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

by

Joel Fishman, Ph.D.

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

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

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

Greetings from your new Chair! It's with excitement (and, okay, a little trepidation) that I begin my official stint with the Legal History and Rare Books Special Interest Section. For being such a small SIS, LHRB is about as active and on-the-ball as anything going in AALL and it's a genuine honor to be this involved in it. I know that our new Vice-Chair, Amy Taylor, and I hope to continue its successful journey into the future.

However, before we head into what's coming up I'd like to say a few words about what just ended. On behalf of the entire LHRB-SIS, I want to say a very heartfelt "thank you" to our outgoing Chair, Karen Beck, for two years of dedication, vision, and just plain hard work. The past couple of years have seen some big accomplishments – the first winner of the Morris L. Cohen Student Essay Contest, the inaugural issue of Unbound, the publication of our new SIS brochure, the list goes on and on. And although none of that would've happened without the incredible effort and talent of the individuals involved in those projects (we know who you are!), I'm not sure they would've happened as speedily and graciously without Karen as our steward. So, thank you, Karen – and now go and rest up!

The rest of us can't rest, though, because we must continue to face forward, into our future. And what a bright future it is. I was frankly stunned by the major presence we had at this year's Annual Meeting in D.C. I think the only phrase that can describe our events is "fabulously well-attended", from the capacity audiences at our programs to our wonderful reception and even our late-Sunday business meeting (more than 20+ people, an astounding number for a small, "niche" SIS such as ours).

Why is this? There are probably lots of reasons, some I haven't even considered, but I believe one of the main reasons is that we consistently come up with unique and interesting programs, articles, ideas, and events. Librarians are inherently a curious and intelligent bunch, always thirsting for new knowledge about the world around us, whether past, present, or future. And I think that's where the goals and work of the LHRB comes in – our exploration of the world behind us satisfies that thirst, and thus provides a great benefit and service to all the members of AALL.

So remember, although we may be a small group we've got a lot of heart and soul and energy (and brains!), and we're always going to keep moving forward. Which, again, is why I'm so privileged and thrilled to be a part of our group.

Now, let's get going ...

-Stacy Etheredge

Editor's Corner

According to the masthead, this is the Fall issue of LH&RB, and according to the calendar that designation is still correct (barely). The weather, however, says otherwise. Our current daytime temperature here in Carlisle, Pennsylvania, is 33 degrees, and I am sure that is tropical compared to some places. Brrrrrrrr!

In any event, we have succeeded in getting another issue out on time. I would like to thank everyone who contributed to this issue. The publication of LH&RB would not be possible without the hard work of our many editors and contributors. Please keep the articles, book reviews, member news, announcements and other material coming! The deadline for the next issue of LH&RB is March 8th.

I would like to echo our new Chair's words regarding our outgoing Chair, Karen Beck. It has been a pleasure working with her–thank you, Karen! I now look forward to working with our new Chair, Stacy Etheredge.

-Mark Podvia
Hale Continued from Page 1

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

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

Hale is also known for his religious writings, writing as early as 1638 a work later published as A Discourse of the Knowledge of God and of Ourselves (1688). Hale was friends with Archbishop Ussher during the Cromwellian decade (Ussher posited the beginning of the world in 4004 B.C. based on counting biblical years) and disliked the Restoration religious settlement that restored Anglican authority in the church and state. He was a friend of Richard Baxter, a moderate Presbyterian minister, and he helped draft the Comprehension Bill of 1668 which tried to mitigate the Church of England’s persecution of religion dissenters. The measure failed but he showed his moderation again by resisting pressure to imprison the Quaker George Fox. Among his religious works were Contemplations Moral and Divine (1676) and The Primitive Origination of Mankind (1677). Cromartie recognizes his religious change from a Calvinist to Arminian position over the decades and his beliefs in a “broadly ethical religion,” no doubt brought about through his relationships with divines John Wilkins, Richard Barrow, and the latitudinarians John Tillotson and Edward Stillingfleet.

The following is a bibliography of his works providing the first publication of each title, several of which went through multiple editions. One can check the online English Short Title Catalogue (1473 to 1800), at http://ebo.chadwyck.com/home. Another good source, for instance, is Yale Law Library’s online catalog. His manuscripts found their way into various hands and so his works were published posthumously in the eighteenth century in various editions and have been published up to the end of the twentieth century.

I. Books by Hale


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


Hale, Matthew and Bartholomew Shower. De Successionibus Apud Anglos, Or, A Treatise of
Hereditary Descents, Shewing the Rise, Progress and Successive Alterations Thereof and Also the Laws of Descent as They are Now In Use: With a Scheme of Pedigrees and the Degrees Of Parentage and Consanguinity. London: Printed and are to be sold by Robert Battersby ¼, 1700.


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

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


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


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


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

Hale, Matthew. A Tryal of Witches at the Assizes heid at bury St. Edmonds for the County of Suffolk on the Tenth Day of March, 1664 [i.e 1665] before Sir Matthew Hale, Kt., then Lord Chief Baron of His Majesties Court of Exchequer / taken by a person then attending the court. London: Printed for William Shrewsbbery ¼, 1682.

II. Bibliography of Books and Articles on Hale

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


Articles


Berman, Harold J. Law and Belief in Three Revolutions, 18 Valparaiso University Law Review, 18 no. 3 (Spring 1984): 569-629. [Edward A. Seegers Lectures, Nov. 8-10, 1983].


Kitching, C. J. “Probate During the Civil War and Interregnum; 1 : The Survival of the Prerogative Court in the 1640s; 2 : The Court for Probate, 1653-1660”. Journal of the


Yale, D. E. C. “A View of the Admiralty

Notes


This Column Is Published

by

Sarah Yates

Catalogers have a reputation for obsessing thinking about odd things. Now, I'm not saying the stereotype is true across the board, but I have found myself concerned with some things, even in my non-work, life that the vast majority of people would never even think of. Case in point: I used to write a little newsletter about my kid and send it to relatives, in addition to posting it online. The odd part is that I thought it should have an ISSN, so I applied to the Library of Congress for one. Actually I applied for two, because everyone knows that the print and electronic versions of a serial can't share an ISSN.

My little newsletter is obviously a published work—"obviously" because, according to electronic resource cataloging rules, everything on the web is considered published. But what about the photo book I just had printed by Shutterfly? The book is on the web, technically, but you can only see it if I send you an e-mail invitation or if you manage to guess my user name and password. (And if you care enough to try, just e-mail me and I'll send you an invitation.) I only had one copy printed, but I or anyone else with an invitation or my user name and password could order more at any time, until Shutterfly goes out of business or changes its policies. So I decided to include only a date, not any "publication" information, on the title page. I didn't credit the printer, but don't worry: Shutterfly makes sure its name appears prominently.

I do realize, of course, that it doesn't matter whether my photo book is a published work or not. It doesn't even matter for cataloging purposes, as no one is likely ever to catalog this title. But it was an all-too-familiar dilemma for me: I have often struggled to determine whether to treat certain works as published or unpublished.

Few works in most law libraries pose any difficulty to the cataloger deciding whether they are published or not. If the title page has the Thomson/West logo, for example, the question never even arises. Even most books predating Thomson/West by a couple centuries are obviously published, often with lengthy statements of by and for whom. Early print manuscripts are similarly easy to identify, the tell-tale sign generally being the handwriting.

Where there sometimes is a question is not with general or even rare books so much as with archives and special collections. And, at least in my own work, the question is not so much with print materials as with works in other formats. I'll give you two examples that I deal with regularly, one from archives and one from special collections.

My library has been collecting and cataloging videorecordings of law school lectures for a few years now. Actually, we've been collecting them since probably about the time the law school acquired its first video recording equipment, but we've only been cataloging them for a couple years. In addition to lectures there are DVDs of some miscellaneous law school events: the annual student musical, for example, and my personal favorite, only because someone other than me had to catalog it: a videotape of a cocktail party at the law school. The camera was just set up in a corner and left running throughout the reception. (Surprisingly, this video is rarely requested.)

As for special collections, we happen to have a largeish and expanding collection of materials related to Clarence Darrow. The collection started with some correspondence and has grown to include not just all manner of print materials by and about him, but also videorecordings having something to do with him, sound recording of radio programs about him...and, especially, photographs. The video- and audiorecordings have been straightforward so far, but the photographs have given me a few headaches.

As most catalogers do, I turn to the rules when I'm in need of guidance. Unfortunately, the rules don't have much guidance to offer on this question. AACR2 has this to say in rule 1.4C3: "Do not record a place of publication, distribution, etc., for unpublished items (e.g., manuscripts, art originals, naturally occurring objects that have not been packaged for commercial distribution, unedited or unpublished film or video materials, stock shots, nonprocessed
sound recordings, unpublished electronic resources). Do not record a place of publication, distribution, etc., for unpublished collections (including those containing published items but not published as collections). Do not give s.l. in either case." And rule 1.4D8 instructs, using nearly identical language, not to record the name of the publisher of unpublished items (which should be self-evident). Manuscripts, art originals, and objects are defined in AACR2's glossary, but unpublished, sadly, is not.

So which of the categories of unpublished items might the materials in my examples fall under? Obviously, neither DVDs nor photographs are manuscripts, naturally occurring objects, nonprocessed sound recordings, or unpublished electronic resources. That leaves "art originals," "unedited or unpublished film or video materials," and "stock shots" as possibilities.

Unlike photographs, film and video materials—specifically, "unedited or unpublished film or video materials"—are specifically mentioned in the list of unpublished items, so let's consider the lecture DVDs first.

First, are they unedited? Mostly they consist of a continuous shot of the person(s) introducing the speaker and then the speaker speaking. So if edit means "to assemble (as a moving picture or tape recording) by cutting and rearranging," then yes, these are unedited. But wait! That isn't AACR2's definition of edit; it's (one of) Merriam-Webster's. AACR2 doesn't have a definition of unedited, edited, or even edit. It does, however, have a definition of editor: "One who prepares for publication an item not his or her own..." The DVDs I deal with have been prepared by someone whose own work the lectures are not, though only minimally. The preparation is usually limited to recording and producing the DVD itself, adding a title screen, and printing labels for the disc and container. But since we still don't have a definition of publish (or published or unpublished), how can we say whether the DVDs are prepared for publication?

And even if we decide that the DVDs are "edited," the problem remains unresolved.

Remember: the list mentions "unedited or unpublished film or video materials" (emphasis added). In other words, we can consider even edited videorecordings unpublished if they're...unpublished. Thanks a lot, AACR2.

Now we move to the even less clear case of the photographs. Art originals are defined in the glossary, so I look there first to see if photographs are included. I don't even have to read the full definition, "An original two- or three-dimensional work of art (other than an art print (q.v.) or a photograph),..." to see that they are not. "Stock shots" might apply to photographs—there is no definition in the glossary that limits this term to video footage. However, it is not difficult to realize, even without an AACR2 definition, that a photo of Clarence Darrow on a ship with the Massie family, for example, is not a stock shot.

So if my Darrow photos aren't "art originals" and they aren't "stock shots", they must not be "unpublished"—right? Not necessarily. Look again at that list in 1.4C8 of items that are unpublished. Notice that before the list are the letters e.g., not i.e. In other words, these are just examples; the list is not necessarily exhaustive.

There are more cataloging rules than just AACR2, of course. What about DCRM(B)? Well, the B stands for books, so scratch DCRM(B) in this case. The LCRIs? They contain nothing to elaborate on what little we've already learned from AACR2. How about RDA? After all, if RDA can offer definitive guidelines, it's just a matter of waiting until RDA becomes the law of the land.

RDA does have some guidelines on how to describe unpublished items. For example, under the rules for recording the name of the publisher, rule 2.8.4.7 tells us: "If the resource is in an unpublished form (e.g., a manuscript, a painting, a sculpture, a locally made recording), record nothing in the name of publisher's sub-element." This list of examples does help me with my locally made DVDs, but not so much with my photographs. And again, this non-exhaustive list of examples is the closest I could find to a real rule about when to consider an item
unpublished.

In the meantime, I’m left to my own devices to determine whether these darn DVDs and photos are published or unpublished. It’s not that I don’t trust my own devices. It’s just that if I’m deciding on my own, and every other cataloger is deciding on his or her own, there’s very little chance of consistency. In fact, in looking through some of the records in my own catalog, I notice that even the materials I personally cataloged haven’t always been treated consistently. Ulp! I clearly need to make a decision and stick to it.

Well, I turned to Merriam-Webster for a definition of edit, so why not look there for publish? Here are the complete definitions of the transitive sense of publish:

1 a : to make generally known b : to make public announcement of

2 a : to disseminate to the public b : to produce or release for distribution; specifically : print c : to issue the work of (an author)

It’s definition number 2 that applies to my situation. We can ignore the “print” part, since publishing and printing are distinct activities as far as the cataloging rules are concerned. More specifically, my rule of thumb—now that I have one—for determining publication status is whether an item was disseminated to the public, as in definition 2a.

The status of the law school DVDs is not terribly difficult to determine given this definition. Most of them are not even available outside the law school, much less disseminated to the public. The few that are for sale or otherwise “disseminated” (DVDs of the law student musical, for example) are treated as published, and everything else as unpublished.

Some, but not all, of the Darrow photographs are similarly easy. For example, we have twelve photos of Ossian Sweet’s Detroit house, taken by an amateur photographer specifically for us. These are clearly unpublished.

But then we also have AP and other news service photographs, with copyright notices on the back. Some of these were probably published in newspapers shortly after being taken, but I have no way of knowing whether a particular photo appeared in one or more newspapers or not. Here’s how I get around this question: even if a copy of the photograph was published, the actual photo—printed on photographic paper—surely was not. Even putting aside the question of format, the photo would have been published, if at all, not in its own right, but as a proportionately insignificant part of a larger work, i.e., the newspaper. Verdict: unpublished.

Of course, there’s another possible twist. We have ordered some of our photographs from other repositories, such as the Chicago Historical Society. In these cases our copy has been printed from the other repository’s negative. Presumably the historical society would make a print for anyone who requested and paid for this service, so the photo is available to the public. But is availability the same as dissemination? I don’t think so. This situation is very similar to my personal photo book question. The photo book is printable on demand, but I do not consider it published. Likewise, I do not consider these photos published.

There. I wish I could say I’ve answered all the questions you never knew you had about published versus unpublished items, but I’m sure I haven’t. I just hope that if you ever face this type of dilemma, I’ve given you some factors to take into consideration.

Sarah Yates is Cataloging Librarian at the University of Minnesota Law Library.
“Standing on the Shoulders of Giants” – A Report on the RBMS Preconference, Seas of Change: Navigating the Cultural and Institutional Contexts of Special Collections
Charlottesville, Virginia – June 17-20, 2009
Kasia Solon

In her program review of last year’s RBMS Preconference, Karen Beck observed that the occasion’s unspoken theme was “This is our time.” 14 LH&RB 10 (2008). With 2009 being the Preconference’s 50th anniversary, the choice of Charlottesville a return to where it was first held, and the coinciding retirement of Terry Belanger from UVa’s Rare Book School, this year’s unofficial theme emerged as “Standing on the shoulders of giants.”

RBMS is shorthand for what is really quite a mouthful, the American Library Association’s Association of College & Research Libraries’ Rare Books and Manuscripts Section. Because ALA is so huge and RBMS has enough programming to offer its own multi-day affair, the tradition developed for RBMS to hold a preconference that precedes ALA’s own annual meeting. This year’s evocation of the original 1959 Preconference did not end with simply returning to the original location of Charlottesville. At the opening plenary session in UVa’s Newcomb Ballroom, attendees learned that the first Preconference had gotten underway exactly fifty years ago to the day, in exactly the same room. For those wondering just what had been discussed then and there, or at any other Preconference for that matter, RBMS had kindly provided everyone with a "Commemorative Keepsake Volume" of all the Preconference programs over the last fifty years.

Beginning with that opening plenary then and scattered throughout the meeting were reminiscences of that first Preconference and the ensuing decades. David H. Stam, University Librarian Emeritus of Syracuse University, recalled the mystery of receiving an invitation to the first Preconference from a higher up—who never spoke to him—only to learn that the event had been on the verge of cancellation if attendance did not increase. Katharine Kyes Leab, Editor of American Book Prices Current, gave an entertaining talk about the book dealers’ trade and the colorful characters who have populated that world. Ellen S. Dunlap, President of the American Antiquarian Society, provided an overview of the efforts of freestanding libraries such as hers to join forces over the years. Even John T. Casteen, President of the University of Virginia, spoke of learning to love rare materials while working as an undergraduate in UVa’s Special Collections. Such a university president must be a rarity in and of himself. (Casteen himself is retiring next year in 2010, which taken together with Belanger’s retirement, must be the end of an era for rare books at UVa.)

The combination of all these speakers made me realize all the different interest groups comprised within RBMS, beyond the overarching academic label of ACRL. Yet this Preconference also brought home how far RBMS still has to go when it comes to the MS portion of its name. When the archivist Francis X. Blouin, Director of the Bentley Historical Library at the University of Michigan, gave his talk on working with different research communities, he remarked that this was the first RBMS Preconference he had attended. He was not alone among archivists in saying this. Clearly there is a gap to bridge between rare book librarians and archivists, between RBMS and the Society of American Archivists.

I, of course, was attending RBMS to bridge my own gap between being a rare books librarian and a law librarian with a background in reference. This is the first Preconference I have had the good fortune to attend and I wondered about who else exactly was at it. Fortunately, the Preconference is small enough that RBMS provides a list of attendees with some contact information. (Including another Kasia I eventually met, with a different pronunciation by way of Greece, not Poland—never too late to learn something new.) I was gratified to see that I was not the only one at RBMS from a law library. I did not have a chance to run into all of these assorted compatriots, but I was able to meet one of them, Alison White, when she gave a tour of UVa’s Law Library.
This tour was one of the highlights of the conference for me as I have been in Charlottesville before, but had been unable to visit the law library for various reasons. UVa's law school with its law library is at a bit of a remove from the main campus, which allows it an enviable amount of space. I think all of us on the tour got a kick out of a humorous painting of Thomas Jefferson as a young law student; he is casually seated reading a Constitutional law casebook in the immediately identifiable red Aspen covers. There is no escaping Thomas Jefferson at UVa and it was interesting to hear about Jefferson's particular interest in selecting legal titles when founding the school in the 1820s and the school's current efforts to reconstruct that collection. (For more on Special Collections at UVa's law library, visit: http://www.law.virginia.edu/html/library/site/specialcollections.htm.) Law did manage to creep into the larger Preconference as well in the form of Siva Vaidyanathan, a professor at UVa's law school, who gave a talk on the "googlization of everything." It was he who explained that professors at UVa are traditionally addressed as Mr. or Ms. so as not to outrank Mr. Jefferson.

In smaller seminars and discussions sessions, the Preconference also afforded more practical and forward looking fare. I had to laugh when I attended a discussion session on Web 2.0 as the moderators opened with the remarks that if your work has a blog committee, you are doing it wrong and if you have to wait for IT, you are doing it wrong. My own workplace had just had a meeting the week before to announce the formation of what is essentially a Web 2.0 committee. The consensus that emerged from discussion was that experimentation with Web 2.0 technologies is part of the appeal and that one can figure out the details as one goes along with a project. To the common criticism that accurate measures of the effectiveness of Web 2.0 tools are lacking, participants commented that traditional measurements have never been that good anyway and that generally quality not quantity contacts are generated through these efforts.

I found a dialogue on adding content to Wikipedia particularly intriguing, as people had had varying experiences. One institution had fleshed out content for different entries in the spirit of public service, only to have it removed on the grounds that it was self-promotion. Another librarian recounted that he had not encountered any such roadblocks because it had not occurred to him to do so in an official capacity anyway. There was some back and forth on whether twitter was really all that useful, but after listening to this session I could see that it was worth at least investigating, possibly to connect with others in special collections if not patrons. The one Web 2.0 technology that everyone could agree on not liking was Second Life.

As I work at a place with a Friends of the law library program, I was also eager to attend a seminar on Friends' organizations. Some of the takeaway points were that just because library staff can get stuff done on their own, does not mean they should. Asking the Friends to do things is a way to keep members engaged. And while having large events like bringing in big name speakers seems most impressive, sometimes doing smaller, targeted events where people can actually handle objects carry a more lasting impact and can be fruitful in increasing membership. If special collections happens to be just one department competing for funds within a Friends organization for a library overall, the tangible quality of rare books may be a distinct advantage compared to colleagues who say ask for funds for a database. The various other activities that people mentioned for Friends' groups included book appraisals, discounts on a library shop, tours, a book group, and organizing a book sale.

Finally, there were a couple of plenary sessions of general interest. Sarah E. Thomas, the Bodley's Librarian and Director of Oxford University, regaled the audience with her transition from running Cornell's library system to being the first American to run the libraries at Oxford University in England. And then there were the speakers Tod Lippy, Editor of Esopus, and Eli Horowitz, Publisher of McSweeney's Quarterly Concern, who both publish journals. I found it refreshing and heartening that they both consciously printed material that they felt to be suited to print, not simply to keep the medium alive, and were also determined to charge a more
reasonable price than limited edition artistic efforts.

In case anyone is interested in attending RBMS or hosting a tour for attendees, next year's Preconference will be in Philadelphia from Tuesday, June 22 through Friday, June 25, 2010. This city is a natural choice of venue as it is home to America's first lending library, the Library Company of Philadelphia, founded in 1731 by Benjamin Franklin. For more information on the Preconference, visit http://www.rbms.info/conferences/.

**RBMS Preconference Schedule, June 2009 (bracketed sessions ran concurrently)**

**Wednesday, June 17** (sessions at the Omni Hotel, Main Street, Charlottesville)
- ABA Booksellers’ Showcase
- Workshop: Descriptive Cataloging of Rare Materials (Serials)
- Workshop: Copyright Fundamentals for Special Collections Librarians
- Tour: Monticello and International Center for Jefferson Studies Library
- Tour: Monticello and Barboursville Winery
- Workshop: Beyond Show and Tell: Teaching Strategies for Special Collections Professionals
- Workshop: Web 2.0 Basics for Special Collections Librarians
- Conference Orientation and Introduction to RBMS
- Welcome Reception
- New Members Social

**Thursday, June 18** (sessions at UVa)
- Plenary I: The History of the Preconference; Academic Research Universities
- Plenary II: Working with Our Research Communities; Professional Organizations and Library Education
- Seminar A: Taking the “Shifting Gears” Challenge
- Seminar B: Can an Effective Transfer Policy Be Achieved? Guidelines on the Selection and Transfer of Materials from General to Special Collections
- Seminar C: Partners in Processing; Students, Volunteers and Paraprofessionals in the Library
- Tour: UVa Albert and Shirley Small Special Collections Library
- Tour: UVa Law School Special Collections
- Tour: UVa Health Sciences Special Collections
- [Discussion Session 1: Working with Our Parent Organizations, with Examples Drawn from the History of RBMS]

**Session 2: Making Preconferences Ready for the Next 50 Years**
- Session 3: Many Voices at the Table: Diversity in Special Collections
- Session 4: Web 2.0 and Special Collections
- Session 5: Issues Faced by Small Libraries
- Tour: UVa Alderman Library
- Tour: UVa Digitization Services
- Tour: UVa Rotunda and Academical Village
- Friday, June 19 (sessions at the Omni Hotel)
- Plenary III: The Boston 1980 RBMS Preconference and the Global History of the Book; Collecting, Auctions and the Book Trade; Publishing and the Public Consumption of Print Materials
- Plenary IV: The Legal and Policy of the Global Information Ecosystem; Preservation and Large-Scale Digitization
- Seminar D: Mold Outbreak! Dealing with Disaster
- Seminar E: Islands in the Bitstream: Special Collections at the Confluence of Information, Authentication and Technology
- Seminar F: Finding Common Ground: CJIR Postdoctoral Fellows on Scholarly Engagement with Hidden Special Collections and Archives
- Tour: Charlottesville Albemarle Historical Society and Downtown Walking Tour
- [Short Papers Session 1: Special Collections at Risk; Beyond Reformatting: Special Collections and Digital Humanities at the Crossroads; Special Collections Cataloging in the 21st-Century Academic Library]
- Short Papers Session 2: Building Community While Building a Library: Community Partnerships and the Creation of the Mayne A. Clayton Library and Museum; Putting the Pieces Together: Curating the Slocum Puzzle Collection at Indiana University's Lilly Library; Dada v. Dada: Changes in the Use of Library Materials in Museum Exhibitions
- Short Papers Session 3: Digitization, Inspiration and the Next Generation of Collecting; Seamless Marketing: The Impact of the Web on Special Collections Patronage, a Case Study from the Carmelitana Collection; Special Collections’ Golden Age
- Saturday, June 20 (sessions at the Omni Hotel)
- Seminar G: Public Services and "Un-Hidden Collections": What We Know and What We Need to Know

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Seminar H: Citing Bibliographies in Rare Book Cataloging
Seminar I: The Library and its Friends: Negotiating Change for the 21st Century
[Plenary V: Independent Research Libraries; Academic Library Systems, Domestic and International]

Kasia Solon is Rare Books Librarian at the Jacob Burns Law Library, The George Washington University Law School.

Special Thanks from the Education Committee

Laura Ray

Many kudos and thanks to Karen Beck, Stacy Etheredge, Jennie Meade, and Etheldra Scoggin for their coordinating and moderating work on our 2009 AALL Annual Meeting formal programs – Lincoln, the Law, and Libraries and “Digging” Legal History: Using Exhumation and Innovative Forensic Science Techniques to Verify Historical Legal Events – as well as our Roundtable and Reception. Everyone thoroughly enjoyed themselves at our Reception at the George Washington University Jacob Burns Law Library, where we had the privilege of viewing materials from their 15th-19th centuries French Collection, as well as recognizing J. Benjamin Yousey-Hindes, our first Morris Cohen Student Essay Contest winner. Mr. Yousey-Hindes presented a condensed version of his paper, A Case Study of Canon Law in the Age of the ‘Quinque compilationes antiquae’: The Trial for Balaruc, at our Roundtable. Washington DC was certainly the place to be for LHRB SIS members this summer!

2010 LH&R Programs Announced

Laura Ray

The Legal History & Rare Books SIS will be sponsoring two formal programs at the 2010 AALL Annual Meeting in Denver, Colorado, as well as our annual Roundtable and Reception. On Sunday, July 11th, 3:00-4:00 pm, Kurt Metzmeier, Associate Director of the University of Louisville Louis D. Brandeis School of Law Library, will present Mapping Uncharted Terrains: Introducing Archival Best Practices to the Management of Law School, Court and Law Firm Historical Collections. Answering the needs of many librarians taking up archival responsibilities without formal training, this program will introduce the rudiments of archival best practices – giving practical advice on what is an archival collection, what to keep, and how to describe and provide access to archival materials – as well as provide concrete solutions for managing non-archival materials often lumped into institutional collections.

On Monday, July 12th, 10:45am-11:45am, with the Computer Services SIS, our SIS will be co-sponsoring Beyond Wayback: Preserving Born-Digital Ephemera. This program will discuss challenges and opportunities associated with preserving, and building collections of, digital ephemera. Speakers will include Richard Leiter, Director of the University of Nebraska-Lincoln Schmid Law Library, Professor of Law, and host of the Law Librarian Blog Talk Radio Show; Jean-Gabriel Bankier, President of Berkeley Electronic Press; and Martha Anderson, Director of Program Management at the Library of Congress Office of Strategic Initiatives National Digital Information Infrastructure and Preservation Program.

Our LHRB SIS Roundtable will be on Monday, July 12th, 12:00noon-1:15pm, and feature the 2010 winner of our Morris Cohen Student Essay Contest. Our Business Meeting will be Sunday, July 11th, 5:30pm-6:30pm, followed by our Reception 7:30pm-9:30pm. Stay tuned to future Newsletters, and check our Web site, for details on the Roundtable and Reception. Congratulations to all the program planners and coordinators for continuing our tradition of excellence in LHRB SIS programming at the AALL Annual Meeting.

Laura Ray is Educational Programing Librarian at Cleveland State University.
LH&RB 2009 Program Reviews

Mark Podvia

Program B-5: Lincoln, the Law, and Libraries

Sunday, July 26, 2009: 3-4 pm

In 2009, Americans celebrated the 200th anniversary of the birth of the 16th President of the United States, Abraham Lincoln. Usually recognized as the nation’s greatest President, Lincoln’s shadow looms large in American history. The Legal History and Rare Books SIS marked the occasion with a program that examined major collections of Lincoln’s manuscripts and legal documents and the tools for accessing them.

Dr. John R. Sellers, Lincoln Curator at the Library of Congress, opened the program with a look at the Abraham Lincoln Papers at the Library of Congress. He explained that at the time of Lincoln’s death the Federal government did not lay claim to Presidential papers, and we are fortunate that so many of Lincoln’s papers survived. Lincoln’s son, Robert Todd Lincoln, had the collection organized under the direction of Justice David Davis, with the assistance of Lincoln’s former secretaries, John Nicolay and John Hay. In 1923, Robert Todd Lincoln deeded the collection to the Library of Congress, and it was opened to the public in 1947. Additional Lincoln material has since been added. The collection, the Abraham Lincoln Papers at the Library of Congress, is available online via the Library of Congress website.

The second speaker was Daniel W. Stowell, Director of The Papers of Abraham Lincoln, a project of the Illinois Historic Preservation Agency and the Abraham Lincoln Presidential Library and Museum. This project has provided access to Lincoln’s legal materials in both print and electronic formats. Lincoln practiced law for more than 20 years, rising from a junior partner to one of the leading practitioners in Illinois. The Papers of Abraham Lincoln has made his legal papers readily available to researchers.

Both speakers offered interesting presentations; that of Dr. Sellers was particularly informative. Stacy Etheredge and Etheldra G. Scoggins, Co-coordinators and co-moderators, are to be commended for putting together an excellent program.

With Malice Toward None: The Abraham Lincoln Bicentennial Exhibition, will be on tour through 2011.

Program J-1: “Digging” Legal History: Using Exhumation and Innovative Forensic Science Techniques to Verify Historical Legal Events

Tuesday July 28, 2:30-3:15 pm

The “Kingfish,” Huey Long, was shot in the Louisiana State Capitol at Baton Rouge on September 8, 1935. He died two days later. Long bodyguards killed the suspected assassin, Dr. Carl Weiss, firing numerous bullets into his body. However, the question has remained throughout the years: Was Weiss really the shooter?

Dr. James E. Starrs, the David B. Weaver Research Professor of Law and a Professor of Forensic Science at the George Washington University, used the example of the Weiss case to explain the application of forensic science in the courtroom. Professor Starrs is a leading expert in modern forensics, and he has investigated the deaths of both well-known historical figures as well as those of the not-so-well-known.

Physical evidence can provide Professors Starrs and his teams of volunteers with an accurate picture of what actually occurred. For example, after examining the remains of Dr. Weiss and other physical evidence, Professor Starrs determined that there were “grave and persistent doubts” that Weiss shot Huey Long.

Professor Starrs’ presentation was masterful, a perfect blend of detailed fact and humor, that held the audience in rapt attention. Coordinator and Moderator Jennie Meade deserves great thanks for bringing us such an excellent program.

As you might hope from a book about television shows, this book is a good read. Actors James Woods and Sam Waterston discuss their respective characters, Sebastian Stark in *Shark* and Jack McCoy in *Law & Order*, in the forewords. The introduction provides a nice historical overview of lawyers on television. The book's thirty-four chapters are divided into seven parts by the editor. The first part discusses the general genre of dramatic lawyer series. Parts two to five cover the foundations of "Law on Television," the "American Criminal Justice System," "Criminal Justice-British Shows," and the "Civil Justice System" by devoting individual chapters to specific shows. "Daytime Television Judges" are the focus of part six with "Lawyers on Non-Law TV Shows" as the topic of part seven.

The particular television lawyer shows included cover not only the staples that no self-respecting book on the subject would avoid, but a few American and foreign shows that American viewers might have missed. In addition to classic and popular series (*Perry Mason, The Defenders, Matlock, L.A. Law, Law & Order, JAG, Judging Amy, Boston Legal*, etc.), some less successful series are discussed for their unique approaches (*Murder One, Shark, girls club*). Not all of the shows included were television series. One chapter discusses the Hallmark Hall of Fame presentation of *Gideon's Trumpet*. The lawyers appearing in non-lawyer shows are a quirky lot ranging from Oliver Douglas in *Green Acres* and Judge Bone in *Picket Fences* to Lionel Hutz in the *Simpsons*. There is a whole play-by-play on the lawyers in *Seinfeld* and the house full of lawyers in *The West Wing* is reviewed.

Then there is the *Judge Judy* phenomena. Two essays examine the risks inherent in having the public perception of judges and the justice system depend on the images of judges presented on these daytime court television shows. The essays are remarkably
compact given the relative importance of the issues raised. Another essay presents the German version of this television judge phenomena and how it both differs from its American cousins and how reactions to it are similar. The section concludes strangely with a Brazilian reality television show that focused on legal situations, but which seems out of place in this book about lawyers on television. The show does not appear to have been court based. The show’s host was not a judge or lawyer and apparently had little regard for the actual laws of Brazil. Perhaps the discussion of this show in the essay could have benefited from more background which would have clarified why the essay was included in this collection.

To me, the best parts of the book dealt with the foreign shows or the foreign perspective on American shows. The British perspective on Ben Matlock’s “down home” character both contains some interesting observations concerning the transatlantic cultural gaps and insights on how a show or its characters could be understood or misunderstood. The chapters discussing British shows includes the well known Rumpole of the Bailey and less well known shows like Blind Justice and Judge John Deed. These chapters provide interesting commentary on the differences between British and American legal practice and ethics. Similarly, the French series Avocats et Associés, the Spanish series Anillos de oro, and even the discussion of the German court television shows, open intriguing windows into different legal systems and cultures.

With a variety of authors collaborating on a subject, the style and, to a much lesser extent, the quality of the writing and content naturally varies. This does not present any real difficulties for the reader. The biggest difficulty facing the reader is the overall weakness of, and in many instances absence of, supporting citations. The descriptions of storylines and ethical conflicts, explanations of foreign legal systems or foreigners’ views of American lawyers, quotes from shows, and discussions of the social impact of the lawyer as seen on television are fascinating. The vast majority of the authors of the essays are academics; but there is seldom information provided about the supporting sources. Regrettably, when the preface has better support than many of the essays, I am left to assume that the scholarly market was not the main target of this book. Nonetheless, the essays are interesting, sometimes entertaining, and occasionally thought provoking, even without the supporting citations.

Lucinda Harrison-Cox
Associate Law Librarian
Roger Williams University School of Law Library, Bristol, RI


Louis D. Brandeis is a well-known social reformer during the Progressive era and a noted justice of the United States Supreme Court. Brandeis’s role as social reformer gained him the respect of President Woodrow Wilson, who considered him for Attorney-General of the United States, but Brandeis was eventually rejected as too controversial for a cabinet position. Shortly after taking the presidency in 1913, Wilson began to look at Wall Street to reform its operations. Large banks in 1913 supported reform and Wilson created the Federal Reserve system in a 1913 act. Although Brandeis did not hold any positions within the government, Wilson called on him several times to advise him in determining policy. Brandeis responded in part by writing nine articles for Harper’s Weekly magazine between November 22, 1913 and January 1914. The articles concentrated on investment bankers and how they used the public’s money through deposits to their banks to purchase and control other business firms. The articles were collected along with one additional article and published by the Frederick A Stokes Company. Norman Hapgood, Brandeis’s friend, wrote the introduction
praising Brandeis for his work on the Pinchot-Ballinger Teapot Scandal and reform of the banks and railroads. Brandeis testified before Congress about his ideas expressed in the book, but his ideas were unable to put into legislation. Although not a major publication, Brandeis went on to continue his reform activities and publish other books on business-related subjects, e.g., *Business—A Profession* (1914).

Bridge Publishing Group’s reprinting of this early work by Brandeis shows the reformer’s expression of ideas concerning business during the early years of Wilson’s presidency. Its reprint almost a century later, during a similar time of distrust of Wall Street, reminds people that history has a way of repeating itself. Although the book received mixed reviews and Brandeis eventually wrote the publication “seemed pretty stupid now,” in a letter to his wife (Lewis J. Paper, *Brandeis*.188 (1983)), the work provides a useful addition to the literature on Brandeis as a progressive reformer in the years before becoming a justice.

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


In early twentieth century, bar associations across the country attempted to encourage the growth of legal education and stricter admissions policy to the bar with the assistance of the state courts who regulated admission to the state bar. However, the increasing amount of immigrants, women, and general public who desiring to become lawyers through the attendance of night schools or by “reading for the bar” through working in a law office meant that there needed a wide range of legal textbooks available for introduction to the law. In the first decade of the twentieth century, there were 40 evening law schools as well as corresponding law schools. Among the various sets that came into existence at that time is Chadman’s *Home Law School Series* of twelve volumes, the titles of which are given above. As the reader can see, these volumes, each comprising around 200 to 300 pages, were written for a basic introduction to law based on the topics generally given on a state’s bar exam. Chadman, in his introduction to volume 1, states that: “The Home Law School Series aims to perform the same office for the American student as the [Blackstone’s] Commentaries did for the English student of law.” (p.6) Chadman listed three advantages to those who used these books:

“first, to be enabled to read the fundamentals of the science understandable; second, to have furnished to him or designated what he should read; and third, to have such a reading collected into reasonable compass.” (p.16). These short volumes contain broad overviews of the law, written in a plain style to easily read and understand, along with footnotes to statutes and caselaw for sources. The *University of Pennsylvania Law Review* (1907) dismissed the work on criminal law in a single paragraph which is
understandable from the law school's perspective, but it is interesting that they even recognized it for a review. Chadman's work, however, had some success and later reprinted in 1912. Having not seen the work, the Cyclopedia of Law (1908) maybe a reprint under a different title or at least is based on the earlier work. It was published by the American Correspondence School of Law (1908). The Home series was also included in the 19th Century Legal Treatise Collection in microfiche published by Research Publications and appears in the West's/Gale's Making of Modern Law digital collection. He was also the author of a Concise Dictionary (1908) for general readership and the White House Handbook of Oratory.

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

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But many claim that Kennedy’s jurisprudence is inconsistent, or lacks a fully developed philosophical framework. In his recent book Justice Kennedy’s Jurisprudence: The Full and Necessary Meaning of Liberty, Frank Colucci argues that these detractors are wrong. Instead, according to Colucci, Kennedy’s jurisprudence is governed by a coherent moral view of the Constitution and the importance of human dignity that is not unlike the legal theories advocated by Ronald Dworkin or former Justice William J. Brennan. Kennedy rejects originalism, and seeks to “remove doubt that liberty is America’s central constitutional value”—an approach that shares similarities with Randy Barnett’s “presumption of liberty.”

To prove his point, Colucci traces Justice Kennedy’s overarching concern for individual liberty through his jurisprudence by analyzing opinions that Kennedy wrote while serving on the Ninth Circuit to today. Based on this comprehensive and thoughtful study, Colucci makes a strong case that liberty interests and individualism drive Kennedy’s jurisprudence. He does not, however, fully resolve contradictions within the jurisprudence, or explain what justifies placing liberty at the heart of constitutional doctrine.


Over the years, Justice Anthony M. Kennedy has voted with the majority more than any of his colleagues. He has used separate concurring opinions to shape the contours of majority opinions to his liking. His votes, which cannot easily be categorized as liberal or conservative, have profoundly influenced the development of constitutional law. Understanding Kennedy’s efforts to expand the power of the judiciary, while restraining its perceived excesses is crucial to understanding the modern Court.

Early in the book, Colucci describes how concern for protecting liberty and neutral individualism drive Kennedy’s jurisprudence making him currently the justice on the Court most likely to strike restrictive state actions, particularly in the area of free speech. To date, Kennedy has voted with the majority on every decision that has found a statute violates free speech. Congruent with his concern for liberty and individual rights, Kennedy argues that free speech expands beyond core, constitutionally-protected political speech to all expressions, stating: “at the heart of the First Amendment is the principle that each person should decide for himself or herself the ideas and beliefs deserving of expression, consideration and allegiance.” Even commercial speech gets protection under Kennedy’s libertarian approach: “the speaker and the audience,
not the government, assess the value of the information presented.”

Similarly, Kennedy has argued that homosexuals must have the liberty “to decide how to conduct their private lives.” Although Kennedy rejects privacy as the basis for his decision, he finds that liberty demands freedom of action and decision within private spheres of life. According to the justice, making homosexual relationships illegal demeans the individuals involved, “just as it would demean a married couple were it to be said marriage is simply about the right to have sexual intercourse.”

Kennedy’s approach to establishment cases lends further support to Colucci’s argument that Kennedy seeks to find and apply “the full and necessary meaning of liberty.” In Allegheny County v. Greater Pittsburgh ACLU, Kennedy voted to allow two religious displays to remain in place when the majority only upheld one. He argued that establishment must be understood within its historical context and that there is no constitutional imperative that the government must ignore all things religious—absent some element of coercion there can be no establishment of religion. Scalia joined Kennedy’s opinion. According to Colucci, however, it is liberty and individual human dignity that guided Kennedy, not originalism.

To support this position, Colucci demonstrates how Kennedy’s coercion test for establishment leads to different results in other cases. In Lee v. Weisman, which involved prayer at a school graduation ceremony, Kennedy moved beyond O’Connor’s endorsement test, and Scalia’s view that coercion must be based in law and punishment in order to constitute establishment. Instead, he took an almost environmental approach, finding that, in Lee, the risk of coercion was heightened because the plaintiff was a student attending a school event that was, to some extent, compulsory. At the event, Kennedy argued, peer pressure made it likely that the student felt compelled to pray although it went against his conscience. Because the school prayer infringed on the student’s conscience and liberty to worship as he pleased, Kennedy found coercion sufficient to support finding an unconstitutional establishment.

As compelling as Colucci’s argument is, it does not fully explain certain inconsistencies in Kennedy’s jurisprudence, although it does begin to define them. These inconsistencies exist both in Kennedy’s approach to individual liberties and to the importance of structural separation of powers to preserving liberty. In each case, an argument could be made that the inconsistencies reflect tensions between Kennedy’s personal values or beliefs and an unbiased application of the law — Colucci points to the influence of Catholic doctrine on the language used by Kennedy in his abortion decisions, and describes Kennedy’s difficulty reconciling his personal views with the central holding of Roe v. Wade.

In the context of individual liberties, Kennedy argues that it is constitutionally impermissible to classify groups according to immutable traits because to do is to injure those persons’ dignity as individuals—even in instances where the government’s intention is positive. Therefore, in Kennedy’s view, remedial legislation is only permissible if necessary as a “last resort.” Racial preferences, for example, must be supported by specific showings of racism, not general allegations. Otherwise, the liberty interests of individuals inside and outside of the classified group are impinged and racial tensions potentially fanned.

In his abortion jurisprudence, however, Kennedy adopts language rooted in traditional, Catholic views of womanhood and motherhood. He rests his opinions on paternalistic generalizations about women, their emotional states, and the need to secure for them guidance so that they will not make a decision they might regret later. He questions whether doctors will really serve the best interests of women seeking abortions. In doing so, Kennedy does not make any specific showing that women need guidance. Instead, in Hodgeson v. Minnesota he argues in favor of a two parent notification requirement while admitting that his opinion was based on an
ideal, not reality: “the prospect of two
parents, perhaps even one parent, sustaining
her with support that is compassionate and
committed is an illusion.” His concern about
doctors is also unsupported by any specific
showing—and questionable given his
willingness to leave euthanasia under the
Controlled Substances Act to doctors, as
opposed to government officials.

Colucci carefully crafts a sensitive portrait of
Kennedy and his crisis of conscience over
abortion. The justice finds abortion
personally distasteful. As a result, he has
struggled with the issue, and, although he
has not sought to overturn the decision,
significantly narrowed the scope of Roe v.
Wade’s holding. Liberty is muted in
Kennedy’s abortion jurisprudence, and
Colucci does not reconcile this discrepancy.
Instead, he leaves open the question whether
all people have equal liberty interests under
Kennedy’s approach.

Similarly, Kennedy appears to find capital
punishment repugnant, but is loath to
overturn precedent. Instead, he has sought
to narrow the application of the law. He
argues that to execute a person for a crime
committed before that person turns eighteen
violates the eighth amendment. In doing so,
Kennedy looks to “evolving standards of
human decency” and to the undeveloped
personality of an adolescent. “[T]he State
cannot extinguish [an adolescent criminal’s]
life and his potential to attain a mature
understanding of his own humanity.” With
respect to child molesters, Kennedy again
looks to evolving traditions and the necessity
of offering a criminal the chance to
comprehend the nature of his crime. But he
does not argue against capital punishment
itself. As with abortion, Kennedy asserts that
the situation is exceptional — that taking a
life is a unique crime.

Alto criticizes this position, and questions
whether all people who have taken a life are
truly more reprehensible than all child
molesters. It is a valid criticism that cuts two
ways—allowing capital punishment for
molesters because they may, in some
instances, be worse than a murderer or
abolishing capital punishment because, in
some instances, a criminal who has not
murdered may be more abhorrent than one
who has. Either way, Kennedy has taken
an inconsistent position that discounts the
liberty interests of murderers and their
victims, and instead reflects the tension
between his personal discomfort with
executions and respect for precedent.

The last part of Colucci’s book deals with
Kennedy’s thinking on separation of powers
and federalism. Kennedy is a strong
supporter of the federalist system. He is
also a staunch advocate of keeping both the
executive branch and the legislative branch
in their respective corners. Unlike justices
who advocate solely for state’s rights,
Kennedy favors maintaining the respective
strengths of the federal government and the
states because maintaining this structure
of checks and balances is necessary to
preserving a system of government capable
of protecting individual liberties.

Ironically, in light of his positions on
federalism, Kennedy is willing to expand the
powers of the judiciary—most notably in
Bush v. Gore. The Court did not have to
hear Bush v. Gore. It lacked a sound bases
for asserting that the recount could not be
completed on time. Moreover, the Court
chose to handle Bush v. Gore as an isolated
event outside its normal jurisprudence.
Arguably, Kennedy helped to stop a recount
that would have vindicated each individual
voter’s liberty interest in voting and
participating in a democratic process. After
reading Colucci’s account, one may still
question whether Kennedy believes
expanding the judiciary’s power serves
liberty, or serves some other purpose.

One can see Kennedy’s willingness to
increase the Court’s power in other areas as
well. For example, he has argued that the
presumption in favor of legislation’s
constitutionality should be abandoned
because there is no evidence that legislators
in fact seek to generate constitutional laws.
The congruence between Kennedy’s
unwillingness to defer to the people’s
democratically elected representatives and
desire to protect individual liberties is not
immediately apparent. Colucci argues that
unlike O’Connor, who played a central role
in the Court’s decision making because of
her restraint, Kennedy has become the deciding vote, so to speak, "because Kennedy's broad theory of liberty justifies judicial intervention in areas favored by both liberal and conservative justices, his assertive judicial role puts him at the center of a divided Court." This premise assumes that courts are better than democratic processes at protecting liberty over time. Whether this is true is not finally answered by Colucci.

Justice Kennedy's Jurisprudence: the Full and Necessary Meaning of Liberty is fascinating. It provides the reader with insight into the mind and legal philosophy of a man who is pivotal to the development of U.S. constitutional law. Although Colucci never explores in detail why Kennedy bases his jurisprudence on liberty, and not justice or some other constitutionally supported ideal, his argument that Kennedy's jurisprudence reflects a unified theory about constitutional law that centers on liberty is convincing. This book allows the reader to appreciate fully Kennedy's commitment to developing a moral theory of law that respects the individual interests it was designed to protect.

The topic overwhelms the 186 pages dedicated to it, however, and at times the book suffers from the same limitations of a casebook in a first year constitutional law class in its effort to cover all of the relevant territory. If Colucci had expanded some of his discussion points, particularly those on how Kennedy has failed to adhere fully to his own doctrine, it would have made this valuable book a more satisfying read. But one cannot complain too much, Colucci's analysis is interesting and well written. If it fails to answer all of one's questions, it does a wonderful job of provoking them. This is a book that is well worth reading.

Kathryn Gordon
Reference Librarian
University of Detroit Mercy School of Law Library


The legal institutions of Pennsylvania are among the oldest and most distinguished in the nation. The state's leading city, Philadelphia, served as the U.S. Supreme Court's first home and some of America's earliest legal publishers arose on its streets and alleyways. To the west, the rising town of Pittsburgh located near the headwaters of the Ohio River itself played no small role in the nation's history. Through it and surrounding Allegheny County passed the rule of law and its mortal instruments—lawyers, law books and pamphlet editions of constitutions, laws, and state documents—on their way to the expanding American frontier. This reviewer's own Kentucky was founded in part by men and women of western Pennsylvania who floated rafts down the Ohio. Some brought law books purchased in Pittsburgh, including copies of the 1790 state constitution that served as a model for Kentucky's own charter. Even as the west matured, Pittsburgh remained a steady supplier of law books to western lawyers and booksellers.

It is this rich soil of history that Joel Fishman, a regular contributor to this newsletter, has toiled for years. His latest work, Judges of Allegheny County, is a biographical directory of the judiciary of this region from 1788 to 2008. The over two hundred judges that have served or currently serve on the Allegheny County Court of Common Pleas are profiled. The first edition of this book was published in 1988 to celebrate the bicentennial of the Court. Fishman has completely re-worked that material, adding detail to the original entries while including entries for the judges who joined the court in the two decades after that publication. The original book was based on biographical files of the Allegheny County Bar Association as well as the Pennsylvania Manual, newspapers, and general biographical encyclopedias. In this edition, the earlier entries have been
enlarged with "several hundreds of citations to the weekly Pittsburgh Legal Journal published between the 1870s to 1963." Newer biographical sources like the American National Biography and histories have also been consulted. In addition, the work has benefited from access to an in-house database of judicial appointments, inductions and obituaries.

The work is organized in an alphabetical format, making it more useful for research and reference than for casual reading. Nonetheless, thumbing through it one is struck by the ethnic diversity of the Allegheny County bench as it evolved over the decades, as well as the varied careers of its inhabitants. There is Jean Baptiste Charles Lucas, who studied and practiced law in France before immigrating to Pittsburgh in the 1790s. After serving on the Allegheny courts, Lucas was elected to the U.S. Congress, and later held federal judgeships in the Louisiana Territory. Also represented is Josiah Cohen, who was born in Plymouth, England but learned law in Pennsylvania before becoming the first Jewish judge appointed (and later elected) to the Allegheny courts. Like many of the judges profiled, Cohen's charitable work was almost as extensive as his legal activities and he played a leading role in the establishment of many of the institutions that would become staples of Jewish civic life. Notable among modern entries is Dwayne D. Woodruff, a former defensive back for the University of Louisville and the Pittsburgh Steelers football teams. Woodruff worked on his Duquesne law degree while still covering receivers from the Steelers secondary, and recently left a successful law practice to join the Court of Common Pleas.

The work is an excellent contribution to the library of Pennsylvania legal history and will be a boon to researchers of the American bench and bar. Because of the extensive references, each entry not only gives a sketch of the accomplishments of its subject but also is a starting point to further research. Nonetheless, there are a few quibbles. The heading for each name entry could have been set off more distinctly, either with hanging margins or a different font. This problem is somewhat mitigated by the table of entries at the beginning of the book. Also, as I suspect this work will be popular with genealogists and local historians who are less sophisticated about the law than its immediate target audience of lawyers, a brief history of the Pennsylvania court system might have been helpful for the more general reader. Despite these minor issues, Judges of Allegheny County is a useful addition to the reference shelf of Pennsylvania lawyers and historians.

Kurt X. Metzmeier
Associate Librarian
Louis D. Brandeis School of Law
University of Louisville


This is a great, short, inexpensive legal history book. When I co-taught a legal history course at my law school a few years ago, the 1989 first edition of this text was out of print, as was the 1985 second edition of Lawrence M. Friedman's A History of American Law. I wanted to teach the class with a synthesis approach, rather than the pieces-of-primary-source-material approach used in casebooks and documentary history textbooks. So, my fellow instructor and I selected a standard U.S. history text, and emphasized the legal parts of American society, culture, institutions, conflicts and compromises over the past two to four hundred years. Since law shows up in U.S. history so frequently, this was not too difficult a task.

I tell this story in the context of this book review because the authors of The Magic Mirror tell the whole of American history in such a way that readers not familiar or even interested in law will come away with an excellent overview and synthesis of so much of our past. This book could be used
beneficially as an undergraduate or even a graduate level textbook on U.S. history. It does a fine job of covering business, the economy, social trends, intellectual endeavors, wars, and industrialization. It brings together in a cogent whole the breadth of the colonial era, our country’s nation-building struggle, the Industrial Revolution’s changes, the Civil War’s impact, the world wars, the Great Depression, the Cold War, and other modern issues. Updated and expanded from the prior edition are many portions on women’s issues, slavery, immigration, ethnic and social concerns, and aspects of law and life by America’s non-elites. This legal history truly reflects, like a “magic mirror, ... not only our own lives, but the lives of all men [or women] that have been,” to use Justice Oliver Wendell Holmes, Jr.’s phrase (p. 1).

What I like most about this book is the breadth, synthesis, and fine writing. I would recommend this book over many other legal history articles and texts primarily for the way it is written (as well as its relatively low cost). If every law or history student could learn to write law or history as well as the authors of this book do, more Americans would want to read law and history. For example, in a discussion of the courts being unable to enforce business in the early 1800s, the authors observe “But if the weapons available to jurists had proven to be inadequate to the task, it was not because they had been unwilling to use them.” (p. 119). Later, in talking about the Antebellum nationalization of law, the book explains that “Legislators at all levels ... succeeded ... in building a legal bridge over which the rural and agricultural nation of the era before the Civil War crossed into the urban and industrial twentieth century.” (p. 230). Then, while talking about the expanding government during the New Deal, the book explains that “Felix Frankfurter, a close advisor to Roosevelt, sent a steady stream of his [law] students, known as ‘Happy Hot Dogs’ to Washington, where they were stuffed into the New Deal agencies.” (p. 297).

The Magic Mirror takes less than 400 pages of text to tell its story, followed by endnotes, a glossary, a very useful bibliographical essay (pp. 419-436), a table of cases, and an index.

The many strengths of the first edition are retained and improved upon. (The first edition’s author, Kermit L. Hall, passed away in 2006, and this second edition is the final product of Mr. Hall and his co-author’s work from 1999 to 2006.) I’ve found this text to be a useful starting point and summary when researching American laws in earlier decades and centuries. The public and constitutional highlights are here, but do not overshadow the analysis of trends in state, private and local law. The authors are careful not to expand the definition of law so far that it loses any meaning, while giving attention to the many institutions, people and movements impacted by and impacting the law. As the sub-title says, the book covers Law in American History, rather than “American Law in History” or even “American Legal History.” I recommend this book for all U.S. law libraries, and hope that it will be read by as many law librarians, law students and lawyers as possible. It will be one of the most enjoyable required reading assignments ever for most of them.

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

Notes


Interim Dean and Professor Frank Houdek is known throughout the American Association of Law Libraries as a former president (1996-97), editor of the *Law Library Journal* (1994-2007), and an historian of the Association through publication of books, pamphlets, articles, and even a CD-ROM. As a professional colleague and friend, and not completely unbiased, this short review is important for our colleagues to know works written on the history of our professional organization receive recognition even if somewhat self-serving.

Houdek understands that the story of the hundred-year old association has not been completely written: “That is, while it highlights, on a year-to-year basis, many of the key moments and individuals that, taken together, comprise AALL’s first century, the story is told in snippets and brief descriptions rather than in an analytical narrative that critically examines the issues and events which played a crucial role in AALL’s development.” (p.xiii)

Beginning with the Spring 1996, A. J. Small of the Iowa State Law Library sent a message out to law librarians to meet at the American Library Association “to consider the advisability of a separate organization of law librarians.” (p.1) The first meeting on July 2, 1906 went the whole day until 1:00 a.m. in creating the organization. Each year has at least three to five entries including association meetings, birth dates and death dates of leaders of the association, dates of the creation of chapters and special interest sections, of new awards and grants, creation of executive directors, commentary on annual conferences, etc. For those of us who have attended conference meetings, pointing out the highlights, e.g., Pather Guido Sarducci” at the 1986 meeting, brings fond memories to anyone reading this book.

In presenting each entry, there are 570 footnotes supporting his statements throughout the work. His final entries for 2005 on the executive board’s adoption of the “Strategic Directions 2005-2010” and the Education Summit in Chicago reflects the association’s continuing emphasis on always looking forward as an organization (pp.139-40).

The book includes thirty-three photographs from a picture of A.J. Small, the first president, down to Morris Cohen as the recipient of the Andrews Bibliographical Award in 1999. Pictures of the various annual meetings and other individuals can also be found in them.

Appendix A lists the annual presidents and the annual meetings (pp.143-151); Appendix B lists the recipients of the Marian Gould Gallagher Distinguished Service Award (1984-2006) and Joseph L. Andrews Bibliographic Award (1967-2006) (pp.153-55). Appendix C contains a selective bibliography on the AALL (pp. 157-62). The index includes the association, members, and other related topics (pp.163-239).

Houdek’s hope that this book “will serve in some small way as a stepping-stone to the analytical narrative which AALL’s rich and fascinating history deserves” (p.xiv), has been met. This work is a critical work on AALL and its people.

Houdek deserves the thanks of all law librarians for his wide ranging activities on behalf of the Association and his work as its historian. As with all of our friends who depart from the profession, we wish him luck in his new position.

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

Notes

1. Frank served as law librarian for twenty years at SIU Law School and left in 2007 to become Associate Dean for Academic Affairs for two years and has in July 2009 become Interim Dean of the law school. His publications are drawn from his extensive publications listed in his resume at


Montesquieu wrote that "in the largest sense laws are the necessary relations which arise from the nature of things; and, in this sense, all beings have their laws." Numerous systems of law in various degrees of complexity have arisen and fallen throughout world history. However, while legal history is "one of the oldest fields of scholarly inquiry," the origins of modern legal history go back only at far as nineteenth century Germany. The study of American legal history is much more recent, dating back a mere three score.

The Oxford International Encyclopedia of Legal History is designed "to cover most parts of the world and most periods of time," although the editor-in-chief freely admits that the six large volumes that comprise the set "are not sufficient to provide universal coverage." Nevertheless, it is the most comprehensive such work available to date.

The set examines more than 950 topics, ranging from ancient to modern, focusing on eight areas of law for which extensive scholarly literature exists: ancient Greek law; ancient Roman law; Chinese law; English common law; Islamic law; medieval and post-medieval Roman law; South Asian, African, and Latin American law; and United States law.

Entries, covering diverse topics ranging from "Admiralty" to "Church and State in English Common Law" to "Hindu Law" to "Islamic Schools of Sacred Law" to "Witch Trials," range from less than a page in length to more than 50 pages. The listing for "Chinese Law, History of," for example, covers 53 pages and includes 17 subentries beginning with the Shang Dynasty (16th Century B.C.E.) and ending with the People's Republic of China, Macau, Hong Kong and Taiwan. A bibliography follows each entry.

The first volume includes a list of the articles found in the set, while volume six includes a topical outline, a list of contributors, an index of legal cases and a detailed subject index.
The set includes approximately 350 illustrations.

The set was prepared by a group of expert scholars under the direction of Professor Stanley N. Katz of Princeton University. This comprehensive work belongs in every academic law library.  

Mark Podvia  
H. Laddie Montague, Jr. Law Library  
The Dickinson School of Law of the Pennsylvania State University

Notes

1. Montesquieu, 1 Esprit des Lois ch. 1.


3. Id. at xxii.

4. The reviewer sent several students to the cataloger's office to use volumes from this set before it had been processed and shelved.


On October 11, 1865, an angry group of approximately 500 black Jamaicans stormed the Morant Bay courthouse, setting fire to it, killing 29 people, and injuring another 34 people. This incident was the culmination of several months of tension between newly-emancipated black Jamaicans and the white ruling class; however, it is not the Morant Bay incident alone that dominates the narrative of R. W. Kostal's A Jurisprudence of Power. Kostal rightly focuses on the Jamaican government's response to the Morant Bay courthouse riots and the subsequent response in England to the colonial government's actions. The colonial governor, Edward John Eyre, declared martial law and in the following weeks after Morant Bay, almost 500 black Jamaicans were killed by British troops, with another 600 having been flogged by the soldiers.

Among those killed in retaliation for the Morant Bay violence was George Gordon, a black landowner, member of the Jamaica House of Assembly, and ardent critic of Governor Eyre. Though he was not involved in the Morant Bay violence, Gordon was arrested in an area outside of where martial law had been proclaimed and brought to Morant Bay to face a court martial without the benefit of legal representation, despite having requested a lawyer. Gordon was found guilty and hanged. His final letter to his wife was later publicized in newspapers throughout England and he became a symbol of sorts for the wrongs carried out by the Jamaican colonial government.

The central focus of A Jurisprudence of Power is on the reaction of the British Empire to the Jamaican incident, or, as it was referred to during its time, the "Jamaica affair." While many historians are familiar with the Jamaican incident, Kostal is one of the first authors to retell the incident using a legal focus. The reaction to the incident was overwhelmingly negative and, initially, it was fueled by abolitionist desires for equality. However, as time progressed, the general attitude shifted towards concern regarding the meanings of martial law and British Constitutionalism. That the arguments for and against Governor Eyre's decision to declare martial law and the subsequent actions of the military in Jamaica were framed in legal terms as opposed to moral terms is a point that Kostal drives home effectively through his meticulous use of primary sources and archival materials. Kostal has assembled and synthesized a thorough collection of sources, both primary and secondary, to recreate the dialogue of the time period and he is further able to show how that dialogue, which was carried out in predominantly legal terms, shaped the response to the Jamaican incident.
Just one example of Kostal's talent for recreating the time period through use of the primary sources occurs within the first chapter of the book, in which Kostal outlines how those in England first heard about the uprising, their initial reactions and the subsequent change in those reactions. Kostal illustrates this sequence through effective use of newspaper stories of the time. He shows that the very first stories reflected a general fear for white British inhabitants of Jamaica, because the first boat to England carried only news of the Morant Bay courthouse burning. The next newspaper stories were, by and large, favorable to Governor Eyre, as the next boat from Jamaica brought news that the rebellion had been squelched. However, just a few weeks into the aftermath, reports (including the official report made by Governor Eyre) revealed the sheer brutality of the Jamaican government's retaliation against black Jamaicans. Newspapers that had only a week earlier supported Governor Eyre were now very critical of him and demanded that the British government punish him for his actions. In our modern day of 24-hour news coverage, where a story develops over a matter of hours or days, the reader is immediately hit with the differences between now and the 1860s through Kostal's merger of great storytelling and mastery of archival sources.

One of the main issues that emerged from the Jamaican incident was a concern over legal standards. Many worried that if the Jamaican government was permitted to use such excessive force to squelch dissent, it was only matter of time before such force would be used elsewhere in the Empire, including in England. The fear was that any political radical would be in danger of a mock court martial like the one given Gordon. On the other hand, many were uncomfortable with the idea that there should be one legal standard for England and a lesser standard for the rest of the Empire. Similarities can be drawn to our own time, in which concerns regularly arise that various groups are treated unjustly in comparison with other groups within a legal system. The same concerns over race are, regrettably, still prevalent in our own time and Kostal does a fine job showing that purely legal arguments and analysis do not ensure resolution of the issues. Furthermore, the controversy and resulting broader legal debate outlined by Kostal are not at all unfamiliar to modern readers, though imperialism has ceased to exist in its Victorian form. Today, arguments are made in the United States for an executive branch which can yield powers much like those found in the imperial government of Victorian England and the struggle between legality and power continues, even if the terms and players have changed.

Another related issue brought to light by the Jamaican incident was that of the confused and murky nature and role of martial law in England and the Empire. Previous to the Jamaican controversy, there was no handy resource to turn to for definitive law regarding the use of martial law and many of the martial law treatises created after the event were biased one way or the other. Though the debate raged for several years between the liberals who felt that martial law was never justifiable under English law and those who felt that martial law was a legitimate doctrine to overcome the threats of "servile revolt," there was never a clear consensus on what martial law actually was, when it could be used, and through what power it should originate.

In using the primary sources to prove the legal nature of the arguments on either side of the Jamaican controversy and providing a fascinating look at the Rule of Law within the Victorian imperial era, Kostal also proves that resorting to a legal framework during such a crisis may not be the best method as the results of the Jamaican incident debates and investigations were inconclusive at best. Neither side of the conflict walked away with a satisfying resolution, as the definition and legality of martial law were not clarified and no one was held legally accountable for the violence meted out on the black Jamaicans in the cases that were unsuccessfully brought against Governor Eyre and other actors in Jamaica.

While Kostal uses his source material to paint a vivid picture of the main players in the Jamaican incident and its aftermath, including such notable historic figures as John Stuart Mills and James Fitzjames Stephen, the one character that the reader wishes to understand is the one that remains
in the shadows. The reader never fully understands Governor Eyre’s motivations for treating black Jamaicans so ruthlessly. Kostal explains the larger feelings of fear that white colonists felt being outnumbered by blacks in Jamaica, but Eyre’s personal experiences which led him to hold black Jamaicans as inferiors are never clarified, which is a shame because Kostal is able to provide such vivid characterizations of so many other players within the Jamaican incident controversy in the book.

Eyre had successfully fulfilled roles in colonial governments elsewhere, like Australia, but was removed from power after Jamaica and retired to a life of obscurity in the English countryside. Suits were brought against him by the Jamaica Committee, a privately assembled group of influential political and social men of the day, when the government declined to prosecute Eyre. Each suit brought against Eyre failed, and while Kostal provides detailed accounts of the legal gymnastics that each side performed, the reader is still left with questions regarding the man at the center of the suits. Whether this is because Kostal’s focus was purely on the legal nature of the arguments against Eyre, or the fact that Eyre left little information to clarify why he viewed Jamaicans so disparagingly is unclear.

Governor Eyre’s shadowy persona aside, Kostal also errs slightly in his lack of explanation regarding certain legal doctrines and arguments. The legal doctrine of necessity is brought up as a possible justification for martial law as a defense but this subject is not explored more fully. Likewise, while Kostal offers a prolific look at the various contesting views of martial law, he does not offer insight into which views carry more weight. An argument could be made that Kostal is not responsible to do anything other than provide the information and allow his readers to make their own judgments of validity of the arguments presented. However, given the immense amount of time Kostal spent with the materials and his obvious knowledge of the subject, the reader cannot help but wish that he had shared some insight into the validity of the positions and materials relied on by those making the arguments for and against martial law. In the final analysis, though, these are somewhat minor quibbles with a book that has been extremely well researched and written.

From the viewpoint of a comparative legal scholar, Kostal’s book is a rich resource, even for those who are already familiar with common law legal systems. Though Americans share a legal system with England, Kostal’s detailed descriptions of the trials brought against Eyre and other actors within the Jamaican incident show some of the both subtle and striking differences between the two legal systems. For those not living within a common law legal system, this book gives excellent examples of common law jury trials during a certain period in history, highlighting some of the fundamental differences between common and civil law systems, differences which persist to our day. Kostal further demonstrates differences through his rendering of the scandals and legal strategizing behind the scenes of the actual trials, as exemplified in his recounting of the “Coleridge Plot,” in which the defense was able to retain the barrister that the plaintiff Jamaica Committee had planned to retain, and in his recounting of the public disagreement between Lord Chief Justice Cockburn and Lord Blackburn. Such vignettes are informative to legal scholars from other legal systems who may initially find it strange that lawyers would be fought over or that judges would publicly bicker and they offer unique glimpses into the common law legal system as it has developed.

A Jurisprudence of Power is a book that should find a wide audience because its appeal goes beyond just the legal audience. Because of Kostal’s striking use of primary source materials to recreate the time period and players within the conflict, this book will undoubtedly appeal to historians, both legal and otherwise, of Victorian England and her colonies. Moreover, the conflict between using morality to justify one’s stance, versus framing an argument in legal terms is a conflict that is sure to appeal to sociologists. Kostal writes with an elegance and wit that makes the book flow despite its heavy reliance on large quotations from the primary sources. It is much to Kostal’s credit that such a thorough and detailed account of the controversy and its legal implications is nonetheless entertaining and informative to
such a wide variety of readers.

Heather Hamilton
Foreign, Comparative, and International Law Librarian
Louisiana State University Law Center


Justice Albie Sachs published this reflection on his contributions to the development of the modern South African legal system. The book is a mix of very personal reflections as well as edited judgments written by the court. The most moving and effective passages in the book are the descriptions of painful episodes in Sachs’ life and how they affected his career and judicial philosophy. Sachs includes his own thoughts about the influences and reasoning behind his opinions. Sachs describes the challenge of writing judgments for the court that will be read closely by the public as well as the legal community. He takes care to remind the reader that the internal deliberations of the Constitutional Court are confidential. The book was published after he retired from the court so it reflects a review of his entire career as Justice.

Sachs was an attorney for the African National Congress (ANC) and provided counsel regarding revolutionary activities as well as drafting the proposed legal framework for South Africa post-apartheid. As an active member of the group planning for the eventual overthrow of the South African government, Sachs was labeled a terrorist by the United States government and denied entry to the U.S. when he attempted to travel to a Yale conference. He reflects about his personal experiences undergoing sleep deprivation in South African cells. This torture experience is used as justification for his recommendations that the ANC and the post Apartheid government avoid harsh interrogation techniques. He discusses the impact resulting from labeling an individual or group as a “terrorist” or “counterrevolutionary.”

The most moving portion of the book, describing personal and national reconciliation, is the chapter “A Man Called Henri: Truth, Reconciliation, and Justice.” While Sachs was in Mozambique working with the ANC, he was personally the target of a car bombing carried out by an employee of the South African government. He survived the attack but lost his right arm and sight in one eye. Sachs recalls waking up in the hospital and cracking jokes with fellow ANC leader and current President of South Africa, Jacob Zuma. Henri, the agent who planned the bombing, later made a personal visit to Sachs’ office in the Constitutional Court prior to asking for amnesty from the Truth and Reconciliation Commission. Sachs refused to shake his hand but left open the possibility that he might reconsider. Henri testifies before the Commission and several years later they have an emotional encounter at a social event: both men are changed after Sachs shakes his hand. Sachs thinks that the openness and the public searching for truth worked for the South African experiment with the Truth and Reconciliation process.

Sachs was a leader in planning for the new Constitutional Court building. The courthouse was built on the site of a notorious prison that once held both Nelson Mandela and MK Gandhi. Gandhi refused to take salt with his meals in prison because African prisoners were not offered salt. Some of the bricks from the old prison were used to create the new courthouse. In addition to the importance of locating the courthouse on the site of the prison, Sachs encouraged the placement of public art reflecting the legal turmoil that led to the formation of the post apartheid government. The cover illustration of the book is a simple blue dress floating in the wind. The dress is the central image of The Man who Sang and the Woman who Kept Silent (Judith Mason, 1998 Triptych). Sachs describes how Mason was inspired by reports she heard from Truth and Reconciliation hearings about the deaths
of Herold Sefola and Phila Ndwanle. Sefola asked the execution squad for permission to sing the 'Nkosi Sikelel' WAfrica, a traditional South African hymn of the oppressed, prior to his execution. Ndwanle was tortured and left naked in her cell. She stitched together flimsy plastic grocery bags into undergarments to keep her dignity. She was assassinated after ten days by South African guards. When her body was taken from the shallow grave for a proper burial she was still wearing the plastic. Mason created a full dress out of plastic bags and painted a written tribute to her courage in white lettering on the dress. Justice Sachs provided comments and encouragement to Mason as she developed the paintings. The artwork is now a prominent feature in the Constitutional Court. Sachs wanted court visitors to be inspired by the courage of two freedom fighters who kept their dignity while undergoing interrogation. Photos of the images and additional information about the artwork is available on the artist’s website: http://www.judithmason.com/assemblage/5_text.html.

Sachs discusses a number of important social issues addressed by the South African Constitutional court. HIV and AIDS issues were addressed in the context of providing antiviral medication to pregnant women to prevent the transmission of the virus to their unborn children. The court ruled that an airline attendant was discriminated against because he was HIV positive. Sachs also includes a discussion of the painful balancing necessary to ration dialysis equipment for the poor. Sachs’ personal upbringing as a non-observant Jew is used as background information for his strongly held belief in respecting the religious beliefs of those outside mainstream religions including Rastafarianism.

The chapter on same sex marriage starts with Sachs’ recollection of his hesitancy to participate in a gay pride march soon after he returns to South Africa from exile. The South African constitution prohibits discrimination on the basis of sexual orientation but didn’t resolve the marriage question. Sachs discusses the importance of understanding both the religious arguments against same sex marriage and the demand for full equality and full marriage rights for all South Africans. He discusses the history of marriage discrimination in South Africa including the denial of marriage rights to certain Islamic marriages because they could be polygamous. He ends his chapter with a description of a joyous same sex marriage ceremony celebrated by the son of a very conservative member of South African society.

The book includes many edited judgments, most written by Justice Sachs. Although this book is not intended as a casebook on South African law, it could be used as a supplement in a law school class on the development of South African legal concepts. Sachs introduces each topic with a chapter about how he was influenced by the issues raised by the case(s) and then follows the background information with the actual text of the opinion. Researchers in the development of the law will find the background information useful. The edited judgments are published without footnotes or citations although there is a comprehensive list of citations in the appendix. The index is useful for both topics and names.

Greg Ewing, Assistant Director for Faculty & Outreach Services
H. Douglas Barclay Law Library
Syracuse University College of Law


Documents of Native American Political Development 1500s to 1933, is an anthology

Wilkins writes in his preface to *Documents of Native American Political Development* of his interest in understanding how tribal peoples "governed themselves before John Collier, Felix Cohen, and Nathan Margold - the Indian New Deal triumvirate - arrived on the scene in 1933 and, through the Indian Reorganization Act (IRA) of 1934, fashioned a law that encouraged native peoples to adopt written constitutional governments." (vii)

Wilkins wanted to know what kinds of political and institutional adaptations Indian nations had made once they had sustained contact with foreign political entities that had intruded upon their lands and established a permanent presence.

Further, Wilkins was interested in learning why little had been written about the historical evolution of indigenous governance. In his introduction, Wilkins cites Felix Cohen, author of *Handbook of Federal Indian Law* (1972) "Between the time of the adoption of the Constitution of the Five Nations and the adoption of more than a hundred Indian tribes of written constitutions pursuant to the Act of June 18, 1934 [the IRA] there is a fascinating history of political development that has never been pieced together." (1)

While a graduate student, Wilkins began collecting documents of all types - treaties, tribal laws, tribal constitutions, business councils, intertribal arrangements, superintendent reports, congressional discourse, and traditional accounts - that evidenced self-governance.

Wilkins selection of documents, arranged chronologically, demonstrate tribal nationals utilized an assortment of government approaches - constitutional, traditional or organic, and transitional arrangements - in an effort to adjust politically, economically, and culturally.

The book reviewed was an attractive and solidly bound hardback. Its features include a List of Native Peoples, List of Documents by Subject, Table of Contents, and Index - providing easy access to the documents.

The List of Documents by Subject categorizes the documents into eight categories: indigenous and Western-inspired constitutions; indigenous and Western-influenced laws, charters, legal codes, ordinances, and rules and regulations; U.S. Indian Agents, Commissions of Indian Affairs, and other federal officials' descriptions of native governance; U.S. Congressional acknowledgment of Native Governance; International confederacies, alliances, organizations, and responses; and Indigenous narratives on politics and governance.

An introduction, front notes to each document, and ending bibliographic essay places the documents in historical and cultural context and provides annotated citations to additional works. Also, included is an appendix with selected internet sites.

This book is of value to Indian law and constitutional legal scholars, lawyers, historians, and political scientists. In this single volume, Wilkins begins to fill the historical gap noted by Cohen and demonstrates the diversity of native governance. I recommend it for both undergraduate and research-level academic libraries.

Joni Herbst  
Technical Services Law Librarian  
John E. Jaqua Law Library  
University of Oregon
Recent Acquisitions
Anne Mar

George Washington University acquires 15th Century French manuscript, Jennie C. Meade, Director of Special Collections, Jacob Burns Law Library

The George Washington University Law Library has acquired a late fifteenth-century French manuscript which presents the customary law as re-edited and re-issued under King René of Anjou for the Anjou-Maine region of France. *Coustumes des pais d'Anjou et du Maine* (c. 1475-1500) is a small portable manuscript (11x7 cm), an unusual format within the uncommon genre of customary law manuscripts. There were said to be six manuscripts of the text; this copy is from the collection of Mrs. Grace Whitney Hoff (1862-1938), an American philanthropist and recipient of the French Legion of Honor award who made her home in France and built a collection of manuscripts, incunabula, rare books, and fine bindings.

This appealing copy, in contemporary leather binding with raised bands and blind-tooled borders, is written on parchment with decorated and rubricated initials, and has occasional side glosses. The text is in Middle French with some Latin. It bears the armorial bookplate of former owner Grace Whitney Hoff. "Good King René," Duke of Anjou and King of Jerusalem and Sicily, under whose auspices this book of customary law was issued, fought side-by-side with Joan of Arc and is said to have been at one time the employer of Christopher Columbus. Today the "Good King" is little known as a political figure, but rather is remembered as a patron of the arts and author.

Of the six recorded manuscript copies of the text, none appeared in auction records for nearly three hundred years.

National Equal Justice Library, Georgetown University Law Library, Anne Mar, Project Archivist

The National Equal Justice Library is pleased to announce the donation of the Gershon "Gary" Ratner Papers. Ratner, a graduate of Williams College and Harvard Law School, first became involved with legal services as a law student and after graduating, was a fellow in the Reginald Heber Smith Program which placed newly minted lawyers at legal services offices throughout the United States. Ratner went on to become the Associate Director of Litigation at Greater Boston Legal Services; Associate General Counsel for Litigation of the U.S. Department of Housing and Urban Development; Deputy Executive Secretary for the U.S. Department of Health, Education and Welfare; and then a return to legal services as the General Counsel and Director of Litigation of the National Veterans Legal Services Program.

His papers include material related to court cases, legislation and regulations largely covering the areas of housing and education; speeches and publications; and research materials and drafts of his 1985 Texas Law Review article, "A New Legal Duty for Urban Public Schools: Effective Education in Basic Skills."

Recent Rare Book Acquisitions at Yale Law Library, Mike Widener, Rare Book Librarian Lillian Goldman Law Library, Yale Law School

A bumper crop of acquisitions have come into the Lillian Goldman Law Library’s Rare Book Collection since my last report in the Spring
2009 issue of the LH&RB Newsletter, 125 of them to be exact.

Among the 37 additions to our American Trials Collection were four items relating to the landmark Dartmouth College case, including Daniel Webster’s argument to the U.S. Supreme Court. A collection of court documents in the case of Eastman Kodak Co. v. the Anthony & Scovill Co. provide insights on the history of photography. Our collection of materials on the prosecution of California labor organizer Tom Mooney grew with the addition of a 1938 brief in his pardon proceedings and a fundraising flyer, One Million Readers Needed for “Justice Raped in California”. Argument of W.H. Seward, in Defence of William Freeman (1846) is an early and eloquent plea for the insanity defense. Two titles relating to the Lindbergh kidnapping were promotional materials for Tastyceast products. Other trials included murder on the high seas (Mutiny and Murder: Confession of Charles Gibbs, 1831), a sermon on the notorious John W. Webster murder trial at Harvard (Sin Found Out: A Discourse Preached to the Central Congregational Church, Laurence, on Sabbath Morning, April 7, 1850: in Reference to the Conviction of Prof. J.W. Webster for the Murder of George Parkman, M.D., 1850), and a poetic meditation on the murder of Harvey Milk (The Trial of Dan White: A Poetic Investigation, 1979).

There were several outstanding additions to our collection of illustrated law books, including the 1580 edition of the Bambergische peinliche Halszgerichts-Ordnung, one of the most beautifully illustrated law books of the 16th century. Two early works on Roman water law contain numerous woodcuts: an essay on water law included in the 1518 edition of Bartolus’ Consilia, and the 1675 edition of Battista Aimo’s Tractatus singularis De universo alhuvionum jure. We acquired the 1818 and 1826 editions of Luigi Piccoli’s treatise on servitudes, or easements, with numerous engravings. Finally, we have acquired an almost complete run of the comic book, Wolff & Byrd: Counsellors of the Macabre, one of them translated into French.

For our collection of early Italian statutes, we acquired the Statuti di Milano, volgarizzati (1773), a collection of Milanese proclamations (1645-47), regulations for Milanese wardens (1788), the statutes of the blacksmiths’ guild of Rome (1690), and the Codice feudale della serenissima republica di Venezia (1780).

Among other highlights is a collection of ten pamphlets on the English trial of William Palmer, the notorious “Rugeley poisoner”; several of them are illustrated and appear to be the only copies in U.S. libraries. Inspired by the superb display that the LH&RB SIS was treated to this summer during AALL at GWU’s Jacob Burns Law Library, I found four of the French “sung constitutions” of the 1790s (including the one with the first known illustration of a yo-yo), as well as the Coutumes de Paris in verse (1787). We acquired a number of early 19th-century law bookseller catalogues, including a small archive of catalogues from the G. & C. Merriam Co. Other significant works included the 1641 edition of Hobart’s Reports (the first English case reports published in English instead of Law French), an interleaved and heavily annotated copy of Dyer’s Abridgement (1609) with manuscript notes of several unpublished English case reports, the 1766 Harlem edition of Beccaria’s Dei delitti e delle penne, containing the author’s last definitive revisions, and a lovely illuminated diploma for a doctoral degree in canon and civil law from the University of Padua (1621).

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

Karen Beck reports that the Boston College Law Library has acquired a number of
interesting items in the past few months, including a letter discussing James Kent, a rare work by Giles Jacob, and several signed modern first editions. Details can be found on the Daniel R. Coquillette Rare Book Room Blog: http://rarebookroom.blogspot.com/

Bounds Law Library, University of Alabama School of Law, Brad E. LeMarr, Graduate Student Assistant, Bounds Law Library, University of Alabama School of Law

The Bounds Law Library at the University of Alabama School of Law has recently acquired the manuscript ledgers of the law firm of Colcock and Hutson. William F. Colcock and Charles J. C. Hutson were distinguished 19th Century South Carolina lawyers and statesmen. On November 1, 1866, Colcock and Hutson formed a partnership for the practice of law in Gillisonville, S.C. On January 1, 1870, Cornelius J. Colcock joined the firm. On November 1, 1872, the firm of Colcock and Hutson was dissolved. William F. Colcock and Cornelius J. Colcock continued the practice under the firm name of Colcock and Son. Hutson began practicing under his own name.

William F. Colcock was an important figure in South Carolina politics. He was a member of the State House of Representatives from 1831 to 1848, its Speaker from 1841 to 1848, a member of the United States House of Representatives from 1849 to 1853, and Collector of the Port of Charleston from 1853 to 1865. Colcock lost his job as Collector of the Port of Charleston after the Civil War and entered a law practice with his nephew Charles J. C. Hutson.

A distinguished officer during the Civil War, Charles J. C. Hutson served several terms in the State Legislature during the 1860s and 1870s and was a forceful opponent of Reconstruction. He was a member of the South Carolina Constitutional Convention of 1895 and was appointed Clerk of the United States District Court that same year, serving in that position until his death.

The collection consists of four volumes: an "Appearance Book," a "Docket Book," an untitled manuscript account ledger, and a "Penn Letter Book." The "Appearance Book" for Colcock and Hutson is dated January 1867 and signed by both William F. Colcock and Charles J. C. Hutson. This volume contains 19 pages of manuscript entries recording 49 court appearances between January 1867 and April 1869. Each entry lists the plaintiff and defendant, type of suit, opposing attorney, and judgment. The "Docket Book" for Colcock and Hutson is dated 1868. This volume contains 40 pages of manuscript entries recording 115 cases between 1868 and 1872. For each case is listed the plaintiff and defendant, cause of action, dates lodged and served, disposition, costs, and occasional remarks. The volume contains an alphabetical index of the cases.

The untitled manuscript account ledger for William F. Colcock and Charles J. C. Hutson contains 148 pages of manuscript entries between January 1872 and May 1879. The "Penn Letter Book" for Colcock and Hutson contains 232 pages of business letters sent during the period June 1870 to September 1872. The volume contains a six-page manuscript index.

The first entry in the "Appearance Book" lists a case in which William F. Colcock served as garnishee and returned property in his care as creditor in possession. The first letter in the "Penn Letter Book" is a letter written by Charles J. C. Hutson on behalf of the Prescott Fund describing a mortgage foreclosure proceeding. Taken together, these ledgers offer a unique perspective on a southern country law practice during the post-Civil War years.
Hello, all, and happy holidays! There’s been a lot of exciting contributions to the legal history field as we enter the second decade of the 21st century. Topics ranged from the Constitution to the history of insanity defenses.

Akron University’s Symposium on the 140th Anniversary of the Fourteenth Amendment (42 Akron L. Rev. No. 4) provided a wide variety of insights into Fourteenth Amendment scholarship. Of particular interest to those with a legislative history bent is Richard Aynes’ examination of the 39th Congress, and its construction of the Amendment. Later in the same issue, William J. Rich tackles another aspect of the intent issue with “Why Privileges or Immunities? An Explanation of the Framers’ Intent.” In that same vein, Anders Walker’s article in the Loyola Chicago Law Review on the legal history of the civil rights movement demands attention as a thorough overview and reexamination of the subject.

Our own Mark W. Podvia has contributed a substantial article on agricultural reform in Pennsylvania with “The Honorable Frederick Watts: Carlisle’s Agricultural Reformer,” which appeared in the Penn State Environmental Law Review. Podvia makes an impassioned case for the influence of Judge Watts not just on agriculture, but on the birth and survival of what is now Pennsylvania State University.

Paul R. Baier has put forth a very interesting, and topical article on the history and use of the Oyez Project, in which he demonstrates how hearing the voices of judges and their opinions contributes immensely to legal pedagogy.

Another Web 2.0 tool for legal history pedagogy is the Legal History Blog (http://legalhistoryblog.blogspot.com/) as produced by Dan Ernst and Mary L. Dudziak. It is great one stop shop for all the new developments and contributions in the area, particularly for items such as postings to SSRN and developments among the professional legal history organizations. For example, there is a posting on the Call for Papers for next year’s conference of the American Society for Legal History (http://www.legalhistorian.org/conferences.shtml), which will take place in Philadelphia on Nov. 18-21, 2010.


That’s it for this newsletter’s roundup! If there’s any work in particular you want the LHRB members to know about, any conference you think they should attend, or
any opportunity to submit papers, please let me know, and I’ll spread the word here! Happy Holidays!

Notes:


