By the Old Style calendar¹, 30 July 2009 marked the anniversary of the founding of the Virginia General Assembly. That meeting launched the assembly on a three hundred ninety-year passage from a corporate appendage to a little parliament to the oldest continuing representative legislature in the Western Hemisphere. Convening the General Assembly also set a vital precedent for the American way of self-governance. All that said, what is really known about that initial gathering? Did the meeting matter all that much? The short answer to the first question is a little and a lot. An answer to the second is more open-ended. Hence, the title of this essay, which aims to dispel myths that have long attached themselves to the origins of representative government in early America and to note things that actually happened at Jamestown that summer of 1619.

A recurring fable centers on the reason the founders of the colony created the General Assembly. Historians, public figures, and other commentators have long regarded the founding of the body as the consequence of an innate English desire for self-rule. A more prosaic explanation dispels that myth.²

Virginia proved a more difficult undertaking than the Virginia Company of London ever imagined when the investors started the colony in 1607. It limped along as an unprofitable enterprise, despite successive re-organizations, and the venture verged on collapse by the late 1610s. Determined company investors refused to quit, and they launched yet another overhaul of the entire operation. Company treasurer Sir Edwin Sandys scrapped the existing business model in favor of one that

Continued on page 4 General Assembly

¹ Meaning that by modern reckoning the assembly would have sat on 10 August 1619. Seventeenth-century Britons used the Old Style calendar, which dated from the time of Julius Caesar, who introduced that mode of reckoning in 46 B.C. It came into force the following year and remained in use until the year 1582, when Continental Europeans supplanted with one devised by Pope Gregory XIII. The change necessitated advancing dates by ten days, so 5 October 1582 became 15 October 1582. However, the Britons continued use of the Julian calendar until 1752.

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I hope that you enjoy our Summer issue! Remember to make note of the dates and times of the LH&RB activities for the upcoming AALL Annual Meeting.

The deadline for the Fall issue of LH&RB, our special Hallowe'en issue, is October 8th.

I look forward to seeing many of you in Denver!

Mark

Justifiable Suicide

Is suicide ever justifiable? A Pittsburgh paper states that a melancholy case of self-murder occurred on Sunday near Titusville, Pennsylvania. The following schedule of misfortunes was in the victim’s left boot: “I married a widow who had a grown-up daughter. My father visited our house very often, and fell in love with my step-daughter and married her. So my father became my son-in-law, and my step-daughter my mother, because she was my father’s wife. Some time afterward my wife had a son; he was my father’s brother-in-law and my uncle, for he was the brother of my step-mother. My father’s wife—i.e., my step-daughter—had also a son; he was, of course, my brother, and at the same time my grandchild, for he was the son of my daughter. My wife was my grand-mother, because she was my mother’s mother. I was my wife’s husband and grand-child at the same time; and as the husband of a person’s grand-mother is his grandfather, I was my own grand-father.”

3 Legal Opinion 400 (October 12, 1872)

Submitted by Joel Fishman, Ph.D., Assistant Director for Lawyer Services, Duquesne University Center for Legal Information/Allegheny County Law Library
would transplant as much of traditional English society as conditions in Virginia would allow. To that end, he set forth his scheme in a series of management documents, collectively known as Great Charter of 1618. The plan reformed land tenures by introducing private ownership and by promising a headright of fifty acres of land to anyone who would settle at his or her own expense, plus an additional fifty acres for every other person such would-be planters might import. Next, there were improvements to local administration, one of which substituted elements of English common law for the much-hated Dale's Laws, a stern regime of martial regulations that the company imposed in 1611. To create a more palatable resident government, a new governor-general also received orders to convene a general assembly comprised of him, company-appointed councillors of state, and representatives elected by Virginia's freemen. That body would sit annually. It received power to enact ordinances, grounded in the company's corporate rights, that addressed local needs or implemented directives from London, any of which the governor-general might veto or company officers might reject. The Great Charter also authorized the assembly to act as a court of justice from time to time.

These and other prescriptions represented solutions that Sandys regarded as practical remedies that were most likely to salvage Virginia and produce much-needed income for a profit-starved company. A close reading of the charter documents clearly shows that Sandys had no desire whatever of establishing the assembly as some sort of Parliament in miniature or that Parliament served as his pattern. Instead, he conceived the body wholly as an adjunct to the company's governing body—its general court. Sandys intended to invest the assembly with sufficient power to do its job, but he never envisioned it as in any way co-equal with corporate authorities in London.

This appraisal runs counter to durable myths about Sandys as an inspiration of liberty in America and a bulwark against the absolutism of King James I. Such views captured the imaginations of late nineteenth- and early twentieth-century Virginia historians. They make pretty stories about the origins of the American political tradition, and Virginia's premier contribution to representative self-government, but they are readings that speak more to patriotic fervor than to early seventeenth-century realities.

As to the session itself, sometime around 25 June 1619, Governor-General Sir George Yeardley issued writs to the “freemen and Tenants,” ordering them “by pluralitie of voices to make election of two sufficient men” from each settlement to meet with him and the Council of State as a “generall

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4 Dale's Laws, so-called, take their name from the man who rigidly enforced them, Sir Thomas Dale, who was deputy governor of Virginia. Secretary of the colony William Strachey published them in a London edition in 1612, a modern rendition of which is David H. Flaherty, ed., *For the Colony in Virginiana Britannia. Lawes Divine, Morall and Martiall, etc.* (Charlottesville, 1969).


Assemblie.⁷ (These representatives would be called “burgesses” from that day until 1776, when their successors took the title of “delegate,” which is still in use.) Qualifications to vote or to sit in the assembly were looser than those that applied in elections to the House of Commons. A candidate or an elector had only to be English, free, male, and above twenty-one years of age, and neither had to own or rent real estate. This more relaxed franchise is yet another indication that replicating Parliament was not Sandys’s intention.

On 30 July 1619, the General Assembly convened at the Jamestown church—the only building in the colony then large enough to accommodate large gatherings. Twenty burgesses, who represented eleven constituencies, six councillors of state, and the governor-general, comprised the body. We know little of the burgesses individually so they are now little more than names on a page. Most never sat in a subsequent assembly. Nevertheless, all shared one common attribute, which also marked the next two generations of their successors as well. Rather than springing from the traditional ruling classes, they were middling sorts of Englishmen with talents for succeeding in the Virginia environment and little skill in governing others. The six councillors of state exhibited similar qualities. Francis West (1586–1634)⁸, Nathaniel Powell (d. 1622)⁹, and Samuel Maycock lived in Virginia for most of its first decade and were notable for their knowledge of matters military and successes as colonizers. A fourth councillor, John Rolfe (1585–1622)¹⁰, pointed the way to the colony’s eventual economic survival through tobacco culture. Whatever memory of him lingers now, however, has less to do with his tobacco experiments than with his marriage to a young Indian woman the English knew as Pocahontas (c.1596–1617)¹¹. The Reverend William Wickham is notable only because he was but one of two clerics ever to sit in the Virginia Council of State before the American Revolution. (The other was the Reverend Dr. James Blair, who founded the College of William and Mary in 1693.) Secretary of the Colony John Pory was the sixth councillor, and more can be told about him than anyone else.

Pory (bap. 1572, d. 1636?) came from people who sat much higher up the social ladder than any of his councillor colleagues. Educated at the University of Cambridge, he was one of those Jacobean wanderers the historian Alison Games recently styled “cosmopolitans.”¹² That is to say, he was a well-travelled Englishman who traversed the globe in search of adventure, personal fulfillment, and glory for king and country. After going down from Cambridge, he assisted the Reverend Richard

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⁹ Nathaniel Powell, or Powle, arrived in Virginia in 1607 and was killed in Mar. 1622 at the onset of the Anglo-Indian War of 1622–1632. Further details are in David R. Ransome, “Powle, Nathaniel,” ibid., article 22657, accessed 9 Oct. 2009.


Hakluyt the Younger, that most influential of late Tudor publicists of English colonizing in the Americas, who aroused Pory’s own curiosity about exploring new worlds. By the early 1600s, Pory’s reputation for honesty, erudition, and diligence produced exceptional political connections and a seat in the House of Commons during the Addled Parliament of 1604–1611. (The latter distinction marked him as one of but three seventeenth-century members of the General Assembly ever to sit in Parliament; the others being Governors-General Thomas Culpeper, 2d baron Culpeper of Thoresway, and Francis Howard, 5th baron Howard of Effingham both of whom were heredity peers in the House of Lords.) Pory’s pronounced penchant for drink neither dulled his wits unduly nor deterred opponents of Sir Edwin Sandys from engineering Pory’s appointment as secretary of the colony in order to keep an eye on Governor-General Yeardley. Pory played an important part in launching the General Assembly before he returned to England in 1623, where he lived out his days as an intelligencer for his patrons.

Sir George Yeardley (bap. 1588, d. 1627), was a son of a London merchant tailor. He, like countless other middling Britons, shunned his father’s calling and traded needle and thread for a sword. Time spent time with the English troops that the crown stationed in the Netherlands as a guarantee of Dutch independence imparted lessons in command. Yeardley threw on the military life. He rose to a captaincy before another soldier of fortune, Sir Thomas Gates, took him under his wing. The two of them set off for Virginia in 1609—Gates as lieutenant governor and Yeardley as captain of Gates’s guard. Gates’s ship, the Sea Venture foundered on the Bermuda coast; both men survived and eventually reached Jamestown in 1610. A variety of assignments followed until Yeardley returned to England in 1617. A year later he married Temperance Flowerdew, who was John Pory’s niece. By then he had already caught the eye of Sir Edwin Sandys, who named him governor-general, and in November 1618, James I tapped him for knighthood “to grace him the more” in his new office. Touches from the king’s rapier and a good marriage did not elevate Yeardley in the eyes of the Virginians who regarded him as a “meane fellow by way of provision.” Nevertheless, he managed his assignment well, though he was never entirely comfortable with his position. He gave it up in 1621 but returned to office briefly under King Charles I before he died in 1627 and was buried supposedly in the chancel of the Jamestown church.

John Pory prepared a “reporte of the manner of proceeding in the General Assembly, ” which he wrote and sent copies off to London soon after the session. If he had done no more than this, his reputation would still be secure because the “reporte” is sole record of what happened at the meeting. In that regard, Pory performed a role akin to that of James Madison, whose notes of the Federal Convention of 1787 remain the principal source of information about the drafting of the

13 Hakluyt (1552?–1616) devoted a lifetime to publicizing the value of colonies to the English nation. His great work, The Principall navigations, Voiages, and Discoveries of the English Nation (London, 1589; 2d ed. 1598–1600) still stands as one of signal works of Elizabethan literature, and it makes lively reading. David Beers Quinn and R.A. Skelton edited a facsimile edition for the Hakluyt Society, which the Cambridge University Press issued in 1965.


Constitution of the United States. Just like Madison’s notes, Pory’s “reporte” leaves the reader wishing for more. It omits as much as it includes; it does not record floor debates verbatim or speeches in full; and it does not reveal who put motions or how the members voted on them. Notwithstanding such omissions, the “reporte” is the fullest record for any General Assembly before the 1680s.

July the 30th was a Friday, and everyone gathered in “the Quire of the churche.” According to Pory, Yeardley designated him “Speaker” before naming John Twine as clerk of the assembly and Thomas Pierse its sergeant-at-arms. The Reverend Richard Bucke, the resident priest, prayed for heavenly blessings and divine guidance. Members swore an oath of allegiance to the crown and another that avowed their acceptance of the king as the supreme head of the Church of England. (The latter oath was meant to catch out crypto-Catholics and to prevent them from holding any office.) Everyone stood by until Twine called the roll for their admission one by one as members of the assembly.

To anyone familiar with the workings of a seventeenth-century Parliament, all of this has a familiar look to it, but a closer inspection discloses some significant differences in proceedings at London and at Jamestown. The governor-general, the councillors of state, and the burgesses sat as one house, not two. Mr. Bucke merely prayed, where as his counterpart at the opening of Parliament preached a sermon, and there was no equivalent to the royal speech from the throne. Although Pory styled himself “Speaker,” nothing in his report indicates that he acted like a Speaker in the House of Commons. Instead of being elected by the burgesses, Yeardley appointed him. The burgesses did not drag a protesting Pory to his chair. Nor did he give the customary disabling speech, such as the one the incumbent Commons Speaker, John Bercow, spoke upon his election in June 2009. Yeardley, not Pory, presided over the assembly. Pory was no advocate for the burgesses, which was a principal duty of the Commons’ Speaker in the early seventeenth century. Actually, Pory sat with his council colleagues and devoted the bulk of his time doing secretarial and clerical tasks and setting the assembly’s agenda.


18 If the Virginia Company required transcripts of proceedings after 1619, none has survived. No such requirement existed between the time Charles I declared Virginia a royal colony in 1625 and the 1680s, when royal officials promulgated such a mandate.

19 Van Schreeven and Reese, eds., Proceedings of the General Assembly, 15-17; John Cay, comp., An Abridgment of The Publick Statutes in Force and Use From Magna Carta, in the ninth year of King Henry III, to the eleventh year of his Present Majesty King George II. Inclusive, 2 vols. (London, 1739), 2: s.v. “oaths.” (This and other citations to sixteenth-, seventeenth-, and eighteenth-century law books are to the witnesses to the editions that are in my library.)

Calling Pory “Speaker” has long fostered the misbegotten idea that the General Assembly took life as a bicameral legislature, in which each chamber enjoyed distinctly separated powers. Consequently, generations of Virginians and scholars conflated the General Assembly with the House of Burgesses, but that is a little like saying the House of Representatives and the Congress of the United States are one and the same body, when they are not. The General Assembly at its start consisted of three elements, governor-general, councillors of state, and burgesses, all of whom constituted a single entity, which remained unicameral for more than two decades.²¹

Mistaking Pory’s role clouds how he brought his legislative experience to bear on the dispatch of the assembly’s business in several significant ways. For one, when a challenge to the qualifications of two prospective burgesses threatened a lengthy delay in proceedings, Pory suggested that his colleagues act as Parliament might and judge for themselves who could sit among them, which they did. By ruling that the disputed credentials were improper, the members laid down a precedent that later General Assemblies translated into an exclusive right that obtains to this day. For another, Pory fixed the legislative agenda. To that purpose, he explained the rationale for the general assembly and detailed the duties the Company assigned to it. Next, he read aloud the Great Charter for the benefit of the whole company, a majority of whom were likely barely literate, and in so doing he took the place of a parliamentary reading clerk. Then he apportioned the legislative work into four parts: determining which sections of the Great Charter needed modification, which company instructions required adoption as local law, what new regulations should be proposed, and what petitions to the Company in London were in order. Finally, Pory seems also to have been responsible for introducing two additional parliamentary habits, giving enactments three readings aloud before passage and employing committees to move bills to the floor in a timely manner.

That Pory exerted so much influence stems from an obvious though often overlooked fact. He alone among the members knew anything about procedures in deliberative bodies. Thus, he was in a unique position to shape how the assembly did its business, and he tailored his knowledge of legislative proceedings to the needs of the moment. His efforts eased the adoption of ordinances that regulated a range of activities that ran from Indian affairs to labor contracts and tobacco prices, and in keeping with its purpose as a court of justice, the assembly also dispatched a number of criminal matters. As a result of his leadership, the assembly did its work smoothly and expeditiously.²²

Unquestionably, Pory’s colleagues appreciated his sense of efficiency. An oppressively humid Tidewater Virginia summer discomforted them as they worked in the stifling, cramped little church. The weather carried off an already sickly Walter Shelley, burgess for Smythe’s Hundred, and resulted in an adjournment on 4 August, because in Pory’s words, “(by reason of extream heat both paste [i.e. past] and likely to ensue, and by that means, of the alteration of the healthes of diverse of the general Assembly) the Governour, who himself also was not well, resolved should be the laste of this firste Session.”²³
When Pory and the others left the churchyard, they had cause to be pleased with what they accomplished in a mere five days. They had shepherded an appreciable measure of self-government into existence. Thereafter the General Assembly grew in popularity with settlers who increasingly saw in it not only an instrument of effective, if limited, home rule but a mechanism by which they could share largely in running the colony.

Little is known about the General Assembly in the first few years after 1619. The frequency with which it sat is uncertain owing to the loss of its journals. It faced an uncertain future following the Crown's seizure of the Virginia Company charter. Charles I inadvertently cast it deeper into constitutional limbo after he neglected to sanction the assembly in 1625, when he proclaimed the colony a royal dominion.24 Turning Virginia into a crown colony effectively left the settlers to govern themselves virtually unnoticed for the next half century, a freedom that had enormous implications for the development of self-government nevertheless. Yeardley's successors continued to summon the assembly annually even as they and prominent colonists lobbied Charles I to sanction its right to exist. Such persistence bore fruit in 1639 after the king named Sir Francis Wyatt governor-general and authorized him to convene the assembly yearly. By that time, the body was already well on its way to being Virginia's principal lawmaker and to a resemblance to Parliament than when it was merely a company adjunct. Its legislation touched increasingly broader areas of colonial life as the members arrogated greater powers to the body, and as they turned themselves into more adept politicians. Still, it remained unicameral and decidedly formless.

The major step towards the transformation of the General Assembly into a little Parliament happened early in the tenure of Wyatt's successor, Sir William Berkeley. Seeking to build his own power base, Berkeley encouraged the burgesses to sit apart from the councilors. In March 1643, the members responded positively to his urging, and so the General Assembly became bicameral. Thereafter, the assembly gained ever-widening authority as Berkeley made common cause with the great planters who sat in the Council of State and the House of Burgesses and dominated local government to boot.25

In its own way, then, the General Assembly of March 1643 was every bit as important as the first one that met at Jamestown a quarter of a century earlier.

Warren M. Billings is Distinguished Professor of History, Emeritus, University of New Orleans. This essay derives from the first annual Jamestown Lecture on Representative Government, a series jointly sponsored by the Library of Virginia and Preservation Virginia, which I inaugurated at the Library in Richmond on 30 July 2009. A video of that lecture may be viewed at http://www.c-spanarchives.org/program/288253-1.


An authentic and faithful history of the atrocious murder of Celia Holloway, with an accurate account of all the mysterious and extraordinary circumstances which led to the discovery of her mangled body ... : including also the trial for the murder and the extraordinary confessions of John William Holloway, together with his life.

Inhuman murder!!! : the trial of Richard Patch, for the horrid & inhuman murder of Mr. Blight, of Rotherhithe, on the 23d of September, 1805.

The Ging murder and the great Hayward trial : the official stenographic report containing every word of the wonderful trial from its opening to sentence of death, the rulings of the court, speeches of Frank M. Nye [and others], the court's charge, etc. : supplemented by a dramatic story of the great crime by Oscar F. G. Day.

You will have to forgive me if this column is only tangentially related to cataloging. But my rare book cataloging work for the past few months has been almost exclusively devoted to pre-1870 trials, and I have been running into titles like the above with great frequency. These reports interest me for much more than the cataloging issues they raise.

With “books” (mostly pamphlets, really) like these, the actual cataloging is usually straightforward. The main entry for criminal trials is the defendant—which is probably confusing to many users, since most OPACs label the main entry (i.e., the name in the 1XX field) the “author,” and defendants are not usually the authors of reports of their own trials. But for the cataloger, once he or she has learned this rule, the only challenge arises when there is a question about the authorized form of the defendant’s name. An unfortunate number of criminal defendants from the past had common names, and they are usually not represented in the LC authority file because they did not author any other works. Of course, if the defendant was found guilty and hanged, a death date is easy to establish.

Subject analysis is usually not much of a challenge either. First subject heading: the defendant’s authorized name entry, subdivided by –Trials, litigation, etc.; second subject heading: Trials (Murder) subdivided by the place of the trial. I could not find an actual cataloging rule for whether to subdivide by the jurisdiction (e.g., United States for trials in federal courts, versus Minnesota for trials in state courts) or by the city in which the trial was held (e.g., Minnesota—Minneapolis), but Library of Congress practice favors the city, so that is what I do. And finally: --Early works to 1800, if applicable.

Many trial reports do exist where the subject analysis is anything but clear. These tend to be civil trials, in my experience. I have had to catalog many a report with a generic title such as Smith v. Johnson, where the actual legal charge is never specifically named. But since these trials are, almost by definition, boring, they are not the type I am writing about here.

Getting back to the type that I am writing about here, the main subject-related difficulty I have is that I get interested in the trial and have a hard time cataloging instead of reading. Take, for example, The trial of Charles Bradbury, for the detestable crime of sodomy said to be committed on

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1 Or Trials [Name of crime] for whatever crime was alleged. The only trouble is when there is no authorized subject heading for the type of trial you are cataloging. For example, Trials (Teaching evolution) is not an authorized subject heading, so catalogers have to use other subject heading syntaxes for subject analysis of the Scopes monkey trial. The Scopes trial wasn’t pre-1870, but you get the idea.
the body of James Hearne: at Justice-Hall in the Old-Bailey, on Thursday the 11th of September, 1755: in the twenty-ninth year of His Majesty's reign, and the seventh sessions in the mayoralty of the Right Honourable Stephen Theodore Jannssen, Esq., Lord-Mayor of the city of London. I opened this one up, expecting to sympathize with poor Chuck Bradbury and his unjust persecution. That was until I read enough of James Hearne's very convincing testimony to realize that this wasn’t really a trial about “sodomy” so much as it was a trial about child rape. Hearne was fourteen at the time of the alleged crime, a naïve apprentice, later completely dependent on the accused, who assumed that anything Bradbury, a preacher, did to him must not be wrong. And when he did realize there was something wrong, Bradbury silenced him with threats to his life. In a dramatic twist at the end of the trial, Hearne recanted, and despite the evidence of a history of threats, Bradbury was acquitted.

So little has changed. This is a thought I come back to again and again while I’m dutifully recording main entries, subject headings, collations, etc. There has been plenty of technological and even social progress (trials for sodomy between consenting adults being much rarer today, for example, at least in the Anglo-American sphere), but human nature is still largely the same as it was in 1755.

It is not only the criminals who have not changed much in 150 years; the public’s interest in criminals and their exploits has not changed much either. In this way, early criminal trial reports remind me of nothing more than Court TV.

Court TV didn’t exist in the nineteenth century, of course. And it doesn’t exist now, at least not under that name. Court TV is now TruTV, which boasts the perplexing slogan: “Not reality. Actuality.” TruTV offers reality-actuality programming in the evenings, but trial coverage is still aired during the daytime on its “In Session” show.

Although trials are “inherently legal,” legal scholars and practitioners were not the intended audience for sensational criminal trial reports, any more than they are the audience for live television coverage of criminal trials. The public’s prurient interest in the gory and salacious details of crime is not a new phenomenon.

And yet, readers and viewers can’t escape the legal technicalities of the justice system. Trial reports were often published verbatim, including some less than thrilling exchanges:

Q: Do you know the prisoner at the bar?
A: Yes.
Q: How long have you known him?
A: Ten years and upwards.

2 “Inherently legal” is the term used by catalogers to designate Library of Congress Subject Headings that do not need and cannot be combined with the subdivision “Law and legislation.” All crimes fall into the “inherently legal” category. For example, “Murder” is a correct subject heading, while “Murder—Law and legislation” is not; works with “Murder” as their first assigned subject should be classified in the Ks...unless of course the work is about the criminological aspects of murder rather than the legal aspects, in which case the subject heading is still “Murder” but the work should be classified in the Hs.

The Inherently Legal Subject Headings Project (http://www.aallnet.org/sis/tssis/committees/cataloging/legalheadings/), initiated under the auspices of AALL’s Technical Services SIS and led by Yael Mandeltam, has compiled a lengthy list of such headings that warrant see-references from headings with the subdivision. The group has submitted proposals for changes to the authority records for subjects on this list to the Library of Congress. If the changes are approved and implemented, anyone looking up “Murder—Law and legislation” will be instructed: “See: Murder.” The classification issue, K versus H, remains the same.
Q: Do you know where has his residence been for the last four years?
A: I believe in France.
Q: Your belief is not evidence; did you ever hear him say where he had resided?
A: I have heard him say that he had resided in France latterly. I have missed him from England
two or three years.
[Et cetera.]3

In this respect, television has a clear advantage over written reports: even if trial coverage is “gavel-
to-gavel,” commentators are on hand to blather through the boring parts and thus (the network
hopes) hold the audience’s attention. The commentators serve another purpose too, namely,
explaining some of the legal and procedural nuances to a lay audience. This function could be
served in trial reports by an introduction, but more often than not, there was no explanation of the
legal issues involved. Where introductions existed, they were more often designed to grab the
reader’s attention—as were many of the titles, as seen above.

Of course, readers of trial reports may not have needed as much explanation of the intricacies of
the judicial system as viewers of televised trial coverage do today. For one thing, the readers of trial
reports were, by definition, literate. Most American television viewers today are literate too, of
course, because literacy is near-universal nowadays4. In the nineteenth century (and earlier),
literacy was not as widespread, so calling a group of people “literate” is a meaningful distinction.
Also, one could make the argument that television viewers today expect to have anything
complicated spelled out for them, whereas no such expectation existed in the olden days.

Another, even more obvious, difference between trial pamphlets and the erstwhile Court TV is that
televised court proceedings are much more immediate. In this respect, newspaper coverage of
popular trials would be a better analogy, although these, too, were delayed in comparison. However,
even the published “monograph” reports of trials were remarkably timely given the technology of
the era, often being rushed off the presses within days of the conclusion of a trial.

Lest I create a false impression, I should point out that not every published trial report—not even
the majority—was intended for laypersons. A great many dealt with technical issues involving wills
or estates or other arcane legal points. For example, I recently happened across two ecclesiastical
law trials that appear to have been published mainly because they settled points of law that had
not been previously adjudicated. The first was a trial of an Anglican priest who knelt during a
service and placed candles on the altar, even though said candles were not necessary for providing
light. The second priest was tried for refusing an Anglican burial to a child whose parents had had
him baptized by a dissenting minister. (In both cases the courts found that the priests had acted
illegally.)

And then there are trial reports that were published in order to publicly exonerate acquitted
defendants. Often these were written by the defendants themselves, as in John Mackcoul’s 1809
Abuses of justice, as illustrated in my own case: disclosing various practices of the officers of criminal
law, with an account of several interesting trials, anecdotes of certain bankers, and hairbreadth
escapes of the innocent and the guilty: being a vindication of the author from several charges of
forgery. To what extent the public was interested in such self-exonerations is a question I can’t
answer. Quite possibly there were few readers who cared as much as the authors would have hoped.

3 From A Full Report of All the Proceedings on the Trial of the Rev. William Jackson, at the Bar of His
Majesty’s Court of King’s Bench, Ireland, on an Indictment for High Treason. London: G.G. and J.
Robinson, 1795.

4 The CIA’s World Factbook (https://www.cia.gov/library/publications/the-world-
factbook/geos/us.html) gives the U.S. literacy rate as 99 percent as of 2003.
Sometimes the defendants even published their own trial reports, especially if the defendants happened to be publishers by trade. The most bizarre example of this scenario I have encountered was *The three trials of William Hone*. The wacky thing about this title was the number of permutations it was published in. My library has six different editions of this, plus one each of just the second trial and just the third trial; additionally, the main university library has three print editions and electronic access to one of the editions via HeinOnline.

When I refer to the different editions, I am at once overcomplicating and oversimplifying. All except one edition were published right after the trial in 1818. (An 1876 reissue, with a different publisher and new notes, is the exception.) There is no difference in the texts of these different editions, except that I did find one minor typographical error in one edition that was corrected in the others. What makes them different editions is that they have different edition statements. This is not so strange; William Hone was neither the first nor the last publisher to reissue the same work without real changes but with a new edition statement. The strange thing is that in any given book containing the three trials, each trial had its own title page with a seemingly random edition number. For example, one book contains the fifteenth edition of the first trial, the thirteenth edition of the second trial, and the eleventh edition of the third trial; another contains the nineteenth edition of the first trial, the seventeenth edition of the second trial, and the sixteenth edition of the third trial. Each copy that we own is different.

Some of the copies/editions have a fourth work included: *Trial by jury and liberty of the press: the proceedings at the public meeting, December 29, 1817, at the City of London Tavern, for the purpose of enabling William Hone to surmount the difficulties in which he has been placed by being selected by the ministers of the Crown as the object of their persecution*. From this title I have gathered that the reason for so many different “editions” of the three trials is that Hone desperately needed to raise money to pay his legal bills. What surprises me is that so many different combinations of editions were actually sold, survived, and ended up being collected by libraries such as mine. (And we are not the only one.) Don’t get me wrong, it’s an interesting and important legal case dealing with freedom of the press. But do we really need so many different copies that are nearly identical in content? Believe me when I tell you that we didn’t collect them as examples of book art.

So what’s the one conclusion I can bring this column to? *When you’re good to Mama...* Sometimes the most interesting thing about special collections cataloging has more to do with the collection than with the cataloging.

_Sarah Yates is Cataloging Librarian at the University of Minnesota Law Library_
Our Legal History & Rare Books SIS has loads of programs and activities for your 2010 AALL Annual Meeting pleasure. Sunday, July 11th could be renamed LH&RB Day. 12noon-1:15pm, light refreshments will be served with “Digging Colorado Legal History: Alfred Packer - The Man, The Myths, The Cannibal.” Fresh off his smash Digging program at the 2009 AALL Annual Meeting, international exhumation expert James E. Starrs, Professor of Law and Forensic Sciences, George Washington University Law School, will discuss his investigation of the Alfred Packer case. Packer, the “Colorado Cannibal,” confessed to cannibalizing two members of his 1874 gold prospecting party. Professor Starrs’ analysis reveals an even more gruesome truth. 3:00pm- 4:00pm, Mapping Uncharted Terrains: Introducing Archival Best Practices to the Management of Law School will present rudiments of archival best practices – including collection development issues and how to describe and provide access to materials – as well as provide concrete solutions for managing non-archival materials often lumped into institutional collections. Speakers will be Denise Anthony, Assistant Professor of Library and Information Science, University of Denver, and Kurt X. Metzmeier, Law Library Associate Director Law Library, University of Louisville Louis D. Brandeis School of Law. Our LH&RB Business Meeting will be 5:30pm-6:30pm. Please come to this important meeting to hear the latest about, and take the opportunity to get involved in, our SIS activities and programs, then take a little break before relaxing with SIS colleagues at our Reception 7:30pm-8:30pm. Here we will also honor our Morris Cohen Student Essay Contest winner and runner-up.

The hits keep coming on Monday, July 12th. 10:45am-11:45am, check out Beyond Wayback: Preserving Born-Digital Ephemera. Coordinated by Jason Eiseman, Librarian for Emerging Technologies, Yale Law School Lillian Goldman Law Library, this innovative program will discuss the challenges and opportunities associated with preserving digital ephemera. Speakers will be Richard A. Leiter, co-host of The Law Librarian blogtalkradio show, Jean-Gabriel Bankier, President and CEO of Berkeley Electronic Press, and William LeFurgy, Digital Initiative Project Manager, Library of Congress National Digital Information Infrastructure and Preservation Program. 12noon-1:15pm, be sure to attend our Roundtable Lunch. Justin Simard, our Morris Cohen Student Essay Contest winner, will present remarks on his essay “The Citadel Must Open Its Gates to the People”: Judicial Reform at the 1821 New York Constitutional Convention. Mr. Simard is an JD/PhD candidate in the American Legal History Program at the University of Pennsylvania.

So you can see our LH&RB SIS has something for everyone! Be sure to check the final AALL Program for exact locations of programs and meetings. Looking forward to seeing you in Denver!

Laura E. Ray is Educational Programming Librarian at Cleveland-Marshall College of Law
The Morris L. Cohen Student Essay Competition Committee is pleased to announce the winner and runner-up in its 2009-2010 competition. The winning entry, “The Citadel Must Open Its Gates to the People: Judicial Reform at the 1821 New York Constitutional Convention,” was authored by Justin Simard, who is enrolled at the University of Pennsylvania in its J.D./Ph.D. Program in American Legal History. Mr. Simard is also Articles Editor for the University of Pennsylvania Law Review for 2010-2011. As the winner, Mr. Simard will receive a $500 cash prize from Gale Cengage Learning and up to $1,000 for expenses associated with attending the Annual Meeting of the American Association of Law Libraries (AALL) in Denver, CO, July 10-13, 2010. He also is invited to present his paper at the Legal History & Rare Books SIS (LH&RB) Roundtable during the Annual Meeting, and to submit his paper to Law Library Journal, the official journal of AALL, for consideration for publication.

The runner-up in this year’s competition is Ian Burke for his paper “The City and the River: The Thames in the Liber Albus.” Mr. Burke is enrolled in the MLIS program at the University of Denver. As runner-up, Mr. Burke will be designated a VIP under the auspices of LH&RB, which will provide complimentary registration at the AALL Annual Meeting in Denver. Mr. Burke also will have the opportunity to publish his essay in LH&RB’s online scholarly publication Unbound: An Annual Review of Legal History and Rare Books.

The Committee will recognize both the first- and second-place winners at the LH&RB awards ceremony and reception at the AALL Annual Meeting, Sunday, July 11, 7:30-9:30 p.m. Both winners will receive framed hand-lettered certificates on rag paper with their name and essay title, created by a calligraphy artist.

Congratulations to our winners Justin Simard and Ian Burke!

Jennie Meade is Director of Special Collections at the Jacob Burns Law Library, George Washington University

Sarah Yates has been appointed Acting Vice-Chair of the LH&RB-SIS to fill out the term of Amy Taylor. Sarah is well-known to the members of the SIS, having previously served as Secretary/Treasurer. She also serves on the Morris Cohen Student Essay Award Committee, and is Special Collections Cataloging Column Editor and the author of numerous articles that have appeared in this newsletter and in our on-line journal, Unbound: An Annual Review of Legal History and Rare Books.
This is a biography of German lawyer Hans Joachim Albert Litten (19 June 1903 - 5 February 1938). The author, Benjamin Carter Hett, is a former Canadian trial lawyer and currently an Associate Professor of History at Hunter College in New York. His scholarship reflects a clear emphasis on the German criminal system in the early twentieth century. Litten’s modern legacy includes an award, the "Hans Litten Prize," that is given every other year to a lawyer by the German and European Democratic Lawyers Association to a lawyer who distinguishes himself in defense of democracy and law. The headquarters of the federal and Berlin bar associations are also located at the Hans Litten Haus.

Litten was a complex, well educated, extremely intelligent son of a Jewish father and a Lutheran mother. The law may not have been his first choice of a profession, but once persuaded by his father, a university law dean, he pursued the profession with vigor. His choice of clients led him in 1931 to the trial in which he placed Adolf Hitler on the witness stand. This trial, combined with his political beliefs and father’s religious heritage, determined the path his fate would take in Nazi Germany.

Like most biographies, part of this work describes Litten’s birth and early life. His education, the family dynamics, and the stresses of being part of a family with Jewish heritage in Germany are presented. Hett could not avoid the underlying tension that builds in the book even in what should be the gentle background sections. No modern reader is ignorant of the fate of the Jewish population under Hitler. As the author moves into the description of Litten’s early career, Hett melds the story of Litten’s personal, political and professional lives into a tightly intertwined tale.

It was Litten’s tendency toward political cases that placed him as a private prosecutor in the trial of Nazi storm troopers for the death of a worker named Riemenscneider, who was believed to have been a communist. As part of his prosecution in May, 1931, Litten summoned Adolf Hitler as a witness to issues related to the Nazi party’s knowledge and approval of the storm trooper’s actions. On the stand, Hitler completely lost his composure and was thoroughly humiliated. Litten’s argument at trial was both about the nature of this particular offense and about the general threat posed by the Nazis. In the end, he lost both arguments despite Hitler’s behavior and testimony.

The next phase of the tale is all too expected. As the Nazis gained in power, Litten was removed from his last trial, expelled from the courtroom on charges of “aiding and abetting” the defendants. There is a brief discussion in the book on the German bar’s ineffective reaction to Litten’s treatment. In
the early stages, it could still be addressed as a matter of interference with a lawyer’s ability to properly represent a client. The trial dragged on for most of 1932 and by the end of that trial, Litten had lost more than just his appeals in that case. His health was failing and he was facing death threats and the possibility of trumped-up criminal charges. Then on February 27, 1933, the Reichstag burned. Litten was one of many German lawyers who were arrested that night for their “protection.” While some of the lawyers were released in response to public or international pressure, Litten was not. By April 6th, Litten had been moved to his first concentration camp and had begun a life of torture and beatings.

The book continues on in great detail about Litten’s struggle in captivity and about the efforts to free him. Those efforts were fated to fail. Hitler had not forgotten the lawyer who had humiliated him and would not forgive Litten for that experience on the witness stand. After nearly five years in Nazi concentration camps, Hans Litten managed to hang himself. It had not been his first attempt at suicide.

In addition to an exceptionally well told account of Hans Litten’s short life, Hett’s work includes a version of the examination of Hitler which has been compiled based on the transcripts published in various newspaper sources. No actual trial transcript of the examination was ever made. He also provides some information on the others who have written about Litten including Litten’s mother Irmgard, his good friend Max Furst, and one published by Carlheinz von Bruck in the GDR. This version, with the perspective of time and without the clouding effect of close personal attachments or political agendas, may present the most balanced view of Litten. That overall view is of a complicated man and lawyer whose principled choices did not necessarily fit neatly within any of the standard philosophies of the times. In those dangerous times, Litten paid the ultimate price for his principles.

Lucinda Harrison-Cox
Association Law Librarian
Rogert Williams University
School of Law Library


David M. Oshinsky is a Pulitzer Prize winning historian and author. He has written several additional books that address major historical and legal issues of American society. He is also an essayist in the New York Times. This book is a stellar addition to the series Landmark Law Cases and American Society published by University Press of Kansas.

The death penalty is often a hot button topic for the citizens of America. The book’s title suggests that you will be reading about one court case, but in reality you are treated to much more. Throughout history popular opinion has swung from fully supporting executions to being entirely against the death penalty for any crime, mostly landing somewhere in the middle. Oshinsky’s Capital Punishment on Trial tells the story of these changes, and the actions the Supreme Court has taken that have helped to shape America’s views on the issue.
The Supreme Court plays a large role in sensational death penalty cases. Once a case has reached the level where the Supreme Court has a say in the matter, the case has garnered national attention and become infamous. *Capital Punishment* covers these cases in detail and attempts to show the inner thoughts of the Supreme Court on these matters. The death penalty is a concept that has helped shape America and its highest court throughout the entire history of the nation. Oshinsky shows this relationship well and helps the reader understand why today's death row exists in its current incarnation.

*Capital Punishment* delves into the make-up of the Supreme Court and how different justices affect majority opinions. The death penalty is an issue that seems to cause major strife between the Justices. Oshinsky devotes a major portion of the book to how different Justices voted on various aspects of capital punishment issues. The research provided by Oshinsky is admirable in both quantity and quality.

Racial prejudice is also a hotly debated topic that tends to go hand-in-hand with capital punishment. Many of the high profile cases depicted an African American male as the aggressor and a Caucasian male or female as the victim. *Furman v. Georgia*, the case mentioned on the cover of the book is a prime example of this situation.

This book is a detailed accounting of the history and major cases surrounding the death penalty in America. In addition to a thorough index, Oshinsky has included a detailed timeline of major events and cases as well as a bibliographic essay that covers his methodology of research.

The table of contents for this *Capital Punishment* is not particularly useful because the titles of the chapters are not indicative of the content. The first chapter is entitled "I Didn’t Intend to Kill Nobody.” This style of chapter title does not let the reader know which cases will be discussed, nor does it inform the reader of the time period to be addressed. Instead, chapter titles are attention grabbing and once the chapter has been read, make perfect sense.

The timeline that Oshinsky provides commences in 1608 with America’s first recorded execution in Jamestown. The final entry is in 2005 with the latest Supreme Court ruling stating that the death penalty for minors is unconstitutional because they have deemed it cruel and unusual punishment. The timeline is laid out in an easy to read manner without any frills. This timeline helps the reader keep track of events as they relate to one another and as they relate to the general history of the United States.

A nice feature of this particular series is the bibliographic essay at the end of the book. This is especially useful for young law students interested in researching topics outside of an academic setting. It also allows for a cleaner, easier to read, main text because the citations are in one section following the material instead of interwoven throughout the work.

I recommend *Capital Punishment* for academic and public libraries. Academic library users will find the information very complete and the bibliographic essay extremely useful when completing their own legal research projects. Public library users will find the topic captivating and the timeline essential to a thorough understanding of events. Oshinsky manages to take what on the surface appears to be a simple case, *Furman v. Georgia*, and uses it to show the reader how America has changed and come full circle on the death penalty numerous times.

Laura Frost  
Reference Librarian  
Clark County Law Library  
Las Vegas, NV

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Kathryn Turner Preyer (1925–2005) lived a distinguished career as a teacher, a devoted friend, a nurturer of younger scholars, and a sophisticated historian of early American law. Despite her eminence, she was relatively unknown beyond the legal history community, largely, one suspects, because she wrote articles rather than books. Books as the gauge of an historian’s renown is applied all too casually, and so it becomes a measure of reputation that bans scholars of her stripe to the margins of fame. Preyer understood that reality, and she looked forward to producing a monograph of her own, but death overtook her before she made good on her intention. Now four of her friends have collaborated in bringing forth this anthology of her essays both as a tribute to her memory and to introduce her to a broader readership.

For readers of this journal who are unfamiliar with Preyer and her work, let me quickly summarize both. Preyer earned a BA from Goucher College before enrolling at the University of Wisconsin, where she received her PhD in history. A student of Merle Curti and Merrill Jensen, two of the prominent mid-twentieth century American historians, she wrote her dissertation on the Judiciary Act of 1801, a study that remains the definitive treatment of one of the foundation stones of the federal judiciary. She taught for a year at Rockford College before accepting an appointment in the history department in Wellesley College. She would remain at Wellesley for the duration of her career, though the Harvard Law School became a home away from home after a stint as a Carnegie Fellow there. Thus, she devoted much of her time to instructing undergraduates, which she very much loved to do, but the time she gave to them and to her departmental responsibilities was time away from her scholarship. Nevertheless, she managed a steady output of articles and book reviews. Her essays focused on the role of law in creating the American republic, and she emphasized how that law was an integral part of the society of which it was part. The book reviews, which appeared in nearly all of the major scholarly journals, dealt with most of the important volumes on early American legal history published over a fifty-year span. They yet bear re-reading because they are models of astute criticism, sharp without being hurtful and graced with beautiful prose.

As for Blackstone in America, its title is one that Preyer intended for her own book. It consists of nine of Preyer’s essays, which are arrayed in three parts, and a general introduction. Stanley N. Katz composed the general introduction. In it he briefly recounts the facts of Preyer’s career. He relates how he first encountered Preyer when both were fellows of the Charles Warren Center at Harvard. At the time he was just beginning his own life-long engagement with American legal history. Preyer took him in hand. Thus began a friendship that abided for upwards of half a century, and the warmth of that friendship is palpable. So is his respect for and the praiseworthiness of her scholarship. He concludes his brief but trenchant assessment this way.

Preyer was among the leading legal historians of the last half century. Her gem-like essays will always be monuments to her unique amalgam of intelligence, originality, breadth of vision, historical sensitivity, and deeply humane vision. That her scholarship on the early nineteenth century remains so germane to today’s conflicts of law and politics is a testament to the enduring worth of what she wrote (p. 4).

thing” that drove all of Preyer’s research and writing, and that plays out again in the final essay, Preyer’s last, in this section of the book.

Three essays—“Penal Measures in the American Colonies: An Overview,” originally published in 1982 in the *American Journal of Legal History*; “Crime, the Criminal Law, and Reform in Post-Revolutionary Virginia,” printed in 1983 in *Law and History Review*; and “Jurisdiction to Punish: Federal Federalism and the Common Law of Crimes in the Early Republic, which also appeared in *Law and History Review* in 1986—comprise the second part. R. Kent Newmyer provides the introduction to that section. He draws notice to the thematic relationship between the three essays and their shared systematic organization. As well he alerts readers to the working assumptions that informed Preyer’s synthesis. And he highlights what to him was “perhaps the central theme of Preyer’s entire corpus of scholarship: the effort by the founding generation to modify English law to fit the needs of the new republic” (p.116).

Preyer published “Cesare Beccaria and the Founding Fathers” and “Two Enlightened Reformers of the Criminal Law: Thomas Jefferson of Virginia and Peter Leopold, Grand Duke of Tuscany” as book chapters in 1989, and they make up the final portion of the book. Entitled “The History of the Book and the Trans-Atlantic Connection, that section is introduced by Mary Sarah Bilder. Bilder informs the reader of Preyer’s engagement with the history of the book and the possible application of that body of literature to early American legal history. She suggests that Preyer’s interest derived from a curiosity about the physical means of transmitting legal ideas across the Atlantic and her rising fascination with book collecting. Ultimately, both interests led Preyer to compose these two essays. Bilder also points out that Pryor had plans to craft a piece on legal self-help manuals such as Giles Jacob’s *Every Man His Own Lawyer* (London, 1736 and later), but she did not live to write the article.

The sole objection one might raise about the book has nothing to do with Preyer. It goes to the editor’s decision to use name the book as they did. True, the editors used the title Preyer intended for the monograph she never wrote, wherein she might have linked that title to Blackstone. This volume makes no such connection, and thus its title seems misplaced at best or misleading at worst. But that is a minor flaw that mars the book but slightly.

All of the essays have been reset to conform to a common copy style, although Preyer’s prose, her citation format, and her typing conventions remain unchanged. The dust jacket, cover, type, and paper all combine to make an attractive, readable volume. Cambridge University Press is to be congratulated for packaging everything in so pleasing a guise. Moreover, the fulfills the editors’ desire to make Preyer’s work more readily available and therefore more accessible to a wide reading audience. That readership will include an array of advanced undergraduate students, graduate students, legal historians, and just about anyone who is curious about aspects of early American legal history.

Those of us who know Preyer’s work will rejoice at having the best of her essays in a convenient gathering that we can turn to at will. We can savor anew our favorite articles and be reminded once more of our own indebtedness to a wonderful scholar and colleague. I, for one, especially enjoyed re-reading the last two pieces because of their connection to my own writing about the importance of books to the making of early American law. And we both shared a passion for book collecting. And now, every time I reach for my copy of the 1778 Philadelphia edition of Cesare Beccaria’s *An Essay on Crimes and Punishments*, I will think of her.

Warren M. Billings, PhD
Distinguished Professor of History, Emeritus
University of New Orleans

-20-

This book is truly “a Reassessment” of the works that considered marriage practices in England throughout the “long Eighteenth Century”. The author examines the conclusions of previous scholars and states her disagreement based upon her own research. The sources for such a study are many ranging from fiction writers to such sources as parish registers and other local records.

What might be confusing to the reader is the period of history covered by the author who defines the long Eighteen Century as the period from the Marriage Duty Act 1695 to the Marriage Act of 1753. In the Introduction, the author lays out her disagreements with other scholars about the impact of the Marriage Act of 1753. The author’s thesis is this act and similar pieces of major legislation are not major breaks with the past but rather incorporates earlier experience prior to this enactment. The author’s review of the historical methods and pitfalls of some of their interpretations will be the most controversial. For example, the author feels [as this reviewer does] that historians often base their understanding of the past by projecting their own experiences and understanding in their interpretation of historical events. The author reviews the sources used to establish marriage practices and their validity.

The organization of this book, so the reader is informed, is both thematic and broadly chronological. In the Introduction, the author explains the alternatives in selection of a date to begin her study so she opts to review the cases before the Marriage Act to determined what elements were necessary to give validly to the marriage. The results of a man and woman exchanging intentions to live together as man and wife required a declaration of both parties. To find the marriage valid, the courts had to find evidence of this declaration of intent, or the marriage was invalid. All the while, the parish register was the official record of a marriage, for it was in earlier times the duty of the parish to keep records of marriages and deaths but this required the formal marriage ceremony in the Church so that secret marriages went unrecorded. The American states - as is noted in this text - solved this living together by recognizing what was known in some jurisdictions as a “common law marriage”. Under this doctrine, to qualify as a valid marriage, the parties had to lived together openly as man and wife for a given period of time. English law did not recognize such marriages as legal without the finding of some evidence to the contrary. It may surprise the American readers that in England and Wales, governmental functions were vested in the parishes of the Church of England, organized in recognized geographical areas.

Any attempts to tackled the problem what is a legitimate marriage, is fraught with many problems, for individuals in society choose to follow their own inclinations in marrying. The reader is familiar with ritual of boy meets girl, boy proposes and after a period of time, marry in a Church with pomp and ceremony, or in the word of the author, a “modern extraganrinza”. But behind this ceremony lies legal consequences.

In the century covered by this book, complications arose. Marriage by a Roman Catholic priest, certainly in the Sixteenth Century was considered as a clandestine marriage and frowned upon but for many legal reasons, a marriage in the Church of England was desirable which was discouraged by priests in that Church. In trying to determine whether a church marriage was common, scholars have examined parish records, as well as settlement records kept by the local governments in determining whether the person was settled in that parish and would be a charge to the local parish under the Poor Laws of England. The conclusion was that a large percentage of couples were married in some Church ceremony, either by a formal ceremony before an Anglican priest which required the publication of the couple banns on three consecutive Sundays followed by a Church ceremony performed by the Anglican priest in the parish where the couple resided.

The organization of the parishes as small geographical units contributed to the difficulties where
parties later were trying to prove a valid marriage. The author observes, the parish clerk was required by law to maintain a record of such marriages, but often failed to do so which undermines these records as a reliable source. Occasionally the clerk failed to enter in the records the marriage and often, entered incorrect spelling of the names of the parties.

Another factor contributing to this difficulty for those seeking to prove a marriage ceremony had been uncertainty of which parish the parties were married. The courts usually found that a marriage had taken place if there was other evidence to support this assumption such as having lived together as man and wife. How often individuals took up living together and died in that uncertain state can never be known.

The marriage laws did not apply to some groups including those marriage in the Jewish or Quaker faiths, for such marriages were regulated closely by these groups. The Royal family was exempt from these laws.

The reasons for the enactment of the Act of 1753 are explored and here, “the seedy side of clandestine marriages” are scrutinize. One of the practices which demanded the attention of the legislators were the Fleet Street marriages. These were marriages conducted in the chapel in this famous prison, Fleet Street, by unscrupulous priests often for nefarious reasons other than to join a happy couple in marriage. In the passage of this statute, the thesis is proposed that the legislators were not trying to override past practices but were attempting to address the difficulties posed by clandestine marriage. The author examines the various sections of the act and seek to show that very little of existing law was changed. One area which appears to be clarified were marriages of individuals who was underage. Now and then as is true today, parents were not consulted by their underage children who still under this statute, could go to another parish at some distance from home to publish their banns which was a public announcement of their proposed wedding. A licence was now required but such formality was not new to English law for the bishops had been issuing such marriage license for centuries as required by the canons of the Church. The penalties for enforcing the provisions prohibiting the performance of a clandestine marriage had many loop poles and the author concludes were ineffective. No attempt is given of the numbers of priests transported to America for fourteen years, if, indeed, any were for performing such marriages.

One of the many unanticipated consequences of the statute was the expansion of the common law courts into this matrimonial field for no longer questions of the validity of a marriage had be referred to the Ecclesiastical Courts.

The reading of this book which is an exegesis of the marriage laws was revealing as to the difficulties of attempting to regulate a social activity such as marriage and finding no uniformity in practices. The author has admirably investigate the many contradictions in what the law required and actual practices. Many other scholars have attempted this task of reconciling these questions but the validity of their conclusions as noted earlier are challenged, by the author’s own scholarship.

Erwin C. Surrency,
Professor and Law Librarian Emeritus
University of Georgia
Pavel Gavrilovich Vinogradoff (1854-1925) began his career as an historian in Russia but left that country in 1901 in protest over the government’s refusal to implement any of his ideas for reforming and expanding education in Russia. In 1903 he was elected to the Corpus Chair of Jurisprudence at Oxford University. His fame today rests primarily upon his acclaimed trilogy, *Villainage in England*, *The Growth of the Manor*, and *English Society in the Eleventh Century*. All three share a great depth of historical research and an appreciation of the organic connection between the legal relationships in Norman society with those passed down from the Anglo-Saxon period. This view of law as an evolving social force flowing not solely from the state, but from other sources of accepted authority as well, is evident in this collection. There are two portion to this book, the first is a look forward to the formation of the proposed League of Nations and the latter is a set of observations on the forms of international law in several historical periods.

The first portion of the book contains thoughts and reflections on the formation of a League of Nations. *The Legal and Political Aspects of the League of Nations*, was published on November 1, 1918. Vinogradoff, writing two years before the first General Assembly of the League of Nations, addresses several functions of a League that need to be considered distinctly. There will need to be judicial, legislative, and executive mechanisms for determining and enforcing dispute resolutions between nations arising out of existing conventions, compacts, treaties and recognized international laws. Giving effect to these established covenants will be the first duty of a League. He sees no reason why an aggrieved individual or corporation should barred from seeking a remedy at the League Court from a member state, such as a bank suing a country for debt repayment. The last legal aspect he entertains is the notion that this League Court should have the power to hear suits based not solely on existing law and convention but also upon the power to make logical extensions of those legal principles or on the basis of equity as would a common law court. The political aspect of a League will be most difficult to address when various states and groups within states are in conflict. Here, Vinogradoff alludes to the ethnic conflicts nationalist struggles that erupted during the First World War and his hope is that mediation, pressure and censure from the League will be sufficient. His last hope is that where armed intervention is called for, the great democratic powers will prove worthy of the trust imposed on them and can be called upon to do the right thing. Vinogradoff was understandably anticipating that the great conflagration through which the world had just passed would concentrate the attention of even the most lackadaisical statesman upon maintaining international peace. The modern reader may be left smirking at this hoped for deus ex mechana which relied upon Warren Harding and Calvin Coolidge for muscular internationalism.

The next item in the collection is an unpublished typescript from late 1918 or early 1919 which draws heavily upon the themes in the first essay. *The Realities of a League of Nations*, reiterates many of same propositions, such as the obligation of that generation to use the great opportunity presented by the upheaval of the Great War to give a broader social foundation to international law. He sees four great ideas let loose by the war. They are: 1) self-determination for nationalities, 2) historical states feeling keener pride in their past and greater hope for their future, 3) the claim of labor to an adequate recognition in politics and society, and 4) the ideal of international justice. Vinogradoff recognizes that while these goals can supplement one another they can also conflict. A brief coda to the first part of the volume is, *The Covenant of the League: Great and Small Powers*, a letter to the Times published on March 28, 1919. Here, Vinogradoff voices overall support for the initial draft of the League Covenant. He notes while the mechanisms of representation and international courts need to be refined that the major goal of the League is to band the great nations together in systems for resolving international disputes. “The real advantage to be derived from the League will consist in the statesmanlike treatment of such disputes, and in the common resolve to prevent a recurrence of the terrible catastrophes like the present one.”
The second portion of the book is composed of public lectures delivered at the University of Leiden in 1921 under the title, *Historical Types of International Law*. The emphasis here is on teasing out major ideas in the law of nations over several historical periods from the Greeks to the early twentieth century.

In the first section, Vinogradoff faults both Aristotle and Montesquieu for starting with the organization of the state and the looking at law as promulgated by state organizations. His view of law is much more as a type of social endeavor. The classification he advances begins with tribes, cities, churches, contractual associations, and collectivist associations. Tribes are derived from either mystical memberships or extended family ties, and manifest themselves in notions of kingship. The city is a privileged club in which citizens devise laws to govern themselves, as did the Greek and Italian city states. Churches are an extension of the city, except that instead of being bound by geography, the citizens are distinguished by common belief. Since their direction is from heaven, law is expressed in forms such as Jewish, canon, and sharia legal systems. The fourth form is the contractual association. These associations are bound by common trade, opinion, or other interests and are common in modern democracies; however, they were also prevalent in Roman society. Vinogradoff attempts explain this apparent gap in liberty between modern democracy and imperial Rome’s penchant for these associations by positing that Roman society was so atomized by voluntary groupings that deference to complete imperial power was needed to keep the concept of a universal Roman civilization moving forward. The final form is collectivist associations. These organizations aim to create enduring changes to the social and economic order with little regard for the individual. Changes to law are frequent and major and should be evaluated only on the basis of whether they achieve the desired social changes.

These various forms of law have a relationship to the forms international law pursued across history. While the Greek city formulated its own law, each city was in no way self-sufficient. Vinogradoff finds this intermunicipality a key concept in understanding Greek international law. In addition to much common culture and religion, the cities, concluded treaties, confederations, and had mechanisms for enforcing customary law between the city states. In Roman law, Vinogradoff finds the contractual association principles being introduced into a kind of common Roman law from which modern concepts of “good faith”, agent and principal” have their origins. Medieval relations relied heavily upon the guidance of the Church in matters of faith. This system did not envision the Church as a universal government but as a force to which temporal powers needed to go and seek a resolution of their disputes. The dual development of the nation state and the concept of natural law weakened the Church’s role over time and lead to the development of notions such as individual conscience and individual right. Vinogradoff ended the lecture series by noting, “Modern society succeeded in suppressing civil strife and ensuring freedom of contract by the agency of sovereign territorial states but success in this direction was coupled with orgies of external wars which threaten the existence of civilisation.”

The volume concludes with a fifty-seven page bibliography of Sir Paul Vinogradoff’s works. This is a daunting chore since his works regularly appeared in both western language and Cyrillic forms. He continued to publish in Russian journals until the chaos of war and revolution made it impossible in 1916.

Tom Heard
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Recently received reprint:


This book is a reprint of a hardbound copy that was reviewed by Kurt Metzmeier in LH&RB 13 no. 3 (Fall 2007), pp. 28-29.

Mark Podvia, Associate Law Librarian and Archivist at the Dickinson School of Law of the Pennsylvania State University, and Dr. Kerry L. Moyer of the Civic Research Alliance, have coauthored The Citizen’s Guide to a Modern Constitutional Convention. The book was published by the Pennsylvania Constitutional Convention Commission. Dr. Joel Fishman, Assistant Director for Lawyer Services at Duquesne University Center for Legal Information/Allegheny County Law Library assisted with the preparation of the text and bibliography. The guide, which was released at a press conference in the Pennsylvania capitol rotunda, is available online at http://www.commoncause.org/pa/citizensguide4modernconcon.

LH&RB Annual Meeting Activities at a Glance

Sunday, July 11th

12:00 noon - 1:15 p.m., LH&RB Program “Digging” Colorado Legal History: Alfred Packer - The Man, The Myths, The Cannibal

3:00 p.m. - 4:00 p.m., Mapping Uncharted Terrains: Introducing Archival Best Practices to the Management of Law School

5:30 p.m. - 6:30 p.m., LH&RB Business Meeting

7:30 p.m. - 8:30 p.m., LH&RB Reception

Monday, July 12th

10:45 a.m. -11:45 a.m, Beyond Wayback: Preserving Born-Digital Ephemera

12 noon - 1:15 p.m., LH&RB Roundtable Lunch