statutes, his Magistrate’s Assistant was preoccupied with strategies to put down crimes. Consider the “A” list, consisting of the following topics: Accessories, Affray, Arrest, Assault and Battery, and Assize. Under “Arrest” there was a separate section, as in the Statutes, for federal offenses. A portion of the latter discussed the use of military force “to prevent expeditions from the United States against nations at peace with them.”

In spite of—more probably because of—the reality of backwardness, violence and insurrection, the world as prescribed by the justice manuals was orderly and procedurally sophisticated. After all, these books were intended to serve as models for communities suffering through civic adolescence—places where passions and acquisitiveness were unembarrassed by established churches, schools, or hierarchies of business or planting. A number of Toulmin’s neighbors were inclined to resent any authority, whether the Spanish in Mobile or U.S. officials at Ft. Stoddart. Yet when Toulmin, good republican that he was, wrote: “It may be laid down as an invariable rule, that the law favors liberty,” he did not equate liberty with freedom from restraint. Rather, he was laying down a regime of choices and gradations for the justices, a group that he may well have viewed as a republican squirearchy. For their use and the public good use he provided rich circumstantial details, citing (for example) the occasions when officers could break down doors or the types of hearings a coroner could convene; teaching how to interpret the varieties of evidence; providing the (thirty-two) rules of statutory interpretation.
Toulmin's life in the concrete world required that he strike a nice balance between serving citizens of the Territory and enforcing the will of his federal superiors. Territorial judges had been given broad federal powers by a congressional act of March 1805, and Toulmin was quite willing to style himself "one of the U.S. Judges for the Mississippi Territory." As such he heard admiralty cases and sought both to prevent and to punish federal crimes, especially those criminal activities likely to have international implications. Toulmin's role in one such case—perhaps the most dramatic, wide-ranging, and ultimately confusing federal prosecution of the era—began in February 1807, when territorial judges at Natchez heard evidence in the matter of the recently surrendered fugitive Aaron Burr. Toulmin was present (as a spectator) as judges and grand jurors struggled to understand Burr's alleged conspiracies against the United States and/or the Spanish Empire. Toulmin, very much the loyal Jeffersonian, viewed Burr as a traitor. Traitor or not, there was every reason to see him as a threat to the peace.

When to Toulmin's distress the Natchez authorities released Burr (who promptly fled eastward), Toulmin issued arrest warrants against the former vice president and his principal allies. Toulmin examined several of the latter and bound them over to grand juries. Burr was eventually captured and briefly confined at Fort Stoddart, Toulmin's home base. There the charismatic adventurer played chess with Toulmin's daughter Frances (the wife of fort commander Edmund Pendleton Gaines) and pursued his schemes before being sent off in March to face trial in Richmond. There is no doubt that many residents of the Tombigbee district would have followed Burr in an expedition against the Spanish in Mobile. Burr had been in contact with territorial legislator James Caller, whose brother John had planned a filibustering raid against Mobile a year earlier. Toulmin had talked John Caller out of that project. Now Toulmin's quick action—plus John's decision to seek a reward for his nonexistent role in Burr's capture—had deflected another warlike preparation.

However the root causes of friction between American settlers and Spanish colonials remained unsettled, with the result that Toulmin remained a de facto diplomat. In 1810 he interceded when residents of his district joined the Mobile Society—a group in sympathy with an interesting and understudied revolutionary organization, the Convention of Baton Rouge, whose leaders had recently wrested authority over several "Florida Parishes" (as they are known in Louisiana) from the Spanish. Though he was determined to keep the peace and avoid international incidents, Toulmin understood his neighbors' frustration with Spanish control over down-river trade. Even as he took every step to discourage lawbreakers, he put out feelers to see if Spanish authorities might relinquish control of Mobile voluntarily.

In the long run Toulmin could not prevent violations of the Spanish boundary, the most annoying of which was a November 1810 expedition under the command of Convention agent Reuben Kemper. The latter and his inebriated followers failed to capture Mobile. Indeed in December Toulmin was able to arrest several of the filibusters' ringleaders, including Kemper, the ubiquitous James Caller, and Joseph Pulaski Kennedy—the judge's long-time enemy. These men were acquitted (March 1811) of all charges against them; such was the state of Tombigbee public opinion or the filibusters' powers of intimidation. In fact a segment of Mississippians, some of them county and militia officials, considered that Toulmin had been overzealous or even pro-Spanish. But he excused himself by explaining that a judge in a frontier community "must perpetually take a more active part in the early stages of prosecutions than is customary in societies more established, and composed of better materials." Life in the borderlands—six years of judicial diplomacy, meting out "unequal laws unto a savage race"—had somewhat eroded his Jeffersonian enthusiasms.

If Toulmin's prosecutions had angered his filibustrian neighbors, they were even angrier when he was instrumental in preventing a
clash between United States troops sent to secure the annexed territory and Spanish forces occupying Mobile. Toulmin and others feared that the Spanish might burn down Mobile if attacked. On reflection, official Washington agreed; so early in February, federal officials were ordered (February 1811) to leave the port in Spanish hands for the moment. For all such activities Toulmin—though he never lost the support of a core of official and legal friends—became a target for abuse and threats throughout the borderlands. Influenced by his enemies, a Baldwin County grand jury brought a nine-count indictment against him—chiefly accusing him of high-handedness on the bench but also implying that he was carrying on treacherous negotiations with the Spanish.

In November 1811 the territorial legislature forwarded the charges to the U.S. House of Representatives, which referred them to a committee whose members included territorial delegate George Poindexter. Toulmin wrote letters defending his conduct at great length, evidently to the satisfaction of President Madison and the investigating committee, for in May 1812 Poindexter closed the investigation with a report commending Toulmin’s “vigilant attention to the duties of his station.”

A Frustrated Founding Father: Toulmin and the Transition to Statehood:

Even as Toulmin suffered for damming up the restless acquisitiveness of his neighbors, demographic currents were shifting in his favor. The second decade of the nineteenth century saw river-borne waves of settlement washing over eastern Mississippi. Land sales boomed along the Tombigbee, Alabama, and Tennessee rivers, bringing slave-worked cotton planting to the district that would be known as Alabama’s Black Belt, and to the Tennessee Valley. These developments led to the growth of several towns, including Huntsville, Selma, Cahawba, and Montgomery, and Tuscaloosa. The new communities (like St. Stephens, close to Toulmin’s base) began to show such appurtenances of civilization as municipal governments, schools, churches, taverns, and dry-goods stores.

Toulmin surely realized that the advance of “normal American” society would lessen the influence of rascals like Kemper or the Callers. Yet ironically the pressure of white settlement disrupted the peace—the fragile peace that Toulmin had been at such pains to preserve. A Native American war movement promoted by the charismatic orator Tecumseh found sympathizers among the Creeks of eastern Mississippi; indeed he had addressed their councils as early as the fall of 1811. When the United States declared war against Great Britain in June 1812 and followed that up by seizing Mobile in April 1813, Tecumseh’s disciples believed (with good reason) that both the English and Spanish would support their fight against the Americans.

Toulmin observed the outbreak of war in the summer of 1813, and put pen to paper—assessing the situation for his official contacts, noting the panic that caused white settlers, their slaves, and their Indian allies to cluster in forts (“the people have been fleeing all night,” he wrote on July 23), and reporting on the massacre of August 30 of soldiers and refugees at Fort Mims. Unlike the filibustering exercises that he had formerly opposed, the Creek War was no comic opera affair; and it was prosecuted with all the force of national authority. Pretenders like James Caller (who had led militia forces to an embarrassing defeat at Burnt Corn Creek) were shoved aside by able frontiersmen, including the epoch-making Andrew Jackson. Following Jackson’s crushing March 1814 defeat of Native American forces at Horseshoe Bend, the Creeks ceded huge tracts of land in the south and east of the future state of Alabama.

From that point the onrush of settlement resumed.

Antebellum judges were typically stretched very thin, forced to cover long distances via primitive transportation; Toulmin was no exception. After the American takeover of Mobile he recommended the establishment of a separate federal court there and volunteered to be its judge. He wanted to think of himself (as noted above) as a federal
official. Indeed his conduct of office had always been informed by his study of national and international laws. But he was painfully aware that however clear his duties might seem in theory, his authority was ambiguous in practice. This was so because territorial legislatures could pass acts restructuring the staffing and jurisdictions of their courts; the Mississippi assembly did so three times.\textsuperscript{43}

Another problem, the result of federal stinginess, was that the Mississippi Territory lacked a United States marshal or attorney until 1813. When necessary, territorial attorneys-general represented the United States. But county-level officers were reluctant to act in federal matters (since the latter often transcended county boundaries).\textsuperscript{44} By the end of 1815, Toulmin's situation was unchanged. He was performing the judicial duties, federal and territorial, in a thriving, litigious, and expanding jurisdiction. Yet in his discouragement he had scaled down his pretensions; he now viewed his court as "merely a territorial court authorized like the state courts to entertain certain suits also belonging to the federal jurisdiction."\textsuperscript{45}

As Congress began to entertain petitions for Mississippi statehood, Toulmin was firmly identified with the eastern half of the Territory, an area chronically underrepresented in territorial affairs. As early as December 1815, citizens east of the Pearl River had complained to Congress that their counties were more populous than those of the western district but sent "only eight members of the Territorial Legislature, while the Mississippi River Section had sixteen." Though the Tombigbee and Tennessee River settlers had hoped at times to escape from the political clutches of the Natchez group, the rapid growth of the Mobile and Huntsville trading areas convinced them that they would dominate an undivided Mississippi. In October 1816 a convention at John Ford's house on the Pearl River petitioned for the admission of Mississippi as a single state, and sent Toulmin to Washington to represent them. Toulmin appeared before congressional committees, prepared statements, and lobbied as best he could. Still he found that powerful interests had taken the side of the Natchez men. As for the Western Mississippians, they now hoped to escape from their formerly downtrodden neighbors; and in the looming sectional conflict over slavery, four U.S. senators were thought to be better than two.\textsuperscript{46}

In two acts of March 1817, Congress prepared for Mississippi statehood and established the Territory of Alabama. In the latter, the lawmakers provided three judgeships. The judges, who were to be (as before) presidential appointees, were expected to ride circuit to preside over "superior courts" in the counties and were required to meet twice yearly at St. Stephens (the capital) to hear appeals and to exercise exclusive federal jurisdiction within the territory. For the remainder of the territorial period, Toulmin shared these duties with John W. Walker of Madison County, a rising politician who would serve as one of Alabama's first United States Senators, and Henry Y. Webb of Perry and Greene counties in the Black Belt, who would serve as a state circuit court judge.\textsuperscript{47}

Congress passed an Alabama enabling act in March 1819. Toulmin was elected as a delegate to the constitutional convention that met in July.\textsuperscript{48} The membership was distinguished; its 44 delegates included former congressmen, legislators and other officials, several of whom would subsequently hold high office in Alabama.\textsuperscript{49} Toulmin was not chosen for of the Committee of Fifteen that drafted the constitution.\textsuperscript{50} Yet it may be significant that its suffrage provisions (white manhood suffrage with no property, militia-service, or taxing limitations) were similar to Kentucky's and thereby more liberal than those of other southern states.\textsuperscript{51} Toulmin was most likely pleased, too, with the convention's relatively liberal approach to slavery.\textsuperscript{52} Otherwise, he played a modest role, attempting without success "to make more definite the provision guaranteeing religious freedom" and arguing unsuccessfully for the federal (three-fifths) ratio as a basis for apportioning state senate districts. In addition he supported (this time on the winning side) popular election of sheriffs, but failed to sway the convention against the popular election of clerks of court.\textsuperscript{53}

Toulmin had acted as a founding father to a
state still undergoing its Jacksonian adolescence. Politically he was outdated, superfluous, as the 1819 legislature demonstrated when it failed to elect him to a circuit judgeship. Instead they gave the office (by a vote of 63 to 5) to former territorial legislator Abner Lipscomb. Unemployed, fatigued by duties that had expanded dramatically during the recent land boom years—"attending seven circuit courts twice a year and discharging the duties not only of a Territorial but of a Federal Judge"—Toulmin welcomed an offer from the 1821 legislature to examine, correct, and digest the state's statute law. Even this labor was arduous for a man whose health was probably failing. He was obliged to attend the 1821 and 1822 sessions of the legislature, to "bring a wagon for the purpose of conveying the digest and original acts of the legislature," and to hire a clerk. He could base some of the work on his 1807 Mississippi statutes; but he was also forced to deal with a digest published in 1816 by Edward Turner. Toulmin did not admire Turner's work, which he described as "mangling and murdering the laws." Of his own work, A Digest of the Laws of the State of Alabama, he declared that it "has brought them to life again."

Toulmin's Digest is one of the most impressive works of its kind. Weighing in at nearly a thousand pages of text, it is divided into sixty-seven alphabetical Titles that are in turn subdivided into Chapters. The latter present major acts pertaining to the topic at hand, arranged in chronological order. Since the Digest encompasses statutes of the Mississippi and Alabama territories as well as the acts of the Alabama state legislature, it is unmatched as an historical document of the Old Southwest. Toulmin assured the Alabama legislators, moreover, that he had taken pains to place components of multi-purpose acts under their proper subject headings. The result, almost as much a code as a digest, is yet another instance of Toulmin, Jefferson's disciple, shaping the public institutions of the wild frontier. Thus we see that laws enacted against dueling receive their own title, and that instead of a title on slavery per se, Toulmin offers a title on "Negroes and Mulattoes, Bond & Free," with considerable attention devoted to emancipations. On the other hand, Toulmin devoted his considerable intelligence to title groupings that would provide lawyers, politicians, and citizens with information useful in a rapidly growing republic—such as his lengthy title on "Highways, Bridges, and Ferries."

Conclusion:

Toulmin may not have lived to see his final work in print, though he did survive long enough to wrangle a promise of $1500 from the 1822 legislature—no mean feat for a sick old man. What he left behind, apart from printed pages, was a legacy pointing toward the supremacy of law. It could be justly said of him that neither distance, hardship, danger, intrigue, politics nor political persecution could shake his faith in the rule of law. Likewise (and marvelously so for a man whose life had been disrupted by mobs and mob mentality from England to Mississippi) he apparently retained his Unitarian, Jeffersonian faith that popular government was the only legitimate foundation for freedom. He continued, too, to hope that reason could inform republican decision-making, and so promote freedom under law. A judge and legal scholar, Toulmin could not suppress the anarchic features of frontier life. But he could help to determine the structures that would stand when chaos had run its course.

NOTES

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5. Lengel, "Keeper of the Peace," 8-10; Tinling and Davies, The Western Country in 1793, xxiv; and Friend, "Inheriting Eden," 229-232, 233-238. A complicating factor for cerebral theologians, deists and Presbyterians alike, was the growing popularity of emotional, revivalistic religion. Friend, "Inheriting Eden," 238, quotes Toulmin to the effect that Kentucky was home both to "unbelievers, who freely express their opinions" and "enthusiasts" who assemble in thousands in the woods, and continue night and day.


4. Lengel, "Keeper of the Peace," 8; and Tinling and Davies, The Western Country in 1793, viii-x (Jefferson quotation on ix). Toulmin maintained his connection with Priestley, who emigrated in 1794 and settled in Philadelphia, continuing his occupations as scientist and clergyman. For Priestley's activities, and for the difficulties attending the formation of Unitarian congregations in America, see John Allen Macaulay, Unitarianism in the Antebellum South: The Other Invisible Institution (Tuscaloosa: University of Alabama Press, 2001, 21-27. As to Toulmin's family, he had married his first wife, Ann Tremlett, in England; they would have eight children. Toulmin's second wife was Martha Johnson, likewise an English woman. They were married in Washington County; together they would have two children. See Owen, History of Alabama and Dictionary of Alabama Biography, IV: 1677.


8. Compare the tables of contents in Toulmin and Blair, Review of the Criminal Law, I: [iii]-


10. Harry Toulmin, *Clerk’s Magazine and American Conveyancer’s Assistant: Being a Collection Adapted to the United States of the Most Approved Precedents* (Philadelphia: Mathew Carey, 1806), [i]–v (quoted passages on i), [xi]–xxi; see iv–v for Toulmin’s sources, chiefly Blackstone, Frederic C. Jones’ *Precedents in Conveying* (1794), and the statutes of the states listed above. Toulmin’s book was issued in duodecimo; the title page declares that he was “Secretary of the State of Kentucky,” which invites the inference that the book was begun before his appointment as a Mississippi territorial judge. The wily Carey also issued the volume as *The American Attorney’s Pocket Book*.

11. Lengel, “Keeper of the Peace,” 11-13; Toulmin declared that he planned to settle in the territories in any case. One of his motives for moving was a change of administration in Kentucky, where the newly elected Governor Greenup would soon (Lengel, 12) have “unhorsed him in favor of some political associate of the new regime.”

12. Harry Toulmin, *An Oration Delivered at the Celebration of American Independence at Frankfort, (K.) on the 4th of July, 1804* (Lexington: Thomas Anderson, 1804), 1-8 (quoted passage on 6). As to the results of European colonization, Toulmin argued that “in the course of a few years, that Territory would have been deluged with slaves from the coast of Africa.” For the likely consequences, he advised listeners to consider “the dark & terrific scenes which have been exhibited in St. Domingo.” Though Toulmin’s attitude toward slavery is not a major concern of this study, the *Oration* leaves no doubt that he viewed the institution with horror, congratulating Americans for their (past and future) roles in suppressing the international slave trade. Like many Jeffersonians he believed that slavery was doomed to fade before the advance of reason and enlightenment. Thus with unconscious irony he wrote that by the transfer of Louisiana to the United States, “instead of a new grave being opened for the children of captivity, there is a wide area thrown open to the sons of freedom.” See ibid., 4. For the terror that slave revolts in Haiti and San Domingo inspired among southerners, see Michael O’Brien, *Conjectures of Order: Intellectual Life in the American South* (Chapel Hill: University of North Carolina Press, 2004), i: 207-209. See also below, especially Note 47.


14. Lengel, “Keeper of the Peace,” 15-21. As explained below, the Mississippi Territory was eventually divided into the present-day states of Alabama and Mississippi. Concerning the early population of Washington County, Rowland, *Mississippi, II: 937 reports estimates (c. 1802) that place the combined white and African American population between 750 and 1200. For Ephraim Kirby’s opinion (the quoted passage) see Aaron Welborn, “A Traitor in the Wilderness: The Arrest of Aaron Burr,” *Alabama Heritage*, 83 (Winter 2007), 14; for similar remarks made in 1803 by famous frontier preacher Lorenzo Dow, see Brantley, *Three Capitals*, 4-5. For an especially good summary of the Callier family, see Philip D. Beidler, *First Books: The Printed Word and Cultural Formation in Early Alabama* (Tuscaloosa: University of Alabama Press, 1999), 16-17.
15. The reference, of course, is to a classic work that covers the same geography, revealing the same human failings that Toulmin would encounter. See Joseph Glover Baldwin, The Flush Times of Alabama and Mississippi: A Series of Sketches (New York: D. Appleton and Company, 1854).


19. Harry Toulmin, compiler, The Statutes of the Mississippi Territory, Revised and Digested By the Authority of the General Assembly (Natchez: Samuel Terrell, 1807), 84-304, (frivolous demurrers, 170-171; attorney regulations 226-229). It seems noteworthy that Toulmin reprinted the Northwest Ordinance, ibid., 467-477, though that famous federal enactment did not control the legislature of Mississippi. However the ordinance includes (on 473) an article that guarantees "judicial proceedings according to the course of the common law."

20. Ibid., 305-386 (territorial criminal law), 486-546 (federal land laws), and 547-587 (federal criminal law). For criticism and publication information on Toulmin's Statutes of Mississippi, and his justice of the peace manual (see below), For a summary of Toulmin as codifier, see Dunbar Rowland, Mississippi: Comprising Sketches of Counties, Towns, Events, Institutions, and Persons (reprint edition; Spartanburg, South Carolina: The Reprint Company, 1976), II: 794-795.


22. Harry Toulmin, The Magistrate's Assistant: Being an Alphabetical Illustration of Sundry Legal Principles and Usages, Accompanied with a Variety of Necessary Forms, Compiled for the Use of the Justices of
the Peace in the Mississippi Territory (Natchez: Samuel Terrell, 1807).

23. Conley, "Doing It By the Book," 262. See Toulmin, Magistrate's Assistant, 5, 15, 17, 90, 126 (for cites to the English legal gods), 31-32 (for an historical treatment of assize, "general gaol delivery", oyer and terminer, nisi prius, and "commission of the peace"), and 102-103 (definition and proposed etymology of the term "felony").

24. Ibid., 3-5 (Accessories), 5-7 (Affray), 7-29 (Arrest, quoted passage 25), 29-30 (Assault and Battery), and Assize (31-32).

25. Further study of Toulmin's frontier judgeship might cast light on the celebrated (and controversial) "Turner Thesis," by which American democracy is said to have grown organically from the restless energy, self-reliance and egalitarian social outlook that marked frontier settlers. See Frederick Jackson Turner, The Frontier in American History (New York: Henry Holt, 1947), 1-38, passim.

26. Toulmin, Magistrate's Assistant, 14-18 (breaking down doors), 67-74 (coroners), 79-96 (evidence), 186-192 (statutory construction), and 189 (quoted passage).


28. For quoted passage see Toulmin, Magistrate's Assistant, title page. For another example of Toulmin as agent of the federal government, see H.S. Halbert and T.H. Ball, The Creek War of 1813 and 1815 (reprint edition; Tuscaloosa: University of Alabama Press, 1995), Frank L. Owsley, Jr., editor, 212-213. These pages show for Toulmin taking a deposition on the incidents of the Ft. Mims Massacre of 1813. For admiralty, see Hamilton, Anglo-American Law on the Frontier, 98 n.27.

29. For the clearest account of Toulmin's role in these hopelessly murky affairs, see Lengel, "Keeper of the Peace," 33-47; and see Hamilton, Anglo-American Law on the Frontier, 78-83. For Burr's capture, see Albert James Pickett, History of Alabama and Incidentally of Georgia and Mississippi, from the Earliest Period (reprint edition; Birmingham: Birmingham Book and Magazine Company, 1962), 488-502. See also Thomas Perkins Abernethy, The Burr Conspiracy (New York: Oxford University Press, 1954), 198-226, especially 222-225. For a recent summary of the case, see Welborn, "Traitor in the Wilderness," 10-19. In justice to Burr and Mississippi adventurers in general, it should be pointed out that the U.S. Congress had in February 1804 passed the Mobile Act, asserting American "annexation of all navigable rivers and streams . . . that flowed into the Gulf of Mexico"; see Owsley and Smith, Filibusters and Expansionists, 23, 62. It was the practice of the Jefferson and Madison administrations to assert rights they had little intention of enforcing immediately—but that might come in handy later.

30. Lengel, "Keeper of the Peace," 57-93, especially 74-77 (Convention activities) and 84-88, 92-93 (Toulmin and Edmund Pendleton Gaines attempting to negotiate with Spanish officials, especially Governor Vicente Folch). See also Isaac Joslin Cox, The West Florida Controversy, 1798-1813: A Study in American Diplomacy (Baltimore: Johns Hopkins Press, 1918), passim, and passages cited below.

31. Lengel, "Keeper of the Peace," 91-125.; see also Pickett, History of Alabama, 481-487, 505-509. December 1810 was a chaotic month. During this time Toulmin effected his captures (December 9), and Governor Folch attacked the Filibusters' camp (December 10), killing, wounding and capturing several of them; these two events effectively crippled the Kemper expedition. And on December 13

32. The quote is from Alfred Tennyson’s 1842 poem “Ulysses,” lines 3-4.

33. Madison had assigned the present-day “Florida Parishes” of Louisiana to the Territory of Orleans as far east as the Perdido River; he would have been happy to see the Spanish surrender Mobile and the remainder of West Florida (and East Florida, for that matter) but was unwilling to seize them by force, unprovoked. See Pruitt and Durham, “Sources of law in the Alabama Territory,” 3; McMillan, Constitutional Development, 17-18; Cox, West Florida Controversy, 487-516, especially, 490, 514-516; Lengel, “Keeper of the Peace,” 111-119; and Owslay and Smith, Filibusters and Expansionists, 62-66 and (for East Florida), 67-81. The federal troops in question were supported by militia units packed with Kemper’s men.

34. Stagg, Papers of James Madison: Presidential Series, 4: 190-191; Toulmin thought that plots against his reputation, even his life, had been planned as early as 1807. See Cox, West Florida Controversy, 515-517; and Lengel, “Keeper of the Peace,” 54-55, 80, 98, 114-117, 125-133.


36. Brantley, Three Capitals, 8, 11; and see 21 for an 1816 estimate of a territory-wide population of 45,000 free people and 30,000 slaves. By 1819, the combined population of Alabama alone would grow to approximately 125,000; see Pruitt and Durham, “Sources of Law in the Alabama Territory,” 17. For the origins of the various towns see Owen, History of Alabama and Dictionary of Alabama Biography, I: 186-188, 718-719, II: 1037-1038, 1237, 1333; see also Nancy M. Rohr, editor, Incidents of the War: The Civil War Journal of Mary Jane Chadick (Huntsville, Alabama: Huntsville Madison County Historical Society, 2005), 4.; and H.S. Halbert and T.H. Ball, The Creek War of 1813 and 1814, edited by Frank L. Owslay, Jn. (Tuscaloosa: University of Alabama Press, 1995), 307-312.

37. This phrase was used in the mid-twentieth century by Harry E. Rogers of Greenville, Alabama, to describe the life of south Alabama—a society based on agriculture and small towns.

38. Halbert and Ball, Creek War of 1813 and 1814, 93; see 94-97 for divisions among the Creeks.

39. Ibid., 85, 87; for a survey see Owslay, Filibusters and Expansionists, 82-102.

40. Halbert and Ball, Creek War of 1813 and 1814, 88-90, 91-93, 129 (quoted passage), 143-176 (Pt Mims), 296-300. Owslay, Filibusters and Expansionists, 95, places the Ft Mims dead at 250 or more.

41. Halbert and Ball, Creek War of 1813 and 1814, 125-142 (Burnt Corn), 141-142 (Caller’s disgrace), 241-278 (battles of Holy Ground and Horseshoe Bend). Of course Caller did not cease plotting and scheming prior to his death in 1819, but he was handicapped by the circulation of a mock-heroic poem satirizing his modest military accomplishments; see Beidler, First Books, 14-22.


47. Carter, *Territorial Papers: Volume XVIII*, 54-55, 238-239, 570-571, 666-668; Owen, *History of Alabama and Dictionary of Alabama Biography*, IV: 1716-1717, 1738. For indications that lower territorial courts continued to handle federal matters, see Carter, *Territorial Papers, Volume XVIII*, 563, 575-576 (for a suit against a federal officer tried first in Mobile), and 637-638 (for a case involving the importation of slaves). For cases of various kinds over which Toulmin presided in the late Mississippi or Alabama territorial years, see Records Group 21, Records of the District Courts of the United States, U.S. District and Other Courts in Alabama, National Archives and Records Administration, Southeastern Region (Atlanta), Cases 54, 56, 57, 58, 59, 60, 62, 63, 64, 65, 66, 67, 68, 70, *et al.* Of these, No. 59, *U.S. v. Negro Slave, Ben* is of interest because it shows the practical application of laws against the international slave trade. One of the documents excerpts an (arguably) anti-slavery jury charge made by Toulmin in October 1816.

48. Between 1808 and 1819, Toulmin's old judicial territory had been subdivided into twenty-two counties. He was elected as the delegate of Baldwin County, created from Washington County in 1809. For the 1819 convention members and their counties, see Brantley, *Three Capitals*, 44; for county dates, see McMillan, *Constitutional Development*, 22, 25 n. 42.

49. McMillan, *Constitutional Development*, 31-32, sees in this convention a division between north and south Alabama; north Alabama, he said, had 28 votes to 16 for south Alabama.

50. Brantley, *Three Capitals*, 44-45, indicates that the chief architects of the 1819 constitution were Committee of Fifteen chairman Clement Comer Clay of Madison County, committee members Henry Hitchcock of Washington County and William R. King of Dallas County, and territorial governor William Wyatt Bibb. The latter (also the first governor of the state) was not a member of the convention. Hitchcock, a youthful attorney who was (relatively) Toulmin's neighbor, may have been the conduit (if any) for Toulmin's influence upon the document as drafted. For Hitchcock's role in seeing Toulmin's final statutory compilation published, see below.

51. Alabama's constitution similarly lacked such restrictions on office-holding. See McMillan, *Constitutional Development*, 35-36. For the 1819 constitution's tendency to confer power on the legislative branch see *ibid.*, 38-39; and in general see Pruitt and Durham, "Sources of Law in the Alabama Territory," 14-16.

52. Under the 1819 constitution, the right to own slaves was guaranteed. However, it gave slaves basic legal protections and trial rights, and empowered the legislature to ban the slave trade, require humane treatment of slaves, and provide for manumissions. See McMillan, *Constitutional Development*, 42-43.

53. *Ibid.*, 35 (quoted passage), 36-37 (for the "white basis" of apportionment), 39 (election of sheriffs), 40 (election of clerks). The Committee of Fifteen had proposed that Alabama follow the U.S. Constitution in
counting each slave as a three-fifths person for apportionment purposes; but this was struck down in a vote that pitted the more generally slave-owning south Alabamians against spokesmen of the small-scale farmers of north Alabama.


55. Brantley, Three Capitals, 57; For Lipscomb’s long history as a judge, see Brewer, Alabama, Her History, 405-406.

56. Brantley, Three Capitals, 100-101, 100 n. 2, and 118--119 (quoted passages).


59. Toulmin, Digest of the Laws of the State of Alabama, iii-xxxiv (contents pages). See Brantley, Three Capitals, 118, for Toulmin’s editing; see ibid., 120 n. 2, for information that the Digest’s index was produced by Henry Hitchcock after Toulmin’s death.

60. Toulmin, Digest of the Laws of the State of Alabama, 261-266 (Dueling), 627-646 (Negroes and Mulattoes, Bond & Free). Readers should not imagine that early Alabama racial statutes were lenient. Emancipated slaves were commonly required to leave the state, and the state’s January 1823 act “to carry into effect” federal laws against the international slave trade provided that contraband slaves should labor for the state (ibid., 643-644).

61. Ibid., 387-442.

62. Brantley, Three Capitals, 119 (for Toulmin’s argument that circuit judges made $1750 per year), 120. Isaac J. Cox says that Toulmin died on November 11, 1823; see Malone, editor, Dictionary of American Biography, IX, Pt. 2, 601.

63. Readers who detect a respectful parody (of Romans 8: 38-39) are quite right.

Processing a Large Acquisition of 16th-19th Century Roman-Canon Law Books at the Yale Law Library

Susan Karpuk*

The Yale Law Library acquired, in August 2006, a collection of 1641 volumes of early Roman-Canon law books from the Bar Association of the City of New York. The collection is on permanent loan to the Law Library and, by agreement, will be preserved and made available to library patrons.

The collection was accompanied by a list of 1093 titles. Of the total volumes, approximately 450 are 19th century, 300 are 18th century, 300 17th century, and 200 16th century. Because of the number of multivolume sets, the many titles bound
together, and inaccuracies in the list, the number of titles is only an estimate, until processing is completed.

Most of the collection was originally in the possession of Konrad von Maurer (1823-1902), a professor of law at the University of Munich and an authority on early Germanic law. Texts are primarily in German or Latin. Earlier materials are nearly all in Latin.

**Initial Preservation Measures**

The materials were received in about 70 standard size file boxes. They were stored in the freezer at the Beinecke Rare Book Library at -50° to -70°F for a period of four days to kill insects and reduce mold. After the boxes were unpacked in the Law Library, a preservationist from Sterling Memorial Library at Yale evaluated each volume and made decisions about repairs, housing, and shelving.

After they arrived at the Law Library, the boxes were unpacked onto five ranges of shelving, in no particular order and with very little room to sort, shift, and prioritize. Large sets had not been kept together in transit. A handful of unrelated volumes were returned to the New York City Bar.

**Processing Decisions**

Materials were prioritized for cataloging by sorting and shifting until everything was in order by size and then by century. They were sorted into five sizes: short, [regular], tall, xtall, and flat. Sorting by size saved shelving space; sorting by century allowed the new cataloger to begin with 19th-century materials and proceed in an orderly fashion to earlier, more difficult material. Because we were establishing a new shelving area and not integrating the collection into the general stacks, a shelving chart was created for the area the collection would occupy.

The arrangement of the volumes is alphabetical by main entry. The first line of the call number is ABCNY; the second line is a cutter number for the main entry; and the third line is the publication date. Sometimes a fourth line is needed to indicate size. For example, ABCNY B234 1706 flat.

**Level of Cataloging**

We did not set out to provide full cataloging for the titles in this collection. With limited resources, our goal was to provide accurate description of the materials in the areas for author, title, imprint, and physical description. In the notes fields, we record bound with’s and transcribe information about any separately titled sections, with or without separate title pages.

For titles in need of original cataloging, we create K level records. These records are very brief, and include only author, title, imprint, and physical description. This level is defined in AACR2 1.0D1. For the rest, we accept any and all copy. We reconcile the author, title, imprint, and physical description fields with the item in hand. For any tracings, both subjects and added entries, we verify the headings in the Authority File, editing as little as possible. Reprints without copy require original cataloging, but that can usually be derived from copy for other editions.

On each record we trace the name of the collection, Roman-Canon Law Collection of the Association of the Bar of the city of New York, for which we created a local authority record. That authority record includes general information and notes for catalogers on the collection. We also created a record for the collection as a whole: http://morris.law.yale.edu/record=6387461 with a link that allows the user to browse and then sort the contents of the collection. When we add an additional copy to material already owned by the library, we add a local note indicating that an additional copy is available in the Roman-Canon Law Collection.

**Multivolume Sets**

One result of fast forwarding through the cataloging process was that certain things that we thought we could finesse without difficulty, such as volume numbering, demanded attention more frequently than we had expected. Captions on multivolume sets vary: *Tomus primus*, *Tomus prior*, *Tomus posterior*, *Pars prima*, *Pars prior*, *Pars posterior*, *Pars anterior*, *Liber primus*, *Volumen primum*. The first volume of a set is often not
numbered at all. The title of the first volume might include a phrase such as In quattuor tomos divis, or In duos tomos distributa. Sometimes the index to a volume or a multivolume set has a different title, and might be bound before the first volume of a set. Some multivolume sets lack specific volume numbering, but are cataloged as a set because the titles clearly indicate that they are commentaries on successive parts of a larger work, such as the Corpus Juris Civilis.

When the Yale Law Library already owned a multivolume set for which we were adding a second copy, we added the second copy and followed the analysis decision already in place. Though we might find cataloging copy for individual volumes, we did not use them unless our first copy of the set was already analyzed.

Cataloging Tools

We bookmarked links for several library catalogs, though we usually don't have to go beyond OCLC to locate cataloging copy. We frequently use the Karlsruhe link below to verify bibliographical information. We are often looking for information about reprints and volume numbering.

Additionally, we located sites on the web which we sometimes consult for Latin place names, Roman numerals, and ecclesiastical abbreviations. The new DCRM(R) is especially helpful with abbreviations, contractions, and symbols, as well as instructions on transcribing i/j and u/v.

http://www.uni-karlsruhe.de/hylib/en/kvk.html (Karlsruhe omnibus search for European catalogs)

http://lawcat.berkeley.edu/ (Boalt Law Library)

http://bav.vatican.va/en/v_home_bav/home_bav.shtml (Vatican Library)

http://www.vd16.de/ (Verzeichnis der im deutschen Sprachraum erschienenen Drucke des 16. Jahrhunderts (VD16)) (Includes images of t.p.'s)

http://www.vd17.de/ (Verzeichnis der im deutschen Sprachraum erschienenen Drucke des 17. Jahrhunderts (VD17)) (Includes images of t.p.'s)

http://www.just-quotes.com/common_latin_abbreviations.html (Latin abbreviations)

http://www.roman-empire.net/diverse/places.html (Latin place names)

http://www.fallingrain.com/world/GM/a/C/h/ (German place names)

http://www.newadvent.org/cathen/01022a.htm (Ecclesiastical abbreviations)

http://www.novaroma.org/via_romana/numbers.html (Roman numerals)

http://palimpsest.stanford.edu/byform/mailing-lists/exlibris/1996/02/msg00222.html (Roman numerals in imprint dates)

http://www2.inetdirect.net/~charta/Roman_numerals.html (Roman numerals conversion guide)

http://www.rootsweb.com/~deusaa/latin.htm (Roman numerals written out)

http://www.library.yale.edu/cataloging/music/fraktur.htm (Fraktur chart)

Published Articles on the Collection

Acquisition of the collection is described in "Reading into the Past: Rare Books at Yale Law School," by Kaitlin Thomas, in Yale Law Report, v. 54:1 (winter 2007)

The same article appeared earlier in the Yale Daily News, Sept. 12, 2006.

Information about the Roman–Canon Law Collection is also reported in the Yale Law Library annual report, 2005/2006.

Conclusion

Processing the original 1641 volumes collection should be complete by the end of 2008.
The Yale Law Library has recently acquired an additional 850 volumes of early Germanic law and another 1800 volumes of Roman-Canon law. The processing policies we now have in place will continue for additional collections.

* Susan Karpuk is Catalog Librarian for Operations at Yale Law Library.

Medieval Legal Documents Wiki

An Old World Topic Weds a New World Technology

Hazel D. Lord*

I was interested to read in the Fall, 2007 issue of the LH & RB Newsletter that the SIS is planning a program, “Explore the New World of Legal History Research – Be Prepared to Wiki” for the AALL Annual Meeting. Although do not wish to preempt a program on such a fascinating topic, I have by coincidence just launched such a research oriented wiki, and thought it might be instructive to share how I accomplished it. This might whet everyone’s appetite to attend the program!

First, my wiki has the very grand title of English Medieval Legal Documents, AD 600 – AD 1535: A Compilation of Published Sources, and its URL is http://emld.usc.edu/tiki-index.php.

It did not begin life as a wiki.

The topic was first suggested to me several years ago by one of our law faculty, Professor Daniel Klerman, whose scholarly interest is English legal history, specifically of the medieval period. He indicated that there was a need for an up-to-date listing of published legal documents for the use of medieval scholars and their graduate students. This need had recently become more pressing, since so many new online sources were now becoming available.

As I first began exploring the possibilities of this project, I discovered that indeed there had been no comprehensive, scholarly bibliography on the topic since the works of W. Harold Maxwell1, Joseph H. Beale2, and Percy H. Winfield3 over fifty years ago. My intention was to create a standard bibliography to update these works, and for two years, as time allowed, I concentrated on gathering the sources, using the bibliographic tools familiar to all librarians.

As I identified relevant items, I compiled a database, using ProCite, Version 5 for Windows, which is an old, but trusty friend I have been using in its various versions, since 1989. (I’m sure more recent database programs such as RefWorks or EndNotes have developed more advanced features, but I opted to stay with the familiar!) As I entered each record, I created an abstract and assigned keywords to it. This latter task proved somewhat problematic, since, as I kept changing the concept of the outline for the finished bibliography, I had to go back and revise the keywords! It was not until I had a critical mass of sources that I was able to develop a cohesive outline, which reflected the basic structure of the English medieval legal system. In this I was assisted by my faculty mentor, who clarified for me the nature of the somewhat confusing and evolving medieval court system. The final arrangement broke the material into broad categories, such as case law, statutory law, administrative law, etc. Within these categories, wherever it seemed appropriate, the entries were arranged first by material type, such as plea rolls, court reports, calendars, etc., and then chronologically by regnal year.

When the information gathering phase was finally completed, I found that, what I had expected to be a bibliography of several hundred sources, had turned into a database of close to one thousand entries! At this point, I decided that the most useful format for such a database was not a standard bibliography, which would be basically frozen in time, but a wiki, which could easily be kept current.

How did I go about the conversion to a wiki?
First I approached our Library Director and Chief Information Officer, Albert Brecht, who was extremely supportive of my venturing into this new format. As a result, I have received incredible support from our IT department. A webmaster assigned part-time to the project, researched the various wiki shareware programs available and their functionality. We selected the open source program TikiWiki. This had all the browse and search capabilities we needed, plus it provided users the ability to register and make editorial changes to the files as they saw a need. However, the original creator retains the final word as to whether any changes will be made permanent.

Next, I converted my ProCite database into a word-file using the Chicago Manual of Style format. All my efforts in establishing keywords to fit the final form of my outline made it a simple matter to drop the records into the correct categories of the outline. I then had to map these categories to create a summary that the programmer could follow to create the structure of the wiki. Each separate set of data from my word-file had to be assigned a separate page and number. My wiki contains 554 separate pages! Once the basic structure of the wiki had been set up, it was a simple task for my student assistant to take the data from my word-file and populate the 554 wiki pages with text.

My final task, and one which has yet to be completed, is to link key topics in the wiki with relevant sources on the web. For example, I have created links from each of the monarchs of the period to relevant biographical information in Wikipedia, and I have added links for charters, such as the 1217 Charter of the Forest, to sites providing full translations of these charters. More importantly, links have been made to digitized files of original manuscripts, such as Robert Palmer’s joint project with the University of Houston and the National Archives (GB) to digitize plea rolls and other court records. This remarkable resource can be accessed at http://aalt.law.uh.edu/.

I have set myself the task of linking all one thousand records to WorldCat, using their OCLC numbers so that users anywhere in the world will be able to identify the local libraries that hold the item they need. As a matter of interest, I chose not to use ISBN’s for this linking because so many of the titles in my wiki were published before the ISBN numbering system had been established.

These linking capabilities are just one of the advantages to be found in converting a large bibliographical database like mine to a wiki. Another, as I mentioned earlier, is the ease of keeping it up-to-date. Possibly even more important is the open source aspect of it. A wiki, unlike a static text file, can become a truly collaborative resource, where scholars who have information to share are able to register as contributors, and add to the value of the resource. I also foresee it becoming an intermediary for linking to scanned files of the original manuscripts, so that scholars could view high definition images, rather than transliterations. This may in some cases obviate the need to visit the local archives themselves in order to carry out their research. This function may prove to be its greatest value. Furthermore I expect the wiki, now launched to the academic community, to take off in directions I have not even conceived of!

This is the first wiki undertaken by the U.S.C. Law School, and we are quite excited about it. I have been extremely fortunate to have the help of a webmaster, who volunteered that he had learned a lot from the project himself! I am assured though, that establishing the structure of a wiki is in fact a simple task for anyone with a basic knowledge of HTML. We are hoping that librarians, information specialists and medieval scholars around the world will embrace this new resource, making their own contributions as they learn of new publications or digitizing projects, so that it may become a truly collaborative ongoing effort.

NOTES

* Hazel D. Lord is Senior Law Librarian and Head of the Access Services Department at USC Gould School of Law Library.
Announcing the Morris L. Cohen Student Essay Contest

Karen Beck

It gives me great pleasure to announce a new student essay contest, jointly sponsored by the LHRB-SIS and Gale Cengage Learning. The purpose of the Morris L. Cohen Student Essay Contest is to encourage scholarship in the areas of legal history and rare book librarianship, and to expose students to AALL and law librarianship through their attendance at the Annual Meeting. Articles may be on any topic related to legal history or legal rare book librarianship. The essay contest is open to students attending accredited graduate programs in library science, law or history. We thought it would be fitting to name the contest in honor of Morris Cohen, one of the leading figures in law librarianship and legal history studies, and a friend and mentor to many of us in LHRB.

The contest will be an annual event, although the committee reserves the right not to award a prize each year. Each year that a prize is awarded, one winner will receive a monetary award from Gale Cengage Learning to cover certain travel expenses and attendance at the Annual Meeting, where he or she will have an opportunity to present the winning paper. The winning essay will be offered to the Editor of Law Library Journal for possible publication.

Although the contest is now “official,” it will take some time to get the procedures and details in place. We expect to unveil the contest at the 2008 Annual Meeting, and plan to solicit our first round of essays shortly thereafter. To ensure that the contest will get off to a good start, I have appointed a new Essay Contest Committee whose members will work out the remaining issues, administer the contest, and review the submitted essays. You will be hearing more from them in the months ahead. The committee members are:

Chair: Katherine Hedin, Curator of Rare Books and Special Collections, Associate Director for Cataloging, University of Minnesota Law Library (k-hedi@umn.edu)

Rob Mead, New Mexico State Law Librarian (libram@nmcourts.com)

Jennie C. Meade, Bibliographer and Rare Books Librarian, George Washington University, Jacob Burns Law Library (jmeade@law.gwu.edu)

Mark Podvia, Associate Law Librarian, Legal Research Professor and Archivist, Pennsylvania State University Dickinson School of Law Library (mwp3@dsl.psu.edu)
Sarah Yates, Cataloging Librarian, University of Minnesota Law Library (yates006@umn.edu)

Please join me in thanking the committee for being willing to bring this wonderful new program to fruition, and Gale Cengage Learning, especially Stephen Wasserstein, for its generous offer of support.

* Karen Beck, our LH&RB-LS Chair, is Curator of Rare Books and Collection Development Librarian at Boston College Law Library

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Program Review

**Taking Up the Gauntlet:**
The Duel in Southern Legal History

The duel, “the fighting of two persons one against the other, at an appointed time and place, upon a precedent quarrel,” was an ancient tradition brought from Europe to the American colonies. Prior to the 1804 duel between Aaron Burr and Alexander Hamilton, dueling was not restricted to the South. However, the public outcry following Hamilton’s death virtually eliminated the duel north of the Mason-Dixon line.

Southern duels were usually carried out by members of the aristocracy and were often tied to politics. Thus, it is no surprise that lawyers were involved in an extraordinary number of Southern duels. New Orleans was among the most active dueling locations.

The purpose of a duel was not usually to kill, but rather to preserve the honor of the participants. Nevertheless, at least one of the participants died in 10-15 per cent of duels. Among these was an 1806 duel between Andrew Jackson and Charles Dickinson, in which Dickinson was killed and Jackson suffered a serious wound.

Although dueling was illegal in most states, few participants were punished, with lawyers and trial judges tending to look the other way. However, the duel was not without opposition in the South. Evangelical Christians argued that dueling was immoral, while state appellate judges opposed dueling as a violation of the rule of law.

Dueling disappeared in the South following the Civil War. The war virtually eliminated the Southern aristocracy, and made many question the wisdom of unnecessary bloodshed.

Timothy S. Huebner, Associate Professor of History at Rhodes College, was not the scheduled speaker for this program. However, one would not have known this based on his excellent presentation. The author of *The Southern Judicial Tradition: State Judges and Sectional Distinctiveness, 1790-1890* and *The Taney Court: Justices, Rulings and Legacy*, he is well-versed in U.S. constitutional and legal history, as well as the history of the American South.

Jennie Meade, program coordinator and moderator, is to be commended for putting together an informative and most enjoyable session!

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

**NOTE**


**Editor’s Note:** Program reviews from the AALL Annual Meeting normally appear in the Fall issue of *LH&RB*. This one was held because of the length of the Fall issue.

When one does research in American legal history, he or she is immediately faced with the question of what precedents did the creators draw on in establishing that institution. He will come across terms like mayor's court or the court of Hustings and wonder where such terms originated. The only charter to a municipality issued by the colonial assemblies was Philadelphia, and the content of that charter suggests that it is based upon the governmental structure of the City of London. After the American Revolution, many features of the charters granted in England were incorporated in those granted to American cities, and for that reason, the legal history of the corporation of London has some interest for the American legal scholar.

Before getting into further details elicited in this scholarly book, a few general comments should be in order. When examining English legal history in the time period of this book, the reader is faced with legal concepts not familiar to the present lawyer. One of the obvious strengths of this book is the author's explanation of the terms and the legal concepts behind them without overburdening the readers with the arcane details, a feature which aids the reader a great deal. The text is based upon thorough research in original existing records of London and other boroughs in England. London was not the only municipality that had received a charter from the king during this period, but the author observes that it was the chief city in England for many reasons and hence this status makes its legal history of greater interest. The author does not neglect to review some developments in these other boroughs such as the establishment of the office of recorder, who had to be trained in the law after 1385. (p.240) The author traces the growth of professionalism of the recorder and its differentiation from other officers but the difficulty is how the office came into existence for it is apparent that the city governing body had often sought sound legal advice long before the formal establishment of this office. The one office that is not discussed in greater detail is that of the mayor who sat as judge in several of the courts in London. It appears in many of the early American cities that by tradition inherited from England, the mayor held a court without a specific provision in the charter of a municipal body directing him to do so.

The customs and privileges granted the city in their charters were murky for what legal concepts did they embrace and who enforced them is addressed by the author. One such source were the courts including those in London and the King's central courts. Several city officials compiled manuscripts recording these customs which are of great value. Chief among these liberties was the ability to alienate real property free of the restrictions imposed by law in the other parts of England. The first chapter surveys the extant records of the period covered by this book which enables the reader to appreciate the complexities of the many contradictory threads in this history. It is well known that London had its own series of courts but how independent of oversight by the King's courts through appeals or other forms of judicial review varied by the decades that are investigated. The author contends that these courts in London were not completely independent of the King's Courts. This issue is examined in the final chapter where the author argues that the city courts could not escape the influence of the common law as developed in the courts at Westminster. The Central Court at Westminster which attracted some of the judicial business of the citizens of London was the Court of Chancery which had a role in the interpretations of what constituted the privileges of the city. The author confines her
research to the major courts of the city and
not other judicial bodies including the private
courts known technically as sokes and Church
Courts. What complicates this survey is the
habit of the courts to sit in separate sessions
to consider different types of business initiated
before them.

In explaining the jurisdiction and some of the
working of the courts, it is necessary for the
author to get into the details of procedure.
Those who admire common law pleading will
enjoy reading these segments of the book and
especially the chapter on the administration of
these courts where procedure played a vital
role. It is impossible for any one to put a
definitive founding date for any of these
judicial bodies, although the Sheriff's Courts
seems to be the oldest and apparently existed
several centuries earlier before the city
received its first charter. A minor flaw of this
excellent history is the lack of a general
overview of the charters given by the Kings to
the city upon which arguments about the city
"liberties" were based.

Offered in this book is an account of the
establishment of the legal profession in the
city between 1300 and 1550. In discussion of
the history of the recorder and the common
serjeanty, it become clear that the aldermen of
the city government sought legal advice from
these two city official . As the author notes,
the records reports many occasions where
individuals appear for litigants but whether
they were personal substitutes or assisting in
some form in the litigation is not clear from
the records . Seeking legal advice and
representing a client are two different
functions for it is clear that the concept of
representation was slowly granted to certain
groups. Since the city had its own series of
courts, it became necessary that a group who
regularly appeared on the behalf of clients
should meet some qualification for as early as
1280 A.D. it was noted that some individuals
who offer their services as counters or advocates "who did not know how to speak
properly". (p.275) It was the Sheriff Court that
first required those seeking to represent
clients to be formally admitted which was
done in 1280 A.D. but no requirements for
admission are contained in this document. At
first, the clerks would appear for litigants
until this practice became prohibited. As earl
as 1244, the Kings justice in eyre prohibited
aldermen of the city could from rendering an
opinion in any case where they had been
consulted by the parties. (p.275)

In summary, this book is very instructive for
those who are interested in the early origins
of English law. This history has many themes
running through the text which require close
study. The authoress has made a
contribution to this early history by her
organization of the material she found during
the course of her research. A reading of this
books reveals that she has devoted many
years in study of these early records which
often requires many visitations in any effort
to extract any trend for it should be
understood that the clerks who created the
official record did not have any thought of
preparing a organized history by his entries.
Thus, structuring this multifarious material
into a structured account is an
accomplishment to be applauded.

—Erwin C. Surrency
Professor Emeritus, University
of Georgia

Rains, Bob. True Tales of Trying Times:
Legal Fables for Today. Includes a
Foreword by Justice J. Michael Eakin.
Carlisle, Pa.: Willow Crossing Press, c.
9780979368608. $19.95.

American writer and humorist Mark Twain
once noted that "[t]ruth is stranger than
fiction, but it is because fiction is obliged to
stick to possibilities; truth isn't." In True
Tales of Trying Times: Legal Fables for Today,
Professor Bob Rains upholds the validity of
Twain's observation; certainly when it comes
to the law, truth is often stranger than
fiction.

Professor Rains has selected 52 strange but
ture cases from American state and Federal
courts. A premier narrator—Mark Twain
would appreciate his sometimes biting
style—Professor Rains summarizes each case, then presents, in verse, the moral of the story. Each tale is accompanied by a delightful pen and ink drawing by the sister team of E.A. Jacobsen. Citations for the selected cases are provided at the end of the book “for those who, for some inexplicable reason, prefer to read the unvarnished truth.”

As an example of Professor Rains’ enchanting style, here is his tale of “The Enterprising Entrepreneur Who Didn’t Know the Difference,” otherwise known as City of Alburquerque v. Sachs, 92 P.3d 24 (N.M. App. 2004):

In the Great American Southwest, there was an enterprising entrepreneur named Renee who was the owner and operator of a tattoo and “body modification” establishment. One day, Renee published an advertisement offering free nipple piercing to any customer—male or female—on condition that the piercée have this delicate operation performed in the front window of the business. Knowing a good deal when they saw one, customers lined up. So did observers.

Unfortunately for Renee, one of those observers was a police officer. Being observant, he observed a female customer sitting in the store window exposing her frontal anatomy to the viewing public. Renee was busted.

A city ordinance forbade owners and operators of public places to permit or allow public nudity. The ordinance only applied to female breasts, not the male kind.

Renee reasoned that the ordinance violated equal rights by discriminating on account of sex. Based, no doubt, on years of study, the district court took judicial notice that the female breast is different from the male breast. Thus, the law can handle them differently.

Moral:

Justice, so it’s said, is blind;
But surely even blind folks find
Differences in people’s pecs

Associated with their sex.

This is most certainly not Coke or Blackstone, but not everything that we read should be Coke or Blackstone. The stories contained in True Tales of Trying Times: Legal Fables for Today are both enjoyable and valuable. As stated by Justice J. Michael Eakin in the Foreword, “Bob Rains gives us lessons worth learning, with fables as broad as the fruited plain, and as addictive as salted peanuts.”

—Mark Podvia
Associate Law Librarian and Archivist, The Dickinson School of Law of the Pennsylvania State University


Schramm has written an engaging work that cries out for more than its 192 pages. Indeed, when simply perusing the work, it becomes obvious quickly that Schramm has undertaken a quite large task with this volume. The attempt to draw law, literature, and theology at all is commendable. To have done so in a readable manner in such a short span even more so.

In the introduction, we come very early to what might be a stumbling block to drawing the three subjects together. Schramm focuses primarily on fiction instead of personal accounts of the Victorian justice system. It is extremely difficult to make anything other than interpretive judgments about fiction that can be easily rebutted by anecdotal evidence or another, opposite interpretation. Schramm is saved from the inevitable “So what?” that comes of unadulterated literary criticism by recognizing the value of what fiction qua
fiction tells us about judicial and theological thought of the day. Quoting Willkie Collins’ biography, we gain some context for what the author is trying to do: In a courtroom, “it came to [Collins] then...that a series of events in a novel would lend themselves to an exposition to this...one could impart to the reader that acceptance, that sense of belief, which was produced here by the succession of testimonies.”[p.2] Here we see the possibility of the suitability of literature to explore conceptions of testimony. What Schramm is endeavoring to do then is to study literature from the Victorian period and see how it converged or diverged with legal theory.

In Chapter 1, we are given an introduction to the primacy of eyewitness testimony in Victorian Britain proceedings, even to the point of prohibiting defense counsel. Schramm cites the assertion that there is a theological component to this: that of “plain speaking”[p.27] Therefore, being honest and truthful is the only defense one needs. There is no need for any intermediary like an attorney.

Chapter 2 brings us closer to the fringes of the area between literature in the law in Schramm’s analysis of the work of Fielding. Most instructive here is Schramm's discussion of Fielding’s attitude toward the law in his fiction, in what she calls Fielding’s tendency for his work to operate in the “extra-judicial” realm. As she says, “Fielding was aware that a benevolent writer could correct judicial mistakes in accordance with comic and providential conventions; as a lawyer he knew the gallows awaited the innocent and the guilty.”[p.79]

Chapter 3 heralds a dramatic shift in British culture’s view of eyewitness testimony from the aforementioned “plain speaking” of Chapter 1. With the passage of 1836 legislation, a “skilled advocate was necessary to ensure that conviction did not result from the erroneous assumption that the facts...could not lie. We have gone from eyewitness testimony being given the most weight to much less, even to the point of counsel representing people to clean up their stories.

Chapter 4 provides us with some idea for this sea change in opinion on the value of eyewitness testimony from the theological realm. Of particular interest is the discussion of society's new view of God; to wit, that of the “originator (rather than the author) of the Old and New Testaments.[p.151; footnote omitted]. With this new view of God, the Scriptures, which used to form the bedrock of the faith were called into question. How much more, then, the testimony of human beings.

For what seems to be an overly ambitious task, Schramm succeeds admirably with this effort. Legal scholars and those individuals with even a passing interest in law, literature, or theology will benefit from reading it.

—Tony Snyder
MLIS student, Kent State University


As Americans, we acknowledge that our democratic government is by definition, intended to be “government by the people” in which “supreme power is vested in the people and exercised by them directly or indirectly through a system of representation usually involving periodically held free elections.”[www.m-w.com]. Over time, the idea of political power resting in the hands of “the people” has changed, and it no longer holds the very literal meaning it did when our Constitution and government was being created prior to the American Revolution. Kramer prolifically illustrates the basis on which the U.S. government was formed and the role it was to play in the lives of Americans, focusing on the reality that “the people” were truly intended to be the governing body.

Kramer provides an in-depth look into where the United States was in terms of government
leading up to the Revolution, including the influence of the British monarch. The developers of the Constitution not only realized that it was a work in progress, but also that change to the document was inevitable. While the Constitution was developed by legislators, it was the responsibility of the citizens to challenge the laws, which they did in a number of very observable ways that Kramer refers to as “crowd action” — protesting, revolting, boycotting, and voting. Actions such as these played a pivotal role in forming the Constitution. This demonstrates just how much power was directly in the hands of the people, and Kramer argues, more power than that of the legislature. In addition to framing legislation, citizens helped to form law by being involved in the legal process. Juries determined the verdict of a case based on his interpretation of the law and understanding of the Constitution. At this time, there was much debate over the idea of judicial review. Advocates argued that it would serve as yet another outlet to voice the opinions and desires of the citizenry, while opponents felt it would only take power away from the people and put it in the hands of the judiciary. Judicial review was in fact a novel concept, and difficult for many to accept. Like the Constitution, judicial review was a work in progress, and determining the extent of judicial power, and how it would be exercised, had yet to be established.

Kramer details the acceptance of judicial review, albeit limited, in chapter four, largely based on the claim that “unconstitutional laws were void,” and the judiciary was to, like any other governmental body — including the citizenry — to take action on these unconstitutional laws. Along with judicial review came a serious examination of the branch’s limitations. Americans had recently fought to remove themselves from sovereign rule, and were cautious for any one governmental body to carry more than its fair share of weight. In the end, both state and federal government adopted forms of judicial review for the sake of upholding the Constitution, and ensuring its integrity. Kramer does an excellent job of giving the reader a chronological analysis of the origins of its origins, and how it fit into the Constitutional framework. He also discusses how this history affects present day law and popular opinion.

Kramer’s work is heavily researched, and extremely well documented, including eighty pages of notes organized by chapter. He cites numerous cases to illustrate key points, and provides detailed explanation. This book is highly informative, while being very readable.

—Lauren L. Vucic
Librarian, Pepper Hamilton LLP, Pittsburgh, PA

Purdon, Susan & Aladin Rahmetula, editors. A Woman’s Place: 100 Years of Queensland Women Lawyers. Brisbane, Australia: Supreme Court of Queensland Library, 2005). 833p. ISBN 0-9751230-4-1. $68.38

This outstanding commemorative volume on female members of the legal profession in Queensland was co-edited by a law librarian (Rahemtula) and an attorney (Purdon). The law librarian is the head of the Supreme Court of Queensland Library, and his co-editor was a long-time member of that library’s selection committee and a practicing family law attorney.1 This nicely bound 833 page work celebrates the centennial of Queensland’s Legal Practitioners Act of 1905, “An Act to Confer on Women the Right of Practising as Barristers, Solicitors, or Conveyancers.” At core, this compilation profiles 75 female members of Queensland’s legal profession in four sections, with 1) a historical summary, 2) individual biographies [the bulk of the book], 3) future predictions, and 4) statistics. It is similar in some ways to The 50 Most Influential Women in American Law,4 but over twice as long, with more historical synthesis, more focus on living individuals, and plenty of statistics for Australia’s north-eastern state.

The first of the book’s four sections contains an excellent [though brief] historical overview of “the admission of women to the legal
profession in Australia" (pp. 9-25). This same section includes a chapter on 23 women lawyers outside private practice, emphasizing "firsts" and other accomplishments in academia, community legal services, corporate, government, rural areas, services to Indigenous communities, and in professional legal organizations (pp. 27-96).

The second and largest section of the volume are 52 profiles of Queensland women lawyers, organized alphabetically, and written by fourteen contributors (pp. 97-629). Full page color photographs accompany most of these biographical vignettes, covering female legal practitioners who have made a difference in their state. Included here are a broad cross-section of individuals, everything from Queensland's 24th governor, many magistrates, judges and justices, a local law school dean, members of the state's Parliament, government attorneys, corporate lawyers, and the first Indigenous Australian appointed to a judicial position in Queensland. Forty-eight of the profiled women are alive (including some retirees), so the book serves as a collective oral history collection of sorts as well. Seeing and reading about these strong women gives the book a vibrant, dynamic feel and provides a depth to the narrative and statistics elsewhere.

A unique feature of the short third section of A Woman's Place are thirteen brief reflections by recent female law graduates in Queensland on the future of the legal profession (pp. 631-681). These fifty pages of hopes for the next twenty years vary greatly, but are uniform in their optimism for a strong and thriving future for women in the law.

The final of the four parts of the book are useful statistics on Queensland lawyers (pp. 685-784). Here are the names and dates of admission of all of Queensland's female barristers, solicitors, and legal practitioners from 1905 to 2005. There are also judicial appointments, prize and scholarship winners, and professional association officers, plus gender ratios in a wide variety of related areas. Rounding out the compilation are a table of statutes, table of cases, many footnotes in all sections of the book, plus a name index and a subject index. Reference is made to a bibliography on the same topic (p. 51, fn. 97): Terry Hutchinson, "Women in the Legal Profession in Australia: A Research Start," Australian Law Librarian, vol. 13, no. 2, pp. 23-35 (Autumn 2005).

A consistent strength throughout is the strong editing and research support undergirding the project. The writing style and voice throughout is upbeat, positive and celebratory, while also realistic about the challenges faced and continuing to face women lawyers in this area of Australia. The editors note that this is a selective rather than comprehensive history, needing further analysis and depth to cover this broad topic. At the same time, A Woman's Place is a dynamic, living historical record of value to current and prospective female attorneys in any country or state. It is a model for what could—and should—be done in other individual states in Australia, the United States, and elsewhere.

—Galen L. Fletcher
Faculty Services Librarian,
Howard W. Hunter Law
Library, Brigham Young
University

NOTES


Professor Biancalana has written a highly detailed, complex book on real property law in medieval England. It is written for a scholarly audience and is not an introductory work. Fee tails began during the reign of Henry II as a means “of avoiding the doctrines that enabled royal government to enforce common law rules of inheritance.” (p.1) Fee tail provided for a grant “to B and the heirs of his body, but if B should die without an heir of his body the land shall revert to A; or, it could take the form “to B and the heirs of his body, but if B should die without an heir of his body the land should remain to C.” (p.6)

Chapter 1 provides a history of fee tails from Henry's reign to the statute of De Donis (1285). As part of the chapter, he discusses how maritagium became recognized as only one version of fee tail. Chapter 2 deals with the history of fee tail down to the fifteenth century, emphasizing the alienation to every generation of the first grantee’s lineal heirs. Fee tails became perpetual during this period and could not be ended by mere passage of time. Chapter 3 deals with entails in maritagium in land changed to jointure settlements on marriage. Chapter 4 discusses how collateral warranties could bar entails before the invention of common recovery. Chapter 5 shows how common recovery developed from a writ of right to a writ of entry. Chapter 6, based on 334 transactions from 1440 to 1502 describes the origins to common recovery, the beginnings of the writ of entry after 1489, and the double voucher recovery system in the 1530s and afterwards. An appendix calendars the 334 transactions for which chapter 6 is based upon (pp.352-439. An extensive bibliography follows (pp. 440-453, and an index.

Professor Biancalana has written an important, highly detailed work on the common law of property in medieval England. His wide knowledge and use of both secondary and primary sources not used previously, will make this work the primary focal point of future research on this subject.

—Joel Fishman, Ph.D.
Asst. Director for Lawyer Services, Duquesne U. Center for Legal Information/Allegheny County Law Library

Legal History Update

Dan Blackaby

2008 is shaping up to be an interesting year for legal history articles and books, with topics ranging from the medieval origins of modern law and the moral foundations of American law in the nineteenth century to the history of modern intellectual property laws.


Law reviews and journals have also provided us with some very interesting reiterations of
legal lectures. James Robertson’s 2007 James McCormick Memorial Lecture lecture, printed in the Buffalo Law Review, asks the question “Quo Vadis, Habeas Corpus?" while the Journal of the Missouri Bar has provided us with a window into the past in more ways than one through their printing of Justice Hugo Black’s lecture to the annual banquet of the Missouri Bar in 1942, in which he discusses the landmark case of Erie Railroad Co. v. Thompkins.6

Another interesting topic touched upon in the beginning of the New Year is the legal history of intellectual property. Steven Wilf delves into this issue in a pragmatic and thorough manner in his article in the Winter 2008 issue of the Columbia Journal of Law and the Arts, “The Making of the Post-War Paradigm in American Intellectual Property Law.”

In addition to articles, at least two notable books on the subject have appeared in early 2008. James Brundage’s The Medieval Origins of the Legal Profession: Canonists, Civilians, and Courts will be released in April from The University of Chicago Press,7 and of particular interest to law librarians is a volume inspired by the contributions of Robert Berring, Legal Information and the Development of American Law, edited by Richard Danner and Frank Houdek, which features essays by, among others, Morris Cohen, Roy M. Mersky, and Berring himself. Readers may have caught this the first time around as the Spring 2007 of Law Library Journal.8

If you are looking to write a legal history article, then The American Society for Legal History is looking for your submission. They have opened their annual call for papers for presentation at their annual conference, which this year will be held in Ottawa, Ontario (http://www.h-net.msu.edu/~law/ASLH/aslh.htm).

If you know of any other articles, books, or items you would like to bring to your colleagues’ attention, or know of any conferences, calls for papers, or any other legal news, please let us know, and you’ll see it here!

NOTES


Exhibits

Amy Taylor

Karen Beck (Boston College Law Library) announces a new exhibit of recent rare book and manuscript acquisitions in its Daniel R.
Coquillette Rare Book Room. Many of them were purchased to strengthen the library's collection of works likely to have been owned and used by working English and American lawyers who lived during the fifteenth through nineteenth centuries, while others were purchased to enhance bequests of books and gifts of manuscripts donated to the library in recent years.

Highlights include a facsimile edition of the famous Domesday Book, classic English and American legal treatises, a very early copy of Massachusetts laws, works on slavery, and magnificent first American editions of Blackstone's Commentaries and Joseph Story's Commentaries on the Constitution. Also on exhibit is a potpourri of law books intended for students, a volume of Edward Coke's Reports in verse, a signed first edition of Truman Capote's In Cold Blood, a document appointing Daniel Webster a Justice of the Peace, and a handwritten record of cases heard by Justice of the Peace Solomon Keyes. Highlights of the exhibit, as well as a handout describing the entire exhibit, can be found here: http://www.bc.edu/schools/law/library/about/rarebook/exhibitions/ncwavc98.html. It will be on view through early June 2008. If you are in the area, please stop by and see it!

Jennie Meade (Georgetown Washington University, Jacob Burns Law Library) announces an exhibit entitled “Why Incunabula?” It will be mounted at the Jacob Burns Law Library from mid-May through August, 2008 in honor of the Law Library’s recent acquisition of its 100th incunable, Tractatusiste solennis de usuris. This treatise, an extremely rare work by lay canonist and politician Lorenzo Ridolfi, was printed in 1490, in the city of Pescia in Tuscany. It examines the issue of law and public debt, a sensitive and controversial issue in the city-states of Florence, Venice and Genoa, since the payment of interest to government creditors could be interpreted as a violation of the ban on usury, defined by law and theology as any charge for a loan. Ridolfi’s treatise was the most influential contribution to the debate on usury and the public debt, and became the standard canonical authority on the issue.

The exhibit will provide an overview of the incunabula collection, discuss why incunabula are important in law, legal history, and law collections, and explore why and how the Jacob Burns Law Library collects them. Displays will include items from the collection as well as facsimile reproductions.

Sarah Wilson (Stanford University, Robert Crown Law Library) announces an exhibit of beautiful quilted wall-hangings, all notable for their innovative use of traditional Celtic designs. These textiles were done by Sarah O’Farrell, 2L.

If you have exhibit information to share, please email me at amt54@law.georgetown.edu. Have a wonderful Spring!

—Amy Taylor

Recent Acquisitions

Anne Mar

Antiquarian Acquisitions at Georgetown Law Library

by Laura Bedard, Special Collections Librarian, E.B. Williams Law Library, Georgetown University Law Center

Hugo Grotius, De Jure Belli ac Pacis (1626)

This past summer, The Special Collections & Archives Department at Georgetown Law Library acquired the first pirated edition of Hugo Grotius’ De jure belii ac pacis, printed in Frankfurt in 1626 by the bookseller Wechsel. Printed in Paris in March 1625 by the French printer Nicholas Buon, the first edition of De jure had two limited printing runs and was published in time for the famous Frankfurt Book Fair at Easter. Grotius’ landmark treatise on the law of war and peace was very
popular, and copies of the first edition were quickly difficult to acquire, making it scarce even before the year was out. A second official edition was planned by the printer Buon, in Paris; he had the license for printing further editions for the next six years, and was working with Grotius on making some additions and corrections when Buon passed away, leaving Grotius without an authorized printer. Meanwhile, the well-known Frankfurt pirate printer Christian Wechel printed a new, "second" edition of *De jure* in 1626, in an octavo, without Grotius' knowledge or consent. Grotius was unaware of this unofficial, unauthorized edition until after it had circulated widely over Europe. Furious over this piracy, but unable to do much about it, and other editions that sprung up after 1625, Grotius worked hard on his corrections and additions, but the next official and authorized edition of *De jure* was not printed until 1631, by the printer/publisher William Blaeu in Amsterdam.

Over Grotius's protests, his landmark publication on the law of war and peace enjoyed such popularity that unofficial "pirate" editions sprung up everywhere over Europe, in Latin, French, German and English. With a few corrections to typographical and printing errors, and some changes in the format of the book, this Frankfurt unofficial second edition is practically identical to the first edition of 1625. Copies of the first edition are now for the most part in private institutions, and just about impossible to find. According to WorldCat, original copies of this 1626 pirated edition are owned by the University of Minnesota, Rutgers Law Library, George Washington Law Library, Harvard Law Library, Indiana University, Cincinnati Law Library, Brown University, Bibliotheek Van De Univ. Van Amsterdam, the Peace Palace Library and the Protestantse Theologische University Kampen, the last three all in the Netherlands.

**René Josué Valin, Nouveau commentaire sur l'ordonnance de la marine du mois d'Aout 1681 (2 volumes, 1766)**

This is an important commentary, still relevant today, especially in the area of marine jurisprudence. The *Ordonnance* of August 1681 covered all of France's commercial law in the late 17th century, but soon thereafter was adopted and followed by so many other nations, that parts are still in use in the world. Valin's commentary made the *Ordonnance* easier to understand and apply, though it was first published in 1760, almost a full century later. This copy is the second edition, in quarto, printed at La Rochelle by Jérôme Léger, and still in its original binding with some rebacking done. Valin's commentary is considered especially important in the late 18th early 19th century efforts to make the slave trade in England and America illegal. The *Ordonnance* of August 1681 is still considered authoritative in French and international tribunals. Valin's work on the *Ordonnance* is equally as important.

**Anthony Fitzherbert, La Nouvelle Natura Brevium (1567)**

In the fall, Georgetown Law Library acquired a 1567 edition of Anthony Fitzherbert's *New Natura Brevium*, published in London by Richard Tottell, and revised by William Rastell. Also an octavo with a very handsome woodcut title page, this copy of Fitzherbert's *New Natura* was heavily annotated by an early court hand. First published in 1534, this manual of procedure was considered authoritative, and went through numerous editions until the last one in 1794.

**George Washington University Law School's Jacob Burns Law Library acquires rare French law collection from the Association of the Bar of the City of New York**

by Jennie Meade, Curator of Special Collections, Jacob Burns Law Library, George Washington University Law School

The George Washington University Law School's Jacob Burns Law Library has acquired the important rare French law book collection of the Association of the Bar of the City of New York. This collection of 269 titles represented in nearly 600 volumes comprises the classic legal works of France from the 16th through the 19th centuries, and
augments the Jacob Burns Law Library's noted French Collection. Customary law, civil law, royal ordonnances, all elucidated by the celebrated French jurisconsults, are found in the New York City Bar Library's rich gathering of French legal historical works. The collection was transferred in late November 2007. The collection of 269 titles represented in nearly 600 volumes comprises the classic legal works of France from 16th through the 19th centuries, and augments the Jacob Burns Law Library's noted French Collection.

Before restoration work on the collection begins, the library will include titles from the Bar's collection in the Law Library Microform Consortium (LLMC) digital scanning project. LLMC is a nonprofit consortium of libraries dedicated to providing economical online access to legal materials. French civil law titles comprise the first group of books from GW to be digitized, and titles from the Bar will join this group and be assigned top priority in the scanning process. After scanning and restoration, the books will be accessible to researchers.

As Burns Law Library Director Scott Pagel noted, "The partnership between the Bar Association and the Burns Law Library will expand to an exceptional degree the availability of resources for scholars researching the history of French and European law."

The Jacob Burns Law Library Special Collections contains nearly 16,000 titles including French customary law, French legal codes, trials, materials documenting the conflict between church and state, and an extensive grouping of French Revolutionary materials.

For information about the books acquired from the Association of the Bar of the City of New York, and Special Collections at the Jacob Burns Law Library, please contact Jennie C. Meade, rare books librarian, at (202) 994-6857 or jmeade@law.gwu.edu.

Yale Law Library Acquires German Law Collection from the Association of the Bar of the City of New York

by Mike Widener, Rare Book Librarian, Lillian Goldman Law Library, Yale Law School

A major expansion of the Lillian Goldman Law Library's Rare Book Collection took place in September 2007, with the acquisition of 826 volumes of German law from the Association of the Bar of the City of New York (ABCNY). This acquisition follows the 2006 transfer of the ABCNY's 1,600-volume collection of Roman and canon law. Both these acquisitions were made possible with the generous support of the Oscar M. Reubhausen Fund at the Yale Law School. The 826 volumes represent 558 titles, dating from the 16th to 19th centuries, covering the period Professor James Q. Whitman called "the three centuries of tradition that bound together Roman law with the Holy Roman Empire" (The Legacy of Roman Law in the German Romantic Era, 1990, p. 233).

The two ABCNY collections complement each other in several ways. Over half the titles in the Roman-Canon Law Collection are by German authors, including 352 in German. A great many of the books in the German Law Collection deal with the history of Roman law and the application of Roman law to legal issues in German courts. In addition, both collections contain many books from the library of Konrad von Maurer (1823-1902), one of the 19th century's leading legal historians. The ABCNY acquired von Maurer's law library shortly after his death.

Most of the books in the German Law Collection date from the 18th century (330 titles in 509 volumes) and the 19th century (178 titles in 264 volumes). The oldest volume is the Teitsch Formular (1529), a popular formulory and student text for lawyers and notaries first published in 1522. The ABCNY's copy is the earliest edition in a U.S. library and all the editions are rare.

At least 34 titles in the ABCNY's German Law Collection are not found in U.S. libraries.
according to WorldCat, the world's largest database of library holdings.

The Lilian Goldman Law Library is presently assessing the collection's preservation needs and making arrangements to catalog it and make it accessible to researchers.

The acquisitions from the Association of the Bar of the City of New York are the result of the ABCNY's decision to focus on its primary mission of serving the practicing bar of New York City. In divesting itself of its superb historical collections, the ABCNY has been careful to find new homes for them in leading academic law libraries, such as Yale's, that are equipped to properly care for them and make them accessible to both its members and the broader research community.

Daniel R. Coquillette Donates Major
Francis Bacon Collection to the Boston
College Law Library

by Karen Beck, Curator of Rare Books,
Boston College Law Library

Daniel R. Coquillette, J. Donald Monan, S.J.
University Professor at BC Law, has completed
an ambitious two-part gift of rare books by
and about Sir Francis Bacon to the Boston
College Law Library. The collection of
approximately 80 titles is one of the largest
and finest collections of Bacon's works and
Baconiana (works about Bacon) in private
hands. The gift encompasses the entire range
of Bacon's writings, from legal writings to
literary essays to histories to scientific and
philosophical works to his letters and
speeches. As such, it will be of interest to
scholars in the fields of law, history,
philosophy, English, natural science and
political science.

Highlights from the gift will be exhibited in the
near future. For more information, visit:
http://www.bc.edu/schools/law/newsevent
s/2008-archive/11008.html

LH&RB MEMBER
NEWS
C. Frederick LeBaron

Jennie C. Meade, Curator of Special
Collections at the Jacob Burns Law Library of
The George Washington University, presented
a paper on February 21, 2008, at the
American Academy of Forensic Sciences
annual meeting in Washington, DC, entitled
"Strangulatus Pro Republica: How the
Assassination of President James Garfield
Resulted in Innovations in Medicine,
Technology and Law."

AALL News: Applications Sought for
Research Grants to be Awarded from the
AALL Research Fund, An Endowment
Established by LexisNexis®

The AALL Research Committee is accepting
applications through April 1, 2008 for research grants
from the AALL Research Fund, totaling up to $5,000.

The committee will award one or more grants to library
professionals who wish to conduct research that
supports the research/scholarly agenda of the profession
of librarianship. Established with a generous
endowment from LexisNexis in July 2000, the annual
grants fund small or large research projects that create,
disseminate or use legal and law-related information.
Projects may range from the historical (indexes,
legislative histories, bibliographies, biographies, or
directories) to the theoretical (trends in cataloging,
publishing, or new service models in libraries) to the
practical (implementation models for collection,
personnel, or infrastructure management).

The AALL Research Agenda offers suggestions for
possible research projects that cover a wide segment of
professional interest, including the profession of law
librarianship, law library patrons, law library services,
legal research and bibliography, legal information
resources, and law library facilities. However, projects
are not limited to those described in the agenda, and the
committee will consider all applications and research
projects. To review AALL's Research Agenda, please
visit www.aallnet.org/committee/research/agenda.asp.

To apply for the grants, all applicants must provide resumes and statements of their qualifications for carrying out their projects. The applications must demonstrate experience with research projects and an understanding of the dissemination and use of legal and law-related information. Priority will be given to practicing law librarians and AALL members working individually or in partnership with other information professionals. The grant application and complete guidelines are available at: http://www.aallnet.org/about/grant_application.asp

The submission deadline for applications is April 1, 2008. Grants will be awarded and announced in May. Allocation of the research grants will be at the sole discretion of the AALL Research Committee.

For more information about the grants, please contact Susan Lerdal, chair of the AALL Research Committee, at susan.lerdal@drake.edu

Remember to Vote in the LH&RB-SIS Election

The first-ever online election of the Legal History & Rare Books SIS began on March 7, 2008! Members will elect a Secretary/Treasurer to serve from 2008/2009 to 2009/2010.

The Elections Committee is delighted to introduce this year’s candidate: Dan Blackaby, Reference & Cataloging Librarian at Western State University College of Law Library. Dan grew up in the Show-Me State of Missouri, near the birthplace of Mark Twain, before heading off to Texas for college. After receiving a B.A. in History in 1995 from the University of Houston, he went on to receive a J.D. from Michigan State University in 2000 and his MLIS from San Jose State University in 2006. He has worked for employers as varied as the State of Montana, Santa Clara County, and Microsoft, before taking up his current position at Western State University College of Law in Fullerton, California. He is an avid collector of jazz CDs and a fervent baseball fan.

Voting is open from March 7 through March 31. The online election URL is https://vote.aallnet.org/sis-lhrb/index.asp. Before the election begins you will receive an e-mail with your login information.

If you have any questions about the election, please feel free to contact Sarah Yates at yates006@umn.edu. Happy voting!