The Pennsylvania Law Record is another short-lived legal periodical/newspaper published in Philadelphia for slightly over a year between June 3, 1879 and June 29, 1880.\(^1\)

Volume one was published weekly from June 3 to November 25, 1879; volume two from December 2, 1879 to June 1, 1880; and volume three from issue no. 1 (June 8, 1880) to issue no. 4 (June 29, 1880). Each issue contained eight pages published in quarto size.

The newspaper was issued every Tuesday by the Pennsylvania Law Record Company with offices at the Corner of Fourth and Walnut Streets (Commercial Bank Building). In issue five (July 1, 1879), the editor lists the location at 418 Walnut Street, followed by 21 North Seventh Street (September 30, 1879),\(^2\) and then 19 South Ninth Street (March 30, 1880).

Continued on Page 4 **Pennsylvania Law Record**

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\(^2\) The September 30, 1879 issue lists the address as 27 N. Seventh Street, but succeeding issues say 21 N. Seventh Street. It is unclear if the first reference is a typographical error.
Welcome to the almost-on-time Spring issue of LH&RB! This issue includes several interesting and informative articles, columns and book reviews. I hope you enjoy it!

As always, I want to thank all of our editors and contributors. In particular, I would like to thank Anne Mar who is putting in her final appearance as our Recent Acquisitions column editor. Thank you Annie for your many contributions to this publication!

Anyone interested in taking over as Recent Acquisitions column editor should contact me.

Dan Blackaby, in his Legal History column offers several suggestions on places to visit in Penn’s City of Brotherly Love. I would add one more item—go aboard the protected cruiser U.S.S. Olympia. Commodore George Dewey’s flagship during the Battle of Manila Bay, Olympia is the sole surviving warship from the Spanish-American war. If you look closely while on the ship’s bridge, you can see where Dewey stood when he issued his famous order, “You may fire when you are ready, Gridley.” The old vessel is in need of maintenance, and the future of this gallant ship is uncertain.

The deadline for the next issue of LH&RB is September 30th.

I look forward to seeing many (hopefully most) of you in Philly!

Mark

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Editor’s Corner

Mark W. Podvia

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LH&RB

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

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The newspaper was $2.00 in advance per year, $2.50 if not paid in advance. The editor removed the advance payment on October 7, 1879 and with volume two, issue 15 (March 16, 1880), the cost of subscription rose to $3.00 per year. Beginning with volume 2, issue 5 (January 6, 1880), under the masthead title was the phrase “The Only Complete and Current Transfer Record Published in Philadelphia.”

The editor was William Allen Mitchener, Esq. I have not been able to find anything about him. He is not listed in Twentieth Bench and Bar (1903), a biographical directory of judges and lawyers in nineteenth-century Pennsylvania, nor in Martin’s Bench and Bar that lists all lawyers admitted to the bar in Philadelphia from colonial period down to the 1880s, nor Biography.com. Neither Westlaw nor Lexis identifies him at all in an AllCases database; nor does he appear in the Law Journal Library database of HeinOnline. Worldcat shows Mitchener coauthored one book, The National Law Record... in 1875.

In his “salutatory” Mitchener stated that “We today present to the legal profession of Pennsylvania, to the business community, and to the public generally, the first issue of the “Pennsylvania Law Record.” It offered full-text of the Pennsylvania Supreme Court opinions, abstracts of U. S. Supreme Court, circuit courts, and occasionally English cases, “and interesting legal notes and news.” It will also contain “a complete record of the proceedings of the various Courts of Philadelphia, including Judgments rendered, Letters Testamentary and of Administration granted. Mechanics liens filed, etc. together with all transfers of property, including Deeds, Mortgages, Assignments, Leases, Releases, etc etc.”

On the first page of the weekly issue, there was a table of contents for the issue. The contents included Supreme Court Decisions; Recent Important Decisions; Current Topics; Building Permits; Wills; Letters of Administration; Mechanic’s Liens; Transfer Record; Mortgages; and Judgments. On page four of each issue was the publisher’s masthead. Infrequently, he provided editorial commentary. Many issues usually began with a report of at least one Pennsylvania Supreme Court case, though later issues have abstracts of Supreme Court decisions (up to six on a page), or a minority of issues starting with Transfers.

There are more than fifty full-text cases reported from the Pennsylvania Supreme Court as well as abstracts of cases. In some instances, there is the phrase “Reported expressly for the Pennsylvania Law Record...”

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3 1 Id. 148

4 2 Id. 116.

5 2 Id. 33.

6 William Allen Mitchener and John P. Young. The National Law Record Containing the Laws of the Several States and Territories Relating to Arrests Civil, Attachments, Bills of Exchange and Promissory Notes, Bills of Sale and Deeds of Trust, Chattel Mortgages, Evidence, Exemptions, Interest, Judgments, Jurisdiction of Magistrates, Limitation of Actions, Married Women, Release by Operation of Law, Statute of Frauds, Together with the Name and Residence of One Reliable Attorney in Each County of the United States and Territories. Philadelphia: John P. Young, 1875.

7 1 Pa. L. Rec. 4 (June 3, 1879).
Pennsylvania cases also appeared in the two additional categories of Recent Important Decisions and Current Topics. Recent Important Decisions provided two to five cases summarized usually in a couple of paragraphs. These cases come from courts including United States Supreme Court, U. S. Circuit and District Courts, and many of the states supreme court, e.g., Connecticut Kansas, Kentucky Maine, Missouri, Massachusetts, Nebraska, Nevada, New Jersey, New York, Ohio, Rhode Island, Tennessee, Texas, Virginia, and Wisconsin. Current Topics included summaries of cases by the editor from the similar courts. In addition, cases also were included from England usually reported from the Law Times. It is interesting to note that one case, Redman v. Hartford Fire Insurance Co., 1 N.W. 257 (Wis. 1879) is one of the first reports of the West’s National Reporter System. One Queen’s Bench case, Taylor v. Goodwin, interestingly approved the word “bicycle” within the definition of “any sort of carriage,” was wide enough to include a bicycle, although that machine had not been invented at the time that the act [5 and 6 Wm. 4, C.50] was passed.\(^{11}\)

Besides the court cases, there were several articles or short editorials found in the newspaper. The longest article was “The Law of Protest,” dealing with notes or bills on payment.\(^{12}\) On “Jury Trials,” Mitchener complained about the jury room where a couple of jurors could influence the others; a unanimous vote was “almost an anomaly,” jurors should vote individually without leaving the jury box, and a unanimous vote never expected. In another sidebar, the word “intent” has to be shown to be effectual in law cases.\(^{14}\) “What a Deed Includes”\(^{15}\) dealt with the contents of a deed of a farm and everything on it. Another editorial, “The Grasp of the Federal Judiciary,” concerned the role of the courts in deciding the right of one state to sue another state over the defaulting interest on bonds. This United States Supreme Court case was not settled for another three

\(^8\) North Pa. Railroad Co. v. Kirk, 1 Id. 1 (June 3, 1879).

\(^9\) The Miscellaneous State Reports were five sets of court reports that picked up cases not reported in the official reports: Grant’s Reports, Walker’s Reports, Pennypacker’s Reports, Sadler’s Reports, and Monaghan’s Reports.

\(^10\) 1 Id. 51 (July 15, 1879).

\(^11\) 40 L. T. R. N.S. 458, 1 Id. 91 (August 19, 1879).

\(^12\) 1 Id. 161-63, 170-71, 177-78 (Oct. 21-Nov. 4, 1879).

\(^13\) 1 Id. 183 (November 4, 1879).

\(^14\) Id.

\(^15\) 2 Id. 68 (February 3, 1880).
On November 25, 1879, the editor began to place fingers with a little note next to it, similar to a headnote: “Real Estate is a more healthy condition, than it has been for the last seven years. A special count upon a contract is bad on its face, if it omits an essential part of it. An old judge told a young lawyer, that he would do well to pick some of the feathers from the wing of his imagination and stick them into the tail of his judgment.”

After the second issue, there began advertising on the last page of each issue. The first pages of ads were four listings under plumbers and gas fitters, one for a roofer, and one law firm, Ginger and Walker on Walnut Street. Additional advertisers continued over the year. Shortly thereafter, a second lawyer, Wm. H Hearne of West Virginia added his card on July 8, 1879, (p.48), and an Adam Hoy of Bellefonte, PA with a specialty of collection of claims added on July 22, 1879 (p.64). Later, advertising took more than a page with lawyers ads listed by state: Pennsylvania Maryland, Virginia, West Virginia, New York North Carolina, Washington DC, and Ohio. As the paper continued to be published, more attorneys added their cards on the last page.

Mitchener listed his advertising rates as follows:

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<tr>
<th>Space</th>
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<td>1 square</td>
<td>$1.00</td>
<td>$1.75</td>
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<td>$8.00</td>
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<td>2.80</td>
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<td>44.00</td>
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<td>4.68</td>
<td>8.75</td>
<td>12.87</td>
<td>15.00</td>
<td>37.50</td>
<td>73.75</td>
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<tr>
<td>1/2 column</td>
<td>8.75</td>
<td>14.37</td>
<td>21.51</td>
<td>27.50</td>
<td>72.50</td>
<td>135.00</td>
</tr>
<tr>
<td>1 column</td>
<td>15.00</td>
<td>27.50</td>
<td>38.75</td>
<td>52.50</td>
<td>135.00</td>
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There were several miscellaneous items found in the newspaper. First, there is only one book review in the newspaper on Henry Mason Baum, *Rights and Duties of Rectors, Churchwardens and Vestrymen* that had a “timely appearance, as there is no work in print so well adapted to the subject matter of which it treats.” Why there is no other book review throughout the issues in unknown. Second, Mitchener recommended two local businesses to his readership, B. M. Shoemaker, window maker, and Empire Slate Works, a roofing slate company. Third, on March

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16 The case is *State of New Hampshire v. State of Louisiana*, 108 U.S. 76, was not decided until 1883. 2 Id. 76 (February 10, 1880).

17 2 Id. 12 (December 9, 1879).

18 1 Id. 24 (June 17, 1879).

19 1 Id. 24 (June 17, 1879). The first advertising appeared on the last page of the third issue; by the end of the periodical the advertising took up the complete back page and more than one column on the next-to-last page. 3 Id. 31-32 (June 29, 1880).

20 Rates of Advertising, 3 Id. 31 (June 29, 1880).

21 New Publications, 1 Id. 12 (June 10, 1879).

22 2 Id. 180 (May 11, 1880).
9, 1880, the editor placed a small notice under the weekly notice that George Delp, “the manager of a small sheet issued in this city” claimed the Record was copying his material. Mitchener “positively denied” and offered to show the certificate from his conveyancer of where he obtained his information.\textsuperscript{23}

The last issues of the newspaper have no mention that it would end as it did. As a little known paper/periodical, there are not many complete collections of this work. As John Hill Martin commented “It is doubtful whether a complete set of this paper exists; but the Law Library and Judge Mitchell have sets near complete.”\textsuperscript{24}

\textit{Joel Fishman, Ph.D., is Assistant Director for Lawyer Services at the Duquesne University Center for Legal Information/Allegheny County Law Library. He is the Book Review Editor and a frequent contributor to LH&RB.}

\textsuperscript{23} 2 Id. 107 (March 9, 1880).

\textsuperscript{24} John Hill Martin, \textit{Martin's Bench and Bar of Philadelphia} (Philadelphia: Rees Welsh & Co., 1883) 200. The Law Library of Philadelphia is now Jenkins Memorial Law Library; Judge Mitchell was James Tyndale Mitchell, a judge of the District Court (1871-1875), transferred to Philadelphia Court of Common Pleas No. 2 (1875-1888), and later Associate, then Chief Justice, of the Pennsylvania Supreme Court (1888-1909). Cyrus M. Dixon, Pennsylvania Side Reports, 12 Law Libr. J. 89, 95 (1920). Luther E. Hewitt has an article on Some Additional Remarks on the Pennsylvania Side Reports, 12 Id. 81 (1920), which identifies the list of side reports as Dixon’s.
There is apparently no conceivable event in human affairs that could be so cataclysmic, so destructive to life and society, that would not leave some legal questions that need to be settled.

Take, for instance, the Rapture.

The Rapture is an event that some Christians believe will cause a certain chosen number of them to ascend to heaven, leaving behind the sinners and non-believers. At some point after that (just how long is a matter of theological debate) the second coming of Jesus will occur which will result in the end of the world. In the interim period (commonly known as the “end times” or “the Tribulation”) the people left behind will have to deal with earthquakes, famine, pestilence, war, disease, and lots of unclaimed property.

When Harold Camping predicted that the Rapture would come in May 2011, I was reminded of an exchange of letters we have in our collection of Louis D. Brandeis letters here at the University of Louisville.

As a native of Louisville, Supreme Court justice Brandeis took an interest in the University of Louisville and particularly its law school. Wary of Harvard’s growing size, Brandeis envisioned a day when each state would have its own Harvard. Determined to make his idea a reality, Brandeis devoted time, energy and money toward making the University of Louisville a premiere institution of learning. Being a major advocate of research, Brandeis was particularly interested in bulking up the collection of the law school’s library. In addition to acquiring subscriptions to titles like the U.S. Reports and the Federal Reporter, he also donated hundreds of volumes from his personal library, as well as arranging to have copies of all of the briefs filed in the Supreme Court sent to the library. But perhaps most importantly, he had most of his papers sent to the library.

The collection, which comprises over 250,000 items, covers every aspect of Brandeis’ public life, with the exception of the papers relating to the cases he heard on the court. (Somehow Felix Frankfurter, who apparently did not share Brandeis’ enthusiasm for the University of Louisville, got those papers diverted to Harvard.) Approximately one sixth of the collection is devoted to what was Brandeis’ biggest public service passion: Zionism. And it was Zionism that led to this exchange of letters.

Zionism was a movement dedicated to the idea of providing a homeland for the Jews. This movement, of course, culminated in the formation of Israel. When Brandeis became involved in the movement in 1913 that outcome was far from certain and Zionism was practically non-existent in America. Brandeis’ first task in assuming leadership of the American Zionist movement was raising money, and lots of it, for the cause. Naturally most of the money came from Jews, but there were Christians who were interested in the cause as well, including one William E. Blackstone.

Blackstone is now largely forgotten, but in the late 19th and early 20th centuries he was one of the leading evangelicals in America. Appalled by the pogroms occurring in Europe, he took a special interest in the Jews. He upon the idea of creating a homeland for the Jews in 1890, a good four or five years before the idea was articulated by Theodor Herzl, the man generally credited with...
being the founder of Zionism. Once Zionism began gaining in popularity in America due to Brandeis’ leadership, Blackstone’s interest in the movement increased. At one time he even sent Brandeis a check for five thousand dollars—a considerable sum in those days.

But Blackstone’s interest in the Jews was not relegated solely to their physical well being. An important requisite for the second coming is the restoration of Israel for the Jews. And, as the letter to Brandeis indicates, Blackstone was convinced that the momentum achieved by the Zionist movement meant that the Rapture was close at hand. And that meant it was time for Blackstone to wrap up his worldly affairs.

Blackstone was the trustee of the Milton Stewart Evangelistic Funds Foundation, which was created to (among other causes) ease the suffering of the Jews. Even though the period between the Rapture and the second coming would presumably be a short one, Blackstone clearly did not see that as an excuse for the Foundation to discontinue its work. And presumably the Jews would be of more need of comfort during the tribulation than before. But who would distribute the Foundation’s money, if its entire board had ascended to heaven? It would have to be someone of high moral integrity but yet someone still stuck on Earth. Someone who was closely connected to the Jews and Palestine. Someone with a legal background who could deal with all the legal niceties of spending money belonging to people who had disappeared but were perhaps not yet legally dead.

Given their association, it was probably inevitable that Blackstone turned to Brandeis:

Mar. 19, 1917
My dear Mr. Brandeis:

Your night letter of the 18th was received this morning and I thank you for the privilege of writing you in this confidential manner.

Referring to my letter of January 29th, I would emphasize again my conviction that the mightiest proof of the truth and reliability of Scripture prophecy is immediately impending, and that is in the personal return to the earth of Jesus, according to His promise in John 14:3.

The whole foundation of the New Testament prophecies falls to the ground if He does not literally fulfill this great promise. I believe He will. And after years of patient study and faithful service, I believe I have through the teaching of the Holy Spirit, a true conviction that His coming is right at hand, and may occur within the next few months. If so,
professing Christians who are ready, are caught away, it must have a convincing effect, at least in the minds of many conscientious believers in the Word of God, who may not be in the true attitude of mind and heart to participate in the glorious Rapture of being caught up to meet Him in the air, as described in 1 Thess. 4:13-18.

May I ask you, dear Mr. Brandeis, that if such an event shall occur, will it not be convincing to you that I am holding a right understanding of Scripture prophecy?

Now, what I wish to ask is, if the Rapture does come, and you are not among those who participate in it, can there be any arrangement made with you, by which one’s earthly substance can be assured to be used for the benefit of those who may be by the Rapture, convinced, and who will thereby be led to hold to believe the Word, and work for Israel’s welfare in the awful troublous times which are to follow?

There are apparently no human laws which provide for any such event as this. If I understand correctly, absence for seven years constitutes a legal presumption of a person’s death, but that is altogether too tardy to have the desired effect concerning the earthly affairs of those who will participate in the Rapture. Can you suggest any method by which one may provide for the legal disposition of property under these circumstances?

I say in the strictest confidence that in God’s providence, during the past year, several million dollars of marketable stock have been put in my hands for evangelistic work. I have been able to use only a few hundred thousand dollars thus far.

Both Mr. Stewart and I will be glad of any suggestion which you can make as to how this could be put into your hands in case the Rapture does occur. Please write me whether you will be willing to consider some such arrangement; make suggestions so that I may write you more fully by immediate mail.

Assuring you that this is prompted by an intense and overwhelming love for Israel, God’s chosen people, who “though they have lain among the sheepcotes, are yet to be as the wings of a dove, covered with silver and her feathers of yellow gold,” Psalms 68:14, I am

Very sincerely yours,
William E. Blackstone

Brandeis’ response was short and to the point:

March 26, 1917
My Dear Dr. Blackstone:

I appreciate the high trust suggested in yours of the 19th, but my office of Justice of the Supreme Court prevents my assuming it or advising in relation to it. The trust might conceivably become a subject of litigation, and questions concerning it be submitted to our Court for decision.
This precludes my giving the subject consideration.

With great regard.
Most cordially,
LDB

Brandeis' position was a delicate one. No one wants to insult an important donor by ignoring their letter or by telling them they are crazy. By claiming a potential conflict of interest, Brandeis could pretend to take the situation seriously enough to plausibly sidestep the issue. (Although with the Four Horsemen of the Apocalypse and the Anti-Christ running around, and the armies of Gog and Magog fighting it out, it is hard to imagine the Supreme Court getting any business done at all. But I guess Brandeis would be a better judge of that than I.)

The collection does not have a copy of the letter that was actually sent to Blackstone. (That is presumably with the collection of Blackstone’s papers at Wheaton College.) What we have instead is the first draft. You can tell from all the crossed out words the care Brandeis took not to offend Blackstone. Brandeis may not have agreed with Blackstone’s ideas, but he certainly did not object to his money.

As far as the Brandeis collection goes, this is a fairly insignificant example. But it is indicative of the many trivial, and sometimes out and out crazy, letters that a public figure like Brandeis had to contend with. Our collection is filled with them and when I stumble on one of them, I cannot help but wonder what was going on in the head of the writer. Like the guy who sent Brandeis a picture of Mary Pickford dressed as a drum majorette—but that is another story.

Peter Scott Campbell is the curator of the Louis D. Brandeis and John Marshall Harlan collection at the University of Louisville Law Library, and is the writer of the Brandeis and Harlan Watch blog (http://brandeiswatch.wordpress.com/).
March 26, 1917, letter from Justice Brandeis to Dr. William E. Blackstone.
Transforming settler colonies in harsh, pristine wildernesses into functioning western societies has occurred several times in the last few hundred years. Several of these have ended up with the legacy of a predominantly Common Law legal system inherited from England: e.g. USA, Canada, South Africa, Australia, New Zealand. As time passed, however, each country developed nuances on that original theme, and each paid more, or less, attention to changes as they occurred in their legal *alma mater*. At the same time, the practicalities of governance had to be worked out to suit local circumstances, again using an imported template of parliamentary democracy. Such societies have now matured into nation states, and with their common heritage all are similar, yet, when looked at more closely, so different. The result is a fascinating mix, bequeathing its own unique legacy to the 21st century. In the meantime, the law that operates in England has taken its own radical pathway into the unchartered territory of the EU.

The Eminent Scholars Archive recently had the privilege of interviewing a specialist of the legal history of one of these “new” Common Law jurisdictions, and for the writer an opportunity to learn first hand of some of the peculiarities that shaped the current Australian situation. See [http://www.squire.law.cam.ac.uk/eminent_scholars/professor_justice_paul_finn.php](http://www.squire.law.cam.ac.uk/eminent_scholars/professor_justice_paul_finn.php).

The interviewee was Paul Desmond Finn, Judge of the Australian Federal Court (since 1995), who was visiting Cambridge as the incumbent Arthur Goodhart Professor of Legal Science. He had previously spent twenty years as an academic at Queensland and Australian National universities. US readers will find many references to differences and parallels in the USA, not only because the two nations confronted similar early problems as they emerged from colonialism, but because Paul Finn quoted American legal writing on several occasions. Also, he admitted to a deep admiration for American literature, which as an undergraduate he studied for part of his BA.

Justice Finn explains that to understand many of the preoccupations of society that informed the development of the law in Australia, one needed to understand the country’s history. Early in his career he realised he did not have this knowledge for reasons he attributed to tensions dating back to the First World War which had made it too divisive an issue to teach in schools until the 60-70s. To tackle this “the best way to learn it was to teach myself, and the best way to teach myself was to write a book”. The result was the fascinating *Law and Government in Colonial Australia*\(^1\) which appeared in 1987.

Australia is a federation that came into existence in 1901 (Commonwealth of Australia), and although each state retained its own laws and legal system, there were common developments in governance that flowed from the necessity of the States to provide basic services for its population.

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\(^{1}\) Oxford University Press, 216pp.
This resulted in the unique phenomenon of Australian “State socialism”\(^2\), which Justice Finn thinks “was an absolutely wonderful development. It made people think about their place in society and the responsibility of the State for people in society.” It resulted, however, in the early recognition by legislators that a novel solution had to be found for citizens to be able to make claims against government, and here Australians parted early (1865) from notions of crown immunity from suit, which persisted in the UK and USA until the late 1940s. Similar differences can be found in attitudes to matters of equity, although here the history of Australian development was tardy, not radical - while Australia only finally abandoned separate equity and common law courts in the 1970s, such notions had long been abandoned in the USA, and even England. Of course there are many other differences.

US readers will find some strong parallels, however, with the struggle Australia has in coming to terms with the difficult question of what is called “native title” - the recognition of land rights for the original population, and squaring this with the earlier legal notions of *terra nullius*. Justice Finn’s personal accounts of cases he has dealt with will no doubt strike chords with US lawyers and issues related to First Nation’s cases. Solutions to such problems could not be sought by reference to developments in England, as there are no analogues, and he says they have to be statutory. Nevertheless there remain serious anomalies.

One route he advocates is through careful use of interpretation of statutes. Here he cites the general advances made in the USA in the culture of holding legislators to account via insisting on clear rules of construction. He favourably refers to the works of Roscoe Pound, Roger Traynor and Guido Calabresi.

Justice Finn’s interview, against the backdrop of his *Law and Government in Colonial Australia*, gives some very perceptive insights into the fascinating dichotomy of the evolution of governance and the law in Australia. On the one hand a radical forging of new (albeit, sometimes flawed) experiments in the former, and, overall, a tardy development of adapting Australian law to Australian circumstances - “Australianisation”.

He summed up the history of the latter by pithily paraphrasing the US Supreme Court Judge Oliver Wendell Holmes, Jr. (1841-1935) - “the Common Law is the history of a country’s development slow grown...in Australia, it was the history of English development slow grown!"

I hope colleagues will find much of interest, and perhaps some controversy, in listening to Justice Finn’s interview.

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Margaret A. Leary is the director of the University of Michigan Law Library and is the author of a forthcoming book from the University of Michigan Press, *Giving It All Away: The Story of William W. Cook and His Michigan Law Quadrangle*. This biography of the greatest benefactor of the University of Michigan Law School will be published in September 2011. She received a B.A. from Cornell University, a M.A. from the University of Minnesota School of Library Science, and a J.D. from the William Mitchell College of Law. She has worked at the University of Michigan Law Library in various capacities since 1973. After learning about her upcoming publication, I contacted her and she graciously agreed to an interview for the LH&RB Newsletter.

Kasia Solon: First, congratulations on the upcoming publication of your book. For those who have not had the chance to see the University of Michigan Law School’s beautiful Law Quadrangle made possible by William W. Cook’s donation, could you describe it and what impression it made on you when first coming to Michigan?

Margaret Leary: My impressions of the Law Quad were prefaced by the fact that my parents both went to Michigan. My father was a very good amateur photographer. One of the black and white photos that I have always had in my office is a picture of the front of the Legal Research Building. It was probably taken in about 1935, within five years of the time it opened. My father had taken that picture. I kind of knew about the Law Quad in a funny way all my life. I just think it is a really magical place. I first saw it myself in person when I came for an interview in 1973. It did make a tremendous impression on me.

Could you briefly summarize Cook’s career?

Cook was born in Hillsdale, Michigan, in 1858 and went to the University of Michigan, did his undergrad degree, finished that in 1880, and then he went to law school and finished that in 1882. He went almost immediately to New York City, which was pretty unusual. Someone from Hillsdale who wanted to go to a big city then would usually go to Detroit, or Toledo, or Chicago. What was even more unusual was that, within two years of getting to New York, he became a member of the New York Bar in 1883 and in 1884 he began the process of becoming a member of a Masonic Lodge that is called the Kane Lodge—it still exists today. The Lodge that he joined had many of New York’s movers and shakers in it. And he started practicing law with a couple of other lawyers and had a number of cases where he represented wealthy people, in New York, Michigan and Ohio. In 1895 he became general counsel for a couple of cable and telegraph companies, which eventually became the Mackay Companies. That is pretty much how he earned his fortune. How did he get so rich? Basically it was from hard work.

He also began writing. Five years after he graduated from law school, he published his first book.

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And he continued to write and became the national expert on corporation law between 1890 and 1930, approximately. His major treatise went into about eight editions.²

**How did you get interested in this topic?**

What made an impression on me, in my first few months at Michigan, was that nobody knew anything about Cook. I would say, “Who gave all this money?” “Oh he was some corporate lawyer from New York, who was an anti-Semite.” That is about all they knew about him. Also in my early days in the job at Michigan there was a safe in my office—I guess it was a common thing in libraries that were built in the 1930s. The safe was originally intended to have the very rarest books and any cash that the library might accumulate. But in there I found this big, black head. It turned out that it was the model that was used to make the busts of Cook that are in the Reading Room and also in the Martha Cook building. It was based on a death mask that was taken. It had a little piece of paper that identified what it was and I thought someday I will have to follow up on this.

**Could you describe Cook’s relationship with the University of Michigan?**

He came to the attention of the university in around 1910 when Harry Hutchens, who had been dean of the law school, became president of the university. Hutchens recognized, earlier than almost anybody in public higher education, the importance of developing a strong alumni base as a resource, not only to bolster the reputation of the school, but also as a source of money and support.

I am not quite sure exactly how Hutchens became aware of Cook. Cook was a little secretive and he did not make it into the newspapers a lot. But there were other Michigan alums in New York City who could easily have alerted Hutchens to Cook’s success. Hutchens developed a very positive relationship with Cook and the first result of that was Cook’s gift of the Martha Cook Building. That gift was a giant gift. Hutchens used that—there are many lessons for development people in this book—he said “Gee look you have built this wonderful dorm for women, how about building a wonderful dorm for men.” And that idea of a dorm for men eventually morphed into the idea of the whole Law Quadrangle, a whole city block of law school buildings. Cook eventually died in 1930. The Lawyers’ Club had already been finished and the rest of the buildings were under construction when Cook died.

There is an interesting story of the years between 1910 [after Cook committed $10,000 towards the Martha Cook women’s dormitory] and 1930 [when Cook died] of the negotiations between Cook and the university over what he would give next. My book has, I hope, a certain sense of drama in it because the person who was dean of the law school for that whole period, Henry Bates, really wanted to control the project and Cook really wanted to control the project and Cook had the money. Bates’ attempts to influence the project, by 1925, had made Cook so angry that he refused to deal with Bates. So there was a period of five or six years when the university really does not know whether Cook is going to give any more money beyond the original Lawyers’ Club.

² William W. Cook, A TREATISE ON THE LAW OF CORPORATIONS HAVING A CAPITAL STOCK.
Did Michigan get lucky with the timing of Cook's death?

The theme of the last chapter of the book is, “This is a story of luck.” It is luck that Cook did not stay married, it is luck that he did not have any children. All events in a sense are luck, but it was really fortunate that Cook died when he did. It was fortunate that there was not a good treatment for tuberculosis; if there had been, he would have lived well into the Depression and his estate would have become worth practically nothing. The timing was such that the university was able to convert his estate, which was mostly stocks and bonds, into buildings. It is a story of luck and one the lucky things is that Cook died when he did.

Did Cook take an interest in the law library, the Legal Research Building?

Oh, a huge interest. For example, Cook did not want the faculty to have offices, because he thought an office meant a place to practice law and he wanted them to be doing research, not practicing law. It took a long time before anybody figured out—they kept saying, “The faculty have to have offices!” “No, they do not have to have offices. I do not want them to have offices!” What Cook meant was, “I do not want them to have a place where they practice law.” But it was only when somebody finally talked to him long enough to figure out, “Ok, fine, they are not going to practice law. They need an office in which to do research.”

Cook did not want there to be stacks. He said you can put all the books you need in the reading room. Well that is because Cook had been such a specialist for so long he did not need any books except court reports. But other people needed other things. So yes, Cook took a great interest in the construction of Legal Research. And [the law library director] Hobart Coffey was able to talk to him or, at least write to him, in a manner that was both informative and not challenging.

I find it somewhat paradoxical that you wrote this book involving the Gothic Law Quadrangle while working in seemingly the law school’s lone modernist architectural outpost, the law library addition from 1981. I remember hearing that this addition was built underground in part not to mar the beauty of Cook’s Law Quad. What do you think Cook would have made of this addition? Do you think your vantage point from the modern addition gave you a different perspective on Cook’s accomplishments?

Cook did influence the collegiate Gothic. The university bought the land after Cook promised to build buildings. The university was not involved at all the way it is now. Cook paid for what was built. Cook told the architects what to build. He vetoed certain plans, approved others, especially “flogged”—that was his word—the architects over the design of the Legal Research Building. He told them it looked like a barn, then he told them it looked like a factory, then he said raise those towers up, elevate that reading room, put more windows in. He was involved in every detail of design. He wrote the inscriptions that are on the outside. He chose the seals that are in the reading room windows, he chose the various historical figures that are represented in the Lawyers’ Club dining room. Cook was the designer, so-to-speak, of the Law Quad.

I do not think he would have liked the underground addition because he was a real Anglophile. I actually love the contrast because it provides people a choice, among other things. You can be in this international style, or you can be in this collegiate Gothic; you can be all isolated or you can be up in the giant reading room; you can be in air conditioned space or not; you can be in kind of
dark space or very bright space. If I were choosing a space for myself, I would choose the style of the underground building and I think being in the underground building has been very good for me psychologically because of all the light and the open and the ability to see outside. I am a happier person down there than I would be if I were in my old office in Legal Research. But that is just me!

I also think that the style of the collegiate Gothic architecture that the faculty have their offices in has influenced the nature of the Michigan faculty. Those offices are designed for people who like to be alone, designed for people who are introverts as opposed to extroverts. The extroverts on our faculty tend to go to certain offices, that are on heavily travelled pathways, and they leave their doors open. So I think we have developed to be a kind of a more introspective faculty than some law schools. That is just my personal theory. I just think architecture is tremendously important to people’s lives and influences us in ways that we do not recognize.

As a member of a profession concerned about book banning, what do you make of Cook’s final reactionary book, *American Institutions and Their Preservation*? Do you know whether the law library has ever made any special arrangements for this title or is it simply part of the general collection?

My recollection is that when I first came to Michigan, *American Institutions and Their Preservation* was in a locked range, where there were a lot of other books. I think it was the source of people saying that Cook was an anti-Semite, but it could well have been the source of people saying Cook was anti-Polish, anti-Irish, anti-Italian, and anti-almost anything except Canadians and people from the British Isles. But so were a lot of people in 1920. So was the university president. So was the president of the country. That was the era of the tightening-down on immigration. Two federal statutes that passed in the 1920s fantastically reduced the number of immigrants that could come into the country. So the book was hidden away; I would not go so far as to say it was banned.

I have a long chapter on that book in my book and, at my editor’s recommendation, I pulled it out and made it an appendix because it so interfered with the flow of the story of Cook’s life. It was one of the most challenging parts of the book to write because I did not want to appear to be an apologist for Cook. On the other hand, I hate to say it, there was a logical explanation for him to have hated immigrants the way he did. There are more ways to justify his feelings, but the way I chose was to describe the number of strikes that went on during his life and the impact those strikes had on the development of the country. Now I am a left-wing, total supporter of all of those strikes. Workers were being killed, injured, underpaid, and working in horrible conditions. However, they disrupted the country tremendously. I have got a whole long list of strikes that went on during his life and who the strikers were and the strikers were, for the most part, East European immigrants. So I can see Cook sitting in his fancy townhouse in New York, unable to take the train where he wanted to go because of a strike, or reading about strikes in factories. There is a reason for why he felt the way he did.

The thing that is clear is that in none of the documents that Cook created to give his gift to the university, which were primarily his will and a series of forty trusts that he set up, in none of them is there a word about no Jews, no blacks, no women, nothing like that. He did not try to impose his views on the university.
When you first undertook this project, you were clearly well versed in legal research. This book also involved extensive historical research and writing. Are there any lessons that you learned along the way?

I just had to figure it out as I went. The thing that I learned, that I still have to learn, is: “Do not make any assumptions.” Recognize the assumptions you are making and question them. As to the writing, I quickly realized that what was good enough for Law Library Journal would not necessarily be good enough for someone who had to pay $50 for a book. So I took a writing workshop at Antioch and I went for two summers to a Kenyon writing workshop. I took several online courses in writing and I learned a lot. I learned how to write scenes, learned how to create a structure, a plot. I learned how to write good dialogue—all kinds of writing skills that you have as a librarian are not necessarily what you need to write a book that people will pay for. Writing was by far the hardest part.


I think it was in 2004. I remember this distinctly: I was sitting up in the faculty lounge and I was having coffee with [the legal historian] Brian Simpson and a couple other people. So I am sitting there chattering about this latest thing I discovered about Cook and I remember Brian leaning forward and saying, in his British accent, “Margaret, are you writing a book?” And I remember thinking to myself, “No I am not, but I could!” And then I said, “Brian, yes, I am writing a book!”

Other pieces in this project were some articles in Law Quadrangle Notes and another piece on the foreign law collection. The idea was that as I worked along, I wanted to get the internal satisfaction of having finished something. Cook and the Detroit railways in my book is only a paragraph because it is just not a matter of general interest. So those articles were a method of not being totally frustrated in writing a whole book.

Originally the “Discovering William Cook” article was also going to be part of my book. There would be a chapter about whatever happened in Cook’s life, and then there would be a little sort of mini-chapter about how I found the information. Well it turns out that has two different audiences. And it made the book hugely long. In fact, U of M Press rejected my book twice, before they accepted it. They rejected the first one because they did not like these little mini-chapters about research. They said, “Nobody cares about that.” I thought, “Well, what an insult to my profession.” But it is true—the people who care about the life of Cook are not the same people who care about how I found the information.

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I looked into publishing it myself and I was totally prepared to publish it myself. Then, at the last minute, I had an idea. In fact, my copyeditor gave it to me—she said, “Margaret, your book needs a sponsor, someone other than you who has credibility make the case for the book.” I thought, “Shoot, there isn’t anybody.” I thought a little harder and said, “Wait. This book has a development theme to it.” So I thought, I am just going to go down and talk to Todd Baily, who is the head of the law school development office. He said, “I think it’s an important story. I have some ideas.” He did not tell me what they were: “Let me go talk to the dean.” And a few weeks later, he called me back and he said basically, “The U of M Press will publish the book.” The law school supported the publication of the book—the dean thought the book was important to be published. I think it also helped that I was willing to pay for the design and that I had already had it copyedited once.

What has the process been to bring this book to press?

It has been quite a saga. I hired my own designer and I hired my own copyeditor, after I had written about half of it, who helped me as I wrote it. A copyeditor will look at the structure of the whole book and say, “This structure has these pros and these cons.” And then she would also look at the structure of each chapter. Does the chapter make sense? Does it flow logically from the previous one and flow logically into the next one? And then the copyeditor will work on the level of the paragraph—do your paragraphs make sense? Talking about this from the highest granularity down to the lowest, then she will look at sentence structure. I cannot tell you how many times my editor would say, “Margaret, just tell me what you are trying to say.” And I would tell her and then she would go, “Well why then did you write this!” So I would write it all over again.

So it was in pretty good shape when the U of M Press got it and they do not have to do the design, which helps them out a lot. They were very pleased with it as the designer I’m using is Mike Savitski, who is nationally known, from Ann Arbor. He has assigned my project, which is relatively simple, to a young woman whose husband is a first year law student. So she feels very connected and that type of connection really I think helps to have a good result in the end.

It has been a real educational process though. The reason I even knew to look for a book designer was that I already had a copyeditor, who was been in the writing and editing business for most of her life. She kind of explained all the steps to me. I was so confused by the whole process—I could not understand what happened when—so I finally said, “I am sorry, I am an amateur, can we all please get together for half an hour?” There is my own copyeditor, the copyeditor at the press, a production person at the press, the book designer, and there is the process of proofreading that has to get done somewhere along the way. I just did not understand the sequence in which anything would happen and how things went back and forth. But after we sat down, we came up with kind of a schedule and I understood it better.

Based on your own experience, do you think that law librarians are well-advised to spearhead efforts to research a law school’s history and, short of writing a book, do you have any recommendations or advice on how to do this?

Yes, I do [think it is worthwhile] as a lot of questions do come up about the history of the law school. One of the things that I am really proud of initiating—others have carried it out—is the

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History and Traditions website at the University of Michigan Law School. I initiated it in about 2008 as part of our celebration of our sesquicentennial in 2009. I think that is an example of how the skills of the library collectively, in terms of building a website, and getting a grip on the history of the law school, pulling together photos of graduates, biographies of graduates, and lists of everybody who taught at the school, what classes they taught, and what world events were going on at the same time, I think that is a very valuable contribution of the skills of librarians to the school, having a sense of its history.

I submitted that website for an award from AALL and it did not win specifically because it was not about the library, it was about the law school. And I was kind of proud of that reason. The library did it and that is why in my opinion it is worthy of an award, because it is an example of what a library can do for the school. I am not claiming it has made a huge difference, but it has helped with alumni—people write in and say “My grandfather went to law school and I was so happy to find his photo.”

I also think that by understanding the history of the school, the librarians can understand the history of the role of the library in the law school. Most law libraries have been very important to their schools, so it is really nice to be able to document that.

I happen to have attended the same law school as you did, William Mitchell College of Law in St. Paul, Minnesota. Over the years, I have read about your generous donations to William Mitchell and the scholarship you have endowed. Has your examination of Cook’s philanthropic efforts influenced you at all in this regard?

I think it did. The university would not have had such beautiful buildings in the Law Quad if Cook had not played the role that he did. I fully appreciate that. In a way he was a bad example because he tried to control so much. I do not want to emulate that part of Cook.

What I admire and respect about Cook is that he did not want his name on anything. He named things after his mother and his father. The only things that are named after Cook are the Legal Research Building and the whole Law Quad; those namings were done after Cook died. He would not have wanted them. Every time they asked him, “Can we put your name on it?” he said, “No, these buildings are more important than any one person.” He said, “There are enough Cooks in that Law Quadrangle already.”

I understand that you will be retiring from your position at the University of Michigan Law Library and will enter the M.A. program in Creative Writing at Eastern Michigan University. Can you tell us more about your plans for the future?

I have some ideas for what I want to write next. So far there is not a whole book there, there are some articles. I want to do an article for the Business History Review about the company that Cook worked for, the place where he made all his money, the Mackay Companies. I originally intended the Cook biography to be a dual biography, that is of Cook and of the company he worked for, but
it got too complicated.

I would really like to do either a series of short stories or a book based a little bit on the life of my former foster daughter, a total change of pace. And then I also want to do some more local articles about local politics in Ann Arbor.

I am retiring at Michigan at the end of July and I will then enter the M.A. program in Creative Writing at Eastern MI U next door! I am going to be taking these classes and I just finished my first crack at registering for the fall term. When I told my advisor what I was taking, she told me “First of all, you cannot possibly take 12 credits. It is not like undergrad!” I just thought, well ok, I do not know how to write, I need to learn how to write, and maybe it is going to be really hard to do these writing assignments. So I am revisiting that. And I think that in the course of the writing workshops that I am going to be taking I will come up with other ideas.

Kasia Solon is Access & Student Services Coordinator at the Tarlton Law Library at the University of Texas at Austin.
April Foolery

Sarah Yates

There once was a rare book cataloger
Whose best friend was her cat, a blogger
The cat’s name was FRBR
“DCRMeow,” he would murmur
To his readers he’s known as Sir Rat a-Flogger
http://ratafllogger.wordpress.com/

There was a rare book in Nantucket
Out the window a lawyer did chuck it
It was full of old laws
That were riddled with flaws
So the lawyer, she just said, “Oh screw it.”

Sarah Yates is Cataloging Librarian at the University of Minnesota Law Library.

Editor’s Note: Sarah sent this to me on April 1st, along with a note explaining that she had decided to leave the field of law librarianship to become a professional poet. Forgetting that it was April Fool’s Day, I bought her story and sent her a reply wishing her good luck in her new profession.

Good job Sarah—you got me!
Legal History & Rare Books SIS members have plenty to choose from at the 2011 AALL Annual Meeting. Sunday, July 24th, 12noon-1:15pm, Jed Glickstein, the 2011 Morris Cohen Student Essay Contest winner, will present remarks on his essay – *After Midnight: The Circuit Judges and the Repeal of the Judiciary Act of 1801* – at our Roundtable. Mr. Glickstein is a JD candidate at Yale Law School. In addition to hearing discussion of this exceptional essay, Roundtable attendees will be provided lunch. 1:30pm-2:45pm, *Old into New: Collaborative Law Library Digital Collections* will present key collaborative concepts for creating institutional repositories and open access digital collections, as well as discuss how such collections facilitate research and teaching. Speakers will be Warren Billings, Distinguished Professor of History, Emeritus, University of New Orleans; Kevin Garewal, Collection Development/Acquisitions Librarian, Cleveland-Marshall College of Law; Kurt X. Metzmeyer, Law Library Associate Director, University of Louisville Louis D. Brandeis School of Law; and Gail Warren, State Law Librarian, Virginia State Law Library / Supreme Court of Virginia. Coordinated by Laura Ray, Instructional Services Librarian, Cleveland-Marshall College of Law, this program is co-sponsored by the Micrographics/Audiovisual SIS. At the end of the Sunday meeting day, please be sure to attend our LHRB Business Meeting 5:30pm-6:30pm. This important brief meeting is your opportunity to hear the latest about, and get involved in, our LHRB SIS activities and programs.

Try to get good sleep Sunday night, because on Monday, July 25th, LHRB programs start early. 8:45am-9:45am, *We The People: Constitutional National Treasures in Philadelphia Archives* will discuss the critical work of James Wilson in the writing of the U.S. Constitution, as well as efforts to preserve and provide access to Wilson’s papers. Coordinated by Galen L. Fletcher, Faculty Services Librarian, Brigham Young University Howard W. Hunter Law Library, this program’s speakers will be William Ewald, Professor of Law and Philosophy, University of Pennsylvania Law School, and Lee Arnold, Senior Director of the Library and Collections, The Historical Society of Pennsylvania. 10:45am-11:45am, international exhumation expert James E. Stairs, Professor of Law and Forensic Sciences, George Washington University Law School, returns to present “Digging” *Legal History in Philadelphia: The Meriwether Lewis Project*. Investigating Lewis’ 1809 death as a murder or suicide, this will be Professor Stairs’ third AALL “Digging” program, again coordinated by Jennie Meade, Director of Special Collections, George Washington University Jacob Burns Law Library.

To assist your time management, consider using the electronic AALL Annual Meeting Conference Planner. Of course, as always, check the final AALL Program for exact locations of programs and meetings. Looking forward to seeing you in Philadelphia!

In America legal educational tradition, this volume would be considered a “casebook” and in many ways, resembles one. The cases in this volume are selected from the extensive literature of court records prior to 1750, both from printed sources and manuscripts, and certain lectures and texts. This materials is arranged under the various historic forms of actions developed through the ages in English law. The purpose of this selection is to show the development of each form of action in this system of common law pleading which was held so dearly by English lawyers, and later by American lawyers in earlier centuries. This system of pleading was complicated and lawyers who became skillful in pleading was recognized in the legal profession for this special ability. In the mid Twentieth Century, in England and America, common law pleading was replaced by a more modern system of rules developed and promulgated by the courts. The decisions selected by the compilers were from the King’s courts where common law pleading was developed and does not represent decisions from other courts in the English judicial system. The authors aim is to point to the recorded notes of decisions and urged future scholars to supplement their efforts from records of local courts. Pleadings in admiralty, ecclesiastical courts and chancery were very different from these forms of actions and for that reason, are not found represented in this collection as the compilers note in their introduction.

What is the value of this material? These notes of holding in actual litigation contribute to our understanding of society at that period as well as extending our understanding of English legal history. The widow seeking her rights in property which she has been wrongfully taken away from her has as much pathos after
all the centuries since as it would today. The authors have sought to compared different versions of the notes reported here with several manuscripts to insure their accuracy. It should be pointed out that these points of litigation exist in written manuscripts and if printed, was done many centuries later. Who recorded these notes is not known and were obviously were made for personal use or possibly the judges. They are not decisions in our present understanding of such documents but they were instructive of legal thinking at the time they were recorded and serve some purpose for the scribe who prepared them.

Any one who string a necklace has many beads from which to choose. Likewise, these editors had a wide range of sources from which to select those “decisions” which are included in this volume. Both editors have shown, through their scholarly writings, a familiarity with this literature and only a brave soul can point to other cases which they should have included.

It is difficult to explain to the modern reader the contents of this collection for terms currently use would not convey an accurate picture of its contents. In our modern terminology, some terms convey a different concept to contemporaries which may be confusing. For example, to describe these court cases as “decisions” conveys a different concept to the modern student. These “decisions” are written notes of litigation which may include the reasoning of the judges or exchanges between the attorneys or arguments made to the judges and no doubt served as a memorandum of actions taken by the court.

The editors efforts are not limited to the selection of cases but include textual materials and statutes. In an efforts to aid the contemporary user, the editors were mindful that much would be unfamiliar today. For example, dates in the original are often references to the Church calendar such as the feast of St. Andrew and the editors have added the dates according to our current methods of references to months, dates and years. The editors were well aware that many references common centuries ago are not known except to the few scholars who are deeply immersed in this history so these enrichments made by the editors serve to make this collection more understandable to the modern reader.

The editors have sought to make the entries as accurate as possible. Where there are two sources, comparison have been made. Since these accounts were often written in Latin or law French, the editors have made their own translations where, in their judgment, this was necessary. This is a brave effort to make this materials known to the modern reader in a convenient form for few libraries have extensive collections of all the printed English court documents for many are found in publications of local English historical societies which are considered out side of the literature normally thought to be useful in a comprehensive English law collections in American law libraries. This reviewer applaud the efforts of these editors and only wish it was available when he had the temerity to try and teach to a law school class the glories and the usefulness of common pleading, trying to convince them that this system of pleading was introduced in many American courts, although in modified form. Editions of English texts on this subject were common in the Nineteenth Century among the books published by American publishers.

Erwin C. Surrency
Professor of Law and Law Librarian emeritus
University of Georgia
The remains of English jurist and philosopher Jeremy Bentham remain on display at University College London more than 175 after his death in 1832. Dressed in the clothing he once wore, Bentham’s stuffed skeleton continues to hold his favorite walking stick–Dapple–on his knee.

Until recently the writings of this great reformer were not as well-preserved as his mortal remains, limited to an incomplete edition of his complete works that was published a decade after his death. Fortunately a new critical edition of Jeremy Bentham’s works and correspondence is being prepared under the supervision of the Bentham Committee of University College London.

_A Comment on the Commentaries_ is Bentham’s critique of Sir William Blackstone’s _Commentaries on the Laws of England_. Never completed, the work did not appear in print until 1928. Bentham’s first major publication, _A Fragment on Government_, was originally published anonymously in 1775. These two related works deny the reality of Blackstone’s theory of social contract, and instead advance the idea of utilitarianism.

Edited by J.H. Burns and H.L.A. Hart, this volume belongs in the office of every legal historian and political scientist.

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

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1 Bentham’s head was damaged in the preservation process and has been replaced by a wax replica.
The Sedition Act of 1798 was among four laws collectively known as the Alien and Sedition Acts. The other laws were the Naturalization Act (officially An Act to Establish a Uniform Rule of Naturalization), the Alien Act (officially An Act Concerning Aliens) and the Alien Enemies Act (officially An Act Respecting Alien Enemies).

Congress, then controlled by the Federalists, enacted the Sedition Act on July 14, 1798 despite opposition from Thomas Jefferson and Congressional Republicans.

The Sedition Act made illegal the “writing, printing, uttering or publishing [of] any false, scandalous and malicious writing or writings against the government of the United States.” Federalist supporters saw it as actually liberalizing the more repressive Common Law. However, the Act was seen as unconstitutional by the Republicans: it was not authorized by the limited powers granted to Congress in the Constitution, it expanded Federal power in violation of the Tenth Amendment, and it violated First Amendment protection of free speech and of the press.

In Repressive Jurisprudence in the Early American Republic, Philip I. Blumberg, Dean and Professor Emeritus of the University of Connecticut School of Law, explains how the same generation that adopted the Declaration of Independence, the Constitution and the Bill of Rights could also adopt the restrictive Sedition Act. Dean Blumberg explains that the political revolution that overthrew British colonial rule was not accompanied by a legal revolution; English Common Law, designed to uphold and protect the monarchy, the legislature, the judiciary, and the established church, remained in place.

With the Election of 1800 on the horizon, the Sedition Act was almost immediately used by the Federalists to suppress Republican newspapers. While successful in the short term, with several Republican newspapers forced to close, the prosecutions ultimately led to public disapproval and Republican victories in the 1800 Congressional elections. The Republicans allowed the Sedition Act to expire in 1801, however the Jefferson and Madison administrations thereafter made use of criminal libel to attack the Federalist press in both Federal and state courts. American courts continued to enforce this repressive jurisprudence until the 1900s.

This well-written tome belongs in every academic library, and is a “must read” for those with an interest in civil liberties. Because it addresses the Sedition Act of 1798 in such detail, it will be

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1 The Sedition Act of 1798 was among four laws collectively known as the Alien and Sedition Acts. The other laws were the Naturalization Act (officially An Act to Establish a Uniform Rule of Naturalization), the Alien Act (officially An Act Concerning Aliens) and the Alien Enemies Act (officially An Act Respecting Alien Enemies).

2 Among those Federalists who supported enactment of the Sedition Act were John Adams, George Washington, and Alexander Hamilton. However, John Marshall, not yet Chief Justice, refused to endorse the Act.

3 Such prosecutions had actually begun prior to the adoption of the Act; among those charged with criminal libel under Federal Common Law prior to the Act’s adoption was Benjamin Franklin Bache, grandson of Benjamin Franklin and editor of the Philadelphia Aurora. Bache died of Yellow Fever before trial.
of particular interest to anyone with an interest in free speech in wartime.

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*Rising Road* provides intelligent and sensitive coverage of a 1921 Birmingham trial that has already received a good deal of attention from biographers of Hugo L. Black (see below, n. 8). The trial was that of the Reverend Edwin R. Stephenson, a Methodist “local minister” charged with—and acquitted of—the murder of Father James Coyle, a Catholic priest. To a modern observer, the backdrop for these events has all the trappings of the “benighted south.” As early as 1917 the journalist-critic Henry L. Mencken had described the former Confederacy as a region marred by stifling racial, political, and religious norms, all of them self-limiting, at best defective; his south was the land of “the Methodist parson turned Savonarola and of the lynching bee.” Davis is much kinder than Mencken to the white Protestant folk of Birmingham, but she is well aware that they were possessed by collective demons.

One of the city’s middle-class Protestants was the Baptist Hugo Black (1886-1971), who appeared as chief counsel for Stephenson’s defense. More ambitious than devout, Black would have been delighted to know in 1921 that the great accomplishments of his life were all before him, including his election to the U.S. Senate in five years, and his nomination to the U.S. Supreme Court in sixteen years. Black viewed the emotionally charged Stephenson case as professional challenge. If it gave him an opportunity to whip up the masses, so much the better—whether he entirely shared their manias or not. The same impulses were behind Black’s induction, two years later, into the second Ku Klux Klan. The hooded order was growing rapidly in numbers and influence in Birmingham during the 1920s. As to its impact upon the legal system, the question was not whether any judges, lawyers, and policemen were in the Klan. Rather, one should ask how much

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influence they could bring to bear upon trials—or perhaps, with regard to the Stephenson affair, whether they needed to try.

Davies is a former prosecutor, and she sets forth the facts of the Stephenson case in a most lawyerly manner. Some facts were beyond dispute. Late in the afternoon of August 11, the defendant had shot Father James Coyle in the head after a brief encounter on the rectory porch of St. Paul’s Catholic Church. He had then walked deliberately to the nearby Jefferson County courthouse, was overtaken upon his arrival by Birmingham police officers, and immediately after his capture confined in the Jefferson County jail. Meanwhile Coyle, though transported by ambulance to St. Vincent’s Hospital, died upon the operating table (Rising Road, 57-78). The root of Stephenson’s hostility to Coyle (as the parson freely confessed to police and to newspapermen) was his belief that Coyle has “interfered” with his family by teaching Ruth Stephenson, only daughter of Edwin and his wife Mary, the doctrines of the Catholic Church. Worse, according to Stephenson, Coyle and some of his parishioners had influenced Ruth’s decision to join the Catholic Church. Worst of all, Coyle had, on that last day of his life, married Ruth to Pedro Gussman, a paperhanger who was a native of Puerto Rico.

Catholicism was one of the great bugbears of early twentieth-century America; and nowhere was anti-Catholicism more virulent than the south. In Georgia the former Populist firebrand Tom Watson used his Jeffersonian, a widely circulated journal, to accuse Catholic clergy of every crime from unnatural lust to treason. Ever more persistent was Wilbur F. Phelps of Aurora, Missouri, whose weekly Menace was devoted exclusively to warnings about supposed Roman Catholic crimes and subversion. Watson carried his brand of personal devotion to the U.S. Senate in March 1921. There he joined Alabama senator James Thomas Heflin, a passionate supporter of Jim Crow and disfranchisement, but equally intent upon detecting papal plots. Davies is well aware (Rising Road, 13-15) of the pervasive influence, in Alabama, of Watson and Phelps. Likewise she covers (Rising Road, 42-43) the tumultuous welcome given in Birmingham (December 1916) to Alabama native Sidney J. Catts, recently elected as governor of Florida after a campaign backed by prohibitionists and an anti-Catholic organization, the Guardians of Liberty.

Prior to the 1920s, Birmingham’s leading anti-Catholic group was the True Americans, or TAs, a group so secretive that little is known of them and nothing more is likely to be known. Like other historians who have covered the Ku Klux era in Alabama, Davies takes notice (Rising Road, 48-50) of TA involvement in the city commission elections of 1917, in which Dr. Nathaniel Barrett defeated the incumbent commission president, George Ward. Ward, an Episcopalian, was deemed insufficiently vigilant against Catholic influence; and besides, he had voted against closing Sunday movies! One of Barrett’s first acts was to dismiss the city’s chief of police and replace him with

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6 See Carl V. Harris, Political Power in Birmingham, 1871-1921 (Knoxville, Tennessee: University of Tennessee Press, 1971), 86; Harris views the Ward-Harris campaign partly as an example of a clash between “Old Birmingham” and suburban Birmingham. Suburbanites (then, as today) were more likely to be white, middle-class, Evangelical Protestants, also to be more firmly
“Thomas J. Shirley, an open member of the Imperial Council of the Ku Klux Klan” (Rising Road, 50). Still, in 1921 Catholics were more likely to blame the TAs than the Klan for acts of discrimination and bias. Before the Stephenson case came to trial, for example, Pedro Gussman was arrested on a trumped-up charge of murder. He fought free of the charge, but in its aftermath Ruth Gussman concluded that her husband had been frightened or bribed into appearing as a defense witness. She renounced Pedro publicly, her statement to the press charging that “the True Americans had bought him out” (Rising Road, 189-198, quoted passage at 198). 7

Xenophobia, racism, religious bigotry, secret societies, mass hysteria: Davies negotiates these waters in order to get to the legal maneuvering that preceded and accompanied the trial. Though Black’s biographers provide significant accounts of State v. Stephenson,8 Davies has written the most developed account. She assesses the maneuvers of Circuit Solicitor Joseph Tate and defense attorney Hugo Black (between whom no love was lost; see Rising Road, 133-134) from the standpoint of one who has “been there and done that.” With regard to the State’s case, she exposes likely tactical considerations that academic historians are likely to miss, showing with readable, fair-minded prose how a good cause can be lost in our adversarial system.

To take one instance: Much of the grand jury transcript of the case is extant, and one of that record’s most striking features is lengthy testimony given by Ruth Gussman, who asserted that her parents were violent bigots with a long record of hostility to Catholics in general and Father Coyle in particular. Most writers on the subject have been so struck by the damning nature of this testimony that they missed something even more meaningful. The grand jurors were not sympathetic to Ruth (Rising Road, 147-153, 155-156) or to the state’s case generally! Instead, they seemed ready to accept the defense’s version of events—that the priest had struck the preacher, knocking him down, and that he had seemed to be reaching for a pistol when Stephenson shot him first. The grand jurors did not rush to judgment; in fact they did not indict Stephenson until the first week in September, after a long adjournment. When they did indict, it was for second-degree murder, not a hanging offense (Rising Road, 142-169, 203-204.)

The trial began on October 17 with selection of a jury whose members reflected the city’s spectrum of blue-collar and middle-class occupations. As was customary in the Jim Crowe south, the jurors were all white men. The prosecution opened its “case-in-chief” the next day (Rising Road, 211-216). Several commentators have noted that the State’s presentation was unexpectedly brief and not particularly effective. Tate and his assistants called only a few witnesses. They did not call Ruth

7 Horace Alford, attorney for both Ruth and Pedro Gussman, received a threatening note signed “the T.A.s.” Alford was kept busy establishing Pedro Gussman’s innocence of the Peoria, Illinois murder for which he was arrested. He also, reportedly, fended off attempts by the Stephenson family to commit Ruth Gussman to the state mental asylum, a move that they had considered earlier in response to her strong interest in Catholicism. See Rising Road, 23-26, 193-194.

Gussman, whose grand jury testimony might have offered evidence of a long animus between Stephenson and Coyle. Later, the State offered crucial eyewitness testimony after both sides had made their main presentations. Black objected vociferously and the trial judge, William E. Fort, sustained the objection, ignoring Tate’s assertion that his eyewitness would rebut Stephenson’s testimony (Rising Road, 264-268). Of all modern writers on the trial, Hugo Black biographer Steve Suitts is harshest in his assessment of the prosecution. He describes “a long string of errors, possibly deliberate errors, on their part,” characterizing the late offer of an eyewitness as “a conspicuous, stupid blunder—so clear that it appears more sabotage than error.”

Davies, on the other hand, feels that Tate was genuinely trying to win.

Davies would have us consider several mitigating factors. First, the charge of second-degree murder required only the simplest elements of proof. It was sufficient if the prosecution could prove that Stephenson killed Coyle with a deadly weapon (Rising Road, 216). If they could do so, the burden of proof was effectively shifted to the defense. Second, calling Ruth Gussman to the stand was unnecessary and would have been unwise, given her track record as a witness and the tenor of stories about her in the Birmingham News and the Birmingham Age-Herald. Reporters had swarmed after Ruth in the sort of feeding frenzy too familiar today. With an eye on selling newspapers they had implied that she was an unnatural daughter, a willful girl who had entered into an ill-advised marriage only to turn on her husband (Rising Road, 144-147, 188-189, 210). Davies sees Ruth as a victim, a young woman courageous enough to escape from an abusive family. But she also knows what Tate knew—that putting Ruth on the stand would have exposed her to cross-examination by Hugo Black.

Third, Tate’s crucial rebuttal witness, the eyewitness to the shooting, had surfaced only the “waning days” of the trial, after the state had finished its case-in-chief (Rising Road, 264-268, quote on 264). By all accounts, this man could have provided exactly what Tait needed: a close-up view of the shooting, not the heard-a-noise-and-looked-over-yonder versions that other witnesses offered. It is not hard, in the realms of legal history, to find stories of defendants hanged due to bad lawyering or bad luck. The peoples’ case in State v. Stephenson seems to have suffered from both afflictions. Overall, as Davies traces the currents of public opinion before and during the trial, it seems clear that the State’s case was doomed. Alabama Klan leader James Esdale would say afterward that “Hugo didn’t have much trouble winning that verdict” (Rising Road, 283). Esdale meant for us to understand that the Klan had rigged the proceedings. But it is not necessary for us to trust him. The truth was that the anti-Catholic culture of the times made a conviction difficult, Klan or no Klan. And to make a conviction well nigh impossible, all that was needed was for someone to play the race card.

Hugo Black was just the man, an attack-dog lawyer seemingly without scruples. From his decision to enter dual pleas (self-defense and temporary insanity), to his brutal cross-examination of prosecution witnesses, to his direct examinations of Stephenson and his wife, he was in effect telling a poignant story. Here was a good Christian family, hedged about with scheming papists who would stop at nothing to steal their child. Building upon the Stephensons’ agitation prior to the murder, Black persuaded the jury to accept that the preacher had been driven mad by anxiety. As for the genie of race, Pedro Gussman’s ethnicity was for Black a gift from heaven; for it allowed

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9 Suitts, Hugo Black of Alabama, quoted passages on 360, 361; see also Newman, Hugo Black, 86.
him to accuse Coyle of being a miscegenationist. Prepped no doubt by Black, Stephenson testified that he had told Coyle, just before his alleged fight with the priest: “You have ruined my home! That man [Gussman] is a Negro!” Black then paraded Gussman in front of the jury, having first darkened the room so they could better see him as a person of color (Rising Road, 240-244, 251, 263-264, quoted passage on 243). In his closing arguments, Black would speak of Gussman’s claim to be of “proud Castilian descent,” adding snidely that “he has descended a long way” (Rising Road, 275).

At several points during his illustrious career as a Supreme Court justice (1937-1970), Black discussed his decision to join the Klan. He probably did not think back, as often, over his management of Stephenson’s defense. But his involvement in both activities associates him, irrevocably, with a lawless movement. True, he left the Klan prior to the 1926 state elections and never looked back. His Senate career, little remembered today, was that of a prominent “New Dealer.” Then by votes and opinions over the course of three decades on the Supreme Court, he established himself as a great defender of our constitutional rights.

Yet, it is useful—more, it is important—to see Black’s earlier incarnation pull out all the stops of racism and bigotry. It is important because of what Black’s story proves: that individuals can change and grow; that we are not the prisoners of environment or chained to the sins of the past. Harper Lee’s Atticus Finch provides us with a mythic lawyer-hero, struggling to lead by example in a wounded society. But Hugo Black was the real thing, struggling to rise above himself; and Rising Road gives us a vivid tour of the tangled wood from which he emerged.

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John W. Head is currently the Robert W. Wagstaff Distinguished Professor at the University of Kansas School of Law. He has also taught in Europe and Asia and previously served as legal counsel to the Asian Development Bank and the International Monetary Fund. Professor Head’s prior publications include books and articles on global business and economic law, and a 2005 book on dynastic Chinese law codes.

Based upon the back cover and introductory materials of Professor Head’s book, I expected to find
a highly readable text that would fall in the “popular history” genre. The back cover of China’s Legal Soul, for example, claims that the book’s narrative “is readily accessible by—and written for—non-specialists.” Further, in his preliminary material, the author posits that he will offer “occasional citations to authorities and additional reading” (p. xxiii), and that he has tried “to use footnotes sparingly in order to provide as clear and straightforward a ‘story line’ as possible.” (p. xxiv). My expectations for an easy read, however, were certainly not met; this is purely a scholarly work. When approached as such, though, Head’s book provides an exceptionally well-organized and valuable exploration of China’s contemporary legal identity as viewed through a historical lens.

Certainly the strength of this book is its organization and the author’s ability to “step into” the text to remind the reader where the author has been, and where he is going. This is a talent that, in my mind, many academics (and most students) lack. Early on, Head clearly articulates the purpose of the book—an exploration and search for what he terms China’s “legal soul,” which he defines as “the set of fundamental and animating legal principles or values that give a society, particularly the legal system of that society, its unique spirit and character.” (p. xiv). He then sets forth the structure of this exploration—carefully explaining the content of each of the four chapters in the book and how that content relates to the book’s aim. Before the opening sentence of the first chapter, the reader has a crystal clear idea of how the author’s quest for China’s modern legal identity will unfold in the forthcoming pages.

Chapter I opens with a “nutshell” account of the development of dynastic Chinese law. Head views dynastic Chinese law “as not only an engaging story worthy of study in its own right, but also a key that can help...unlock the door to understanding the essence of contemporary Chinese law.” (p. xv). In this section, the author adeptly describes the conflict between Legalism and Confucianism, which eventually morphed into what the author describes as an “alloy” that combined the two competing ideologies. This “alloy,” according to Head, eventually found expression in the various legal codes of dynastic China (e.g., Han, Tang, and Qing), each of which the author describes in detail. Head subsequently gleans four distinct themes from his survey of dynastic China: 1) the extraordinary continuity of China’s traditional law; 2) dynastic law’s consistent rejection of foreign influences; 3) the role (if any) of the “rule of law”; and 4) the manner in which Imperial Confucianism served as the “legal soul” in this period of Chinese history.

Head next turns to addressing these four themes as they relate to contemporary Chinese law. In Chapter II, he specifically examines the first two themes described above. With regard to the continuity of law, Head opines that there has been “a complete and irreversible discontinuity” (p. 95) of dynastic Chinese law in the modern era (which encompasses about the past 100 years). In terms of foreign influences, the author concludes that, like dynastic law, contemporary Chinese law reflects a thorough filtering of external elements. Head finds China’s resistance to foreign influences (particularly Western) to be unique among legal systems undergoing substantial reform, reasoning that the Chinese have a more intimate relationship with their past than most Westerners.

Chapter III subsequently explores whether there is a “rule of law” in contemporary China. Here, the author relies heavily on Professor Randall Peerenboom’s concepts of “thick” and “thin” versions of the “rule of law.” Head ultimately concludes that a “thin” version of the “rule of law” does exist in today’s China, albeit only barely. Chapter IV then cuts to the heart of the author’s purpose in writing the book; that is, the question of whether a “legal soul” exists in contemporary China, as
it did during the country’s dynastic era. In addressing this question, Head considers six candidates, including Neo-Confucianism and Marxist-Leninist-Maoist-Dengist thought, for serving as modern China’s “legal soul.” After systematically rejecting the first five possibilities, Head proposes his own aggregate hodge-podge of elements, which he terms MOLECARP—Materialist-Oriented, Legitimate, Extroverted, China-Appropriate, Restorative-Progressivism. The author, however, even dismisses this package of elements, ultimately concluding (at least tentatively) that modern China lacks a “legal soul”—a finding that Head finds particularly troubling.

Head’s text is indeed dense, but his ability to weave in and out—constantly providing the reader with a roadmap—gives the book a strong underlying framework, and an overall logic to the book’s purpose. Although the text alone is well organized and readable, however, it is the author’s heavy (on the verge of excessive) use of direct quotations, footnotes, and charts that results in some arduous reading. Embedded within the 217 pages of primary text are a number of lengthy direct quotations, as well as over 400 footnotes—many of which are extensive and simply cannot be ignored because of their explicative value. Head has also included several detailed charts and tables, such as those covering “Main Chinese Dynasties and Periods,” “Post-1979 Chinese Laws,” and “Legal Terms and Concepts,” along with a 12-page appendix to Chapter III that contains examples of “rule of law” definitions. Like the quotations and footnotes, the latter also interrupt the flow of the main text, but are necessary and effective accompaniments that support and illustrate Head’s contentions.

Praise for the book’s framework is certainly in order, but what about the content of the book itself? Although I lack any detailed knowledge about the corpus of English language commentary on modern Chinese law, I surmise that Head’s book is not duplicative of other recent scholarship on the topic. Based on searches in WorldCat, my sense is that most of the recent English language sources are descriptions and analyses of substantive Chinese law and the legal system. Head’s work, in contrast, is novel as he explores the overall essence, or what he terms “legal soul,” of the contemporary Chinese legal system. The author is convincing in his justification for such a journey, stating that “the question is deeply important because...a country that plays as significant a role as China does on today’s world stage needs some guiding legal ethic to help it withstand the strains that can come from both inside and outside the society.” (p. 221). Albeit pessimistic, Head’s striking conclusion that modern Chinese law lacks such a guiding ethic or soul is a valid and logical one—ably supported by his observations and arguments throughout the book. Indeed the book’s conclusion is rather abrupt, but it does leave the reader wondering about the continued viability of China’s legal system—certainly the effect that the author was seeking when he penned the final paragraph.

Unquestionably, *China’s Legal Soul* is a work of scholarship, most appropriately suited for academics and academic library collections. The book is specifically recommended as a valuable addition to the shelves of academic law libraries with developing Chinese law collections, as well as larger university libraries with Chinese history sections.

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*Is Eating People Wrong?*, the title of this book grabs the reader’s attention immediately. The author, Allan C. Hutchinson, goes on to provide a collection of vignettes telling the stories of eight prominent common law cases from around the world. From the often told tale of the crew of the ill-fated *Mignonette*,¹ to the Scottish snail in a bottle in *Donoghue (M’Alister) v. Stevenson*,² the reader is treated to recitations that bring the cases to life.³ The pertinent history of the parties and judges, the background for the time period and place, the decision, the legal consequence, and the fates of the original parties are all included. Well-written and interesting, each case is truly a well-told tale.

The author of this work is a distinguished legal educator who has written and published extensively. This is not his first book on the common law. In 2005, he published *Evolution and the Common Law*. Yet, when reading this work it is clear that this is not a law school text. In fact, Professor Hutchinson states in his preface that he wanted to write “in a way that was directed primarily to nonlawyers...” and that he has “done little original or primary research myself.” It shows, as the book reads like a work targeted toward a popular market. This is due in large part to the form of the documentation supporting the author’s recitation. The author relies exclusively on a supporting bibliography at the end of the book with sources arranged by chapter. The bibliography, with only a few exceptions, is comprised of secondary sources. Beyond the bibliography, there are only two footnotes in the entire book, both of which provide additional factual information, not source information. There are no legal citations to any of the cases profiled in this book. In fact, only three of the cases have source citations of any kind. The citations for those three cases are in the bibliography and are to Wikipedia.

Professor Hutchinson could easily have provided citations to the cases. He could have used footnotes or endnotes to indicate which of the sources in the bibliography supported particular factual elements of the vignettes in his book. He could have looked at the original materials and perhaps brought new insight to the cases. It could have been done without detracting from the impact of the story line of each case. With that extra effort, this book could have been truly remarkable, a work for the lay reader and the serious legal scholar. Professor Hutchinson’s ability to draw the reader into the tale is extraordinary. He takes a legal concept that can be dry and makes it accessible by presenting it using eight remarkable cases. This work is an excellent everyman’s (or woman’s) introduction to the concept of the common law. *Is Eating People Wrong?*

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is interesting and easy to read. It could have been so much more.

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In a law review article on the subject of judicial biography that was later reprinted in his book *Law and Literature*, Richard Posner stated that the production of such a work is labor intensive and fraught with interpretive difficulty. He mentions only two biographies as especially worthy of approbation—Dennis Hutchinson's *The Man Who Was Whizzer White* and Andrew Kaufman's *Cardozo*. With his sketch of Benjamin Cardozo—*Cardozo: A Study in Reputation*—Posner offered his monograph-length alternative to the massive tomes that predominated in the genre. By confining the details of Cardozo's successful but admittedly quite uninteresting life to a brief essay at the beginning of the book and using other chapters to analyze the merits of the justice's opinions as well as the nature of judicial reputation generally, the book impressed some critics as an exciting and unique way to evaluate a historical figure. Gerald Paul Moran's new book *John Chipman Gray: The Harvard Brahmin of Property Law* does many of the same things, albeit in an even more felicitous and enlightening manner.

A tax lawyer by training, Moran developed a fascination with John Chipman Gray over the course of a career engaged in the study of wills, trusts, and estates. He goes out of his way to note that this book—his first after nearly 40 years of law teaching—is not a biography in the traditional sense, referring to it as an "essay" in both the introduction and conclusion. In truth, it is a series of short essays that cover different aspects of Gray's life and scholarship. Although it would be easy enough for an author relying on this method to lose the narrative thread, Moran goes to great pains to ensure that each subsequent essay builds on the one that preceded it.

Unlike the aforementioned Benjamin Cardozo, who bulk large in the legal imagination because he succeeded in turning so many beautiful phrases, the memory of John Chipman Gray persists because he systematized and articulated the modern rule against perpetuities. The RAP, as many law students call it, was first stated in 1682 in the *Duke of Norfolk's Case* and then restated in differing ways by a host of English and American courts. However, it was not until Gray's monumental treatise *The Rule against Perpetuities*, published in 1886, that these precedents were marshaled in the creation of the precise rule that has bedeviled thousands of aspiring lawyers: "No interest is good unless it must vest, if at all, not later than twenty-one years after the death
of some life in being at the creation of the interest."

Moran seeks to go beyond the fact patterns to discover what environmental factors inspired Gray to develop this rule. In several short but highly effective biographical sketches, he argues that a combination of Gray’s esteemed father’s bankruptcy, his own unstinting sense of rectitude as an upstanding Boston Brahmin, his scholarly coming-of-age during the classical age of legal formalism, and his partiality toward English precedents contributed to his insistence on the “remorseless” application of what he preferred to describe as the “rule against remoteness.” These sections contain a wealth of fascinating details, for Gray—despite a colorless and somewhat enigmatic personality—was connected to many of most important people and events of the late 19th century. He served with distinction in the Civil War, courted the same woman as Oliver Wendell Holmes, Jr., attended meetings of the Metaphysical Club, and oversaw the estate of idiosyncratic Boston arts patron Isabelle Stewart Gardner. In his position as a professor at Harvard Law School, he recommended promising young law students for clerkships with his brother Horace Gray, who had introduced that practice to the Court, and later with Holmes.

Moran also provides a stimulating discussion of Gray’s three principal works—*the Rule Against Perpetuities*, *Restraints on the Alienation of Property*, and *the Nature and Sources of the Law*. He squares the latter, which some scholars have characterized as an early work in the Legal Realist style, with the other two in a cogent manner. *Restraints on the Alienation of Property* arose out of Gray’s fury with what he viewed as an incorrectly decided Supreme Court decision, *Nichols v. Eaton* (1876), in which the Court upheld the enforceability of a spendthrift provision in a trust instrument. In response, he followed the formalist practice pioneered by his colleague Christopher Columbus Langdell, gathering precedents and inducing from them a series of inerrant legal principles. In *The Nature and Sources of the Law*, a much later work that arose out of lectures given at Columbia Law School, Gray frequently quoted Bishop Hoadly’s famous remark that “Whoever hath an an absolutely authority to interpret any written or spoken laws, it is he who is truly the Law-giver” in the course of qualifying claims made decades earlier by John Austin in his *Province of Jurisprudence Defined*. Although *Nature and Sources* seems to point toward one conception of the law and *Restraints* another, Moran shows how both arose from Gray’s career as a legal practitioner in an age where fewer law professors practiced the law they taught: He believed that his interpretations of the law were correct, but he also recognized that judges, rather than legislatures, were chiefly responsible for adopting such correct interpretations.

Moran observes that even as the RAP lingers, both in the multitude of states that have not yet repealed it and in the property casebooks that emphasize it, the nature of its creation as well as the personality of its creator continue to fade into the mists of history. The fact that casebooks include so little historical detail is a regrettable failure of our system of legal education, and one that Gray—who remained somewhat skeptical of both the casebook approach and Socratic method developed at Harvard during his tenure there—would undoubtedly have deplored. Moran does a fine job of resurrecting at least one towering figure from anonymity while leaving plenty of room for future scholars to expand and enrich his research.

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If you’ve seen any of the film versions of Mutiny on the Bounty, you know at least some of the background for the legal case examined here. In 1790, the HMS Bounty left Tahiti after its mission to collect breadfruit plants for use as cheap slave food. It was on this return voyage that senior master’s mate Fletcher Christian and twenty-four crew members mutinied. After setting William Bligh and a group of crew members adrift on a small boat, the mutineers headed back to Tahiti for refuge. Later, Christian and eight of the remaining crew members left Tahiti on the Bounty with twelve Tahitian women, some of whom may have been taken against their will. After being joined by a group of Polynesian men, they headed for the previously uninhabited Pitcairn Island—an isolated island of two square miles located halfway between New Zealand and South America—and began a new community far from the eyes of the British government.

Some 200 years later, the image of Pitcairn Island in popular culture as a tropical paradise would be shattered by news reports of routine sexual abuse of the island’s women and young girls. As we learn in Justice, Legality, and the Rule of Law: Lessons from the Pitcairn Prosecutions, the island’s population has hovered around fifty and consists to this day of only four families, including the descendants of Fletcher Christian. After several investigations by the UK police, charges were brought against almost all of Pitcairn’s male residents, most of whom were related to the victims. Since many of the victims chose not to testify, being concerned with the survival of the island’s community, only seven men were prosecuted. Ultimately, six men were convicted and the convictions were upheld on appeal.

This collection of essays by British legal scholars takes a critical look at the prosecutions of the Pitcairn men and explores alternative approaches that may have achieved the same result with less disruption to the lives of the islanders. Beyond the primary issues related to the rule of law, the book also addresses the implications, particularly moral, of not taking action on behalf of sexual assault victims, as well as the practical difficulties of taking action. This leads to a critical question for multicultural societies about the extent to which law should be applied to cultural groups that have their own customary laws that are different from the portion of the population who follows state laws.

The defendants in this case never argued that the alleged sexual abuse should be immune from prosecution merely on the grounds that it was an acceptable cultural practice, though this argument is raised by one of the authors. As noted throughout the book, there is evidence that even on Pitcairn the actions at issue here were widely regarded as morally wrong. Instead, counsel for the defendants restricted their defense to a series of arguments based on the rule of law, particularly whether or not Pitcairn could even be considered British colony.

To bolster the government view that Pitcairn was a British possession, the prosecution argued that since the Bounty mutineers were British, their settlement resulted in an annexation of the island. This was in fact a long-held view of the British legal system. William Blackstone, in his Commentaries, had set out the principles for determining the law in a newly acquired British settlement by stating that if English subjects were to discover and settle an uninhabited country,
all English laws were immediately in force.\(^1\) However, more than one author here takes issue with this notion that the original settlers took the law with them when they settled on Pitcairn. These authors argue that the courts did not address that the majority of settlers were Polynesian, not English. As one author points out, Pitcairn Island represented for the mutineers a place far beyond the reach of both the British military and the British legal system. If so, it seems highly unlikely that the men would have seen themselves as unconditionally committed to the observance of English law as their personal law.

Although none of the authors in this collection make any real moral defense for the defendants, one essay does propose that the island’s unique culture justifies reducing the defendants’ full moral blame. There are concerns throughout the essays as to what was fair on Pitcairn specifically. Among the suggested alternatives to prosecution were amnesty, counseling, and compensation to the victims. A different author, however, strongly objects to the notion, primarily touted by the media, of “tropical innocence.” He finds the prosecutions to have been a legitimate intervention on the basis that human rights always trump claims of cultural exceptionalism and goes on to argue that such cultural claims are rooted in a “lazy and excessive reverence for cultural difference.” (p.133)

Despite claims that the emphasis on Pitcairn’s isolation was a distorting influence in the media, the isolated island scenario is partly what makes this collection so compelling. As one author points out, this case can serve as a thought experiment, allowing us to “imagine the human condition in its most elementary form, before any social interaction has taken place.” (p.158) This is also where the lessons learned from the prosecutions come into play. The legal and philosophical issues raised here, particularly in relation to Pitcairn’s unique situation, are meant to serve as a guide for other remote communities lacking a governing body. The authors here make analogies not only to colonies and former colonies, but to modern oppressive regimes. There is also some relevance to modern societies where there is a gap between those who submit to the governing social and legal environment and those who follow “street” or other non-mainstream cultures. This is similar to the ongoing debate in the United States as to whether an accused should be able to cite a unique cultural background as a defense to a criminal charge.

While there is some slight redundancy between essays, the book works well as a whole. Each author takes a different focus on the case and there is a useful cumulative effect to reading the essays in the order presented here. As one essay raises certain questions, subsequent essays often address those issues. With the inclusion of a Pitcairn Island chronology, official correspondence letters, and the full judicial opinion, *Justice, Legality, and the Rule of Law* is an excellent reference resource for any scholar looking at the wide range of issues related to the rule of law in isolated communities.

Alan K. Pannell
University of Colorado Law School Library

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\(^1\) W. Blackstone, *Commentaries on the laws of England…with notes and additions by Edward Christian*, twelfth edition (London: Cadell, 1793-5). One of the interesting bits of trivia in the book is that Edward Christian, Cambridge law professor and editor of Blackstone’s *Commentaries*, was one of Fletcher Christian’s brothers.
Leonard Orland is the Oliver Ellsworth Professor of Law at the University of Connecticut. He has written a fine, if a bit unwieldy, book that traces the sad history of money and other assets deposited in supposedly sacrosanct Swiss banks by European Jews during the Nazi era to its long overdue resolution by the American justice system. The book provides background and perspective on how and why the $12.1 billion in pre-war dollars (about $250 trillion today) of financial assets of Holocaust victims disappeared into thin air in the years following World War II. These assets were given over to Swiss banks by Jews and other Holocaust victims seeking to protect their life savings, having been lured by Swiss promises of secrecy and protection; but their heirs were met with cold, calculating denial by these same banks when they attempted to reclaim their rightful inheritance after the war.

Orland provides the narrative for the justice provided by American courts beginning in the late 1990’s with the Holocaust Victim Asset Litigation\(^1\) case and settlement, which culminated in the Swiss banks’ agreement to pay $1.25 billion for the relief of holocaust survivors into a fund based and administered in the United States. The settlement monies were distributed as financial and medical services to hundreds of thousands of survivors all over the world. All legitimate claimants and their heirs to dormant Swiss bank accounts received the full proceeds of the accounts, which accounted for approximately $100 million of the fund, and the remaining funds were distributed to the neediest Jewish, Roma, Jehovah’s Witness, disabled and homosexual survivors.

Part one of this work concentrates on the documented historical record of the obfuscation and intransigence of the Swiss banks whose actions continued right up to the settlement that culminated the litigation. Part two explains the origins of the class action suit, and includes examples of the coordinated, complicated and voluminous defenses made by the Swiss banks, and shows how the class action suit provided a forum for justice to the survivors of the Holocaust. It enumerates in some detail the actions of the trial judge, the Honorable Edward R. Korman of the United States District Court for the Eastern District of New York who very ably led the parties to a successful settlement and supervised the distribution of settlement funds. Part three explains the intricacies and controversies of the settlement and shows how the judge applied equitable standards and the doctrine of \textit{cy pres} in determining who would receive settlement money. Finally, part 4, shows how this litigation set the standard for other Holocaust era cases that sought restitution and justice for human rights claims related to the Nazi era.

Part 4 also contains a chapter on “Historic Injustice Litigations”\(^2\) which is the book weakest part. It attempts to argue that the standards established by the court in the Holocaust Victim’s Asset Litigation case should be applied to other human rights class actions, including the Mexican Braceros claims, the Japanese Comfort Women and Forced Labor claims, South African apartheid class actions, African American Slavery Restitution claims, Armenian Genocide and litigation against former Philippine President, Ferdinand Marcos. Most of the plaintiffs in these class actions sought relief in U.S. courts under the Alien Tort Claims Act and the Torture Victims Protection Act

\(^1\) Holocaust Victim Asset Litig., 105 F. Supp. 2d 139 (E.D. N.Y. 2000), aff’d 14 Fed. Appx. 132 (2d Cir. 2001), reissued without alteration, 413 F.3d 183 (2d Cir. 2005).

\(^2\) Leonard Orland, A Final Accounting: Holocaust Survivors and Swiss Banks 109 (2010).
and most, if not all, have been unsuccessful and have been dismissed before trial or did not succeed in obtaining compensation for the plaintiff victims. These statutes were not at bar in the original case, and the authors' inclusion here seems forced and it is not clear whether their presence in the book was a means to advocate for setting a standard for the settlement of class action human rights cases, a way to showcase the courage and fortitude of Judge Korman, a way show that most cases brought on behalf of victims of “historic injustices” are unsuccessful, or all three factors. It is simply not clear.

Having said that, this is still a valuable book. Along with all the background and the detailed account of the case, are several hundred pages of supporting documents for the litigation in several appendices. Included are excerpts from the Bergier Commission Commission’s Final Report of the Independent Commission of Experts for Switzerland, litigation documents from the class action and other related documentation. From a research standpoint, of particular value and interest is the Judah Gribetz’, the Special Master who supervised the distribution of the fund), bibliography, which has over 500 entries. The appendices comprise the major portion of the book, and are over 400 pages in length.

In the first pages of this book you will find the famous biblical quote “Justice, justice you are to pursue.”\(^3\) That it took over 55 years, a justice system in a foreign country and on a different continent, a forthright judge and a novel legal concept for holocaust survivors to obtain some measure of restitution for their incalculable losses is a testament to the tenacity of those who pursued justice, both on their own behalf’s and for others.

Adeen Postar
Pence Law Library
American University, Washington College of Law

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Saskia T. Roselaar provides an exceptionally detailed portrait of the role that *ager publicus* played in Roman society during the years of the Republic. Her history of public land is pieced together from knowledge of Roman literature, law, and economics, in addition to the analysis of archeological material that has been recovered from field surveys. Roselaar’s work is the first in a series to be published by Oxford University Press that will use an interdisciplinary exploration of Roman law to examine legal rules in the context of the society that created them in order to

\(^3\) Deuteronomy, chapter 16, verse 20.
understand the purpose that these rules served and the extent to which these rules proved effective.

This book found its origin in Roselaar’s Ph.D. thesis at the University of Leiden. Although there have been several academic works which examined the topic of *ager publicus*, these works primarily explored the laws relating to the public land and the legal instruments that regulated its possession. These works were produced by experts in the area of Roman law. In contrast to these studies, Roselaar wanted to put the laws concerning *ager publicus* into a wider context. It is her intent to expand our understanding of *ager publicus* by exploring how public land functioned in the Roman economy and society, subjects which she believes have been neglected by legal experts. (3) It is her contention, that these laws were not created in isolation to changes in the economy and society at large, and that the laws that governed public land adapted to the economic and demographic changes in Rome.

As explained by Roselaar, the history of *ager publicus* is “in a sense a history of the conquest of Italy” because *ager publicus* is comprised of land claimed by the Roman Republic which had been taken from the peoples they had conquered. (31) There is an ongoing debate concerning the manner in which this public land was disposed of after it was appropriated by the state. Some have argued that *ager publicus* was merely a transient category of property, which pertained to land that had been annexed from conquered societies which Rome intended to transfer to private ownership. (18) Roselaar argues differently, that *ager publicus* played a far more consequential role in the expansion of the Roman Republic, and could be found years after its appropriation still in the hands of the state. Accounting for *ager publicus* that existed well after the Second Punic War, Roselaar demonstrates that public land was not privatized by the Roman Republic as quickly as experts of Roman history once surmised. And from this prolonged existence of public land in the hands of the state, Roselaar provides a compelling explanation as to the purposes that *ager publicus* served during this period in Roman history.

In the appendix to her work, Roselaar provides a systematic overview of the land classified as *ager publicus* in Italy during the time of the Republic. Included are locations of these tracts of land, dates in which the land was acquired, and indications as to how much of the land was privatized. No actual figures were provided, but rather speculations about the size of these tracts of land were offered, as she concedes that there is not enough information known presently that would allow for a precise accounting of *ager publicus* during the time of the Republic. Roselaar undertakes this task in order to support her argument concerning the existence of large tracts of public land that were retained by the state.

After establishing that Rome had substantial holdings of public land that spanned over a significant amount of time, there is a question which arises as to why the Roman Republic would confiscate large tracts of land that it did not need. According to Roselaar, *ager publicus* was often used as a tool to pacify conquered populations. (292) During the early part of the Roman Republic, the land that was claimed by Rome was not of great use because Rome did not have any economically feasible methods to transfer agricultural products from these conquered lands to Rome. Very often the inhabitants of these lands confiscated by Rome were allowed to remain, ensuring the loyalty of these people to the state.
It was not until the second century that *ager publicus* served another role critical to the Roman Republic. During this period there was increased competition for arable land in central Italy due to population growth and an expanding market for commercial agriculture. As a result many small farmers saw their land being accumulated by the wealthy citizens of Rome. (219) In response to the decline of the small farmer, a solution was proposed, in which *ager publicus* would be distributed to the poor, providing them with their own plots of land, with secure rights of tenure that would prevent the wealthy elite from taking their land away. (220)

It was this land reform that occurred during the second century which significantly contributed to the Social War. Prior to this period, the inhabitants of land confiscated by Rome believed that they would be permitted to remain on this land as allies of Rome, as long as they refrained from rebelling against Roman rule. This permission secured the loyalty of these allies to Rome; however, this relationship was permanently altered once Rome began distributing this public land to poor Roman citizens. Despite the fact that these allies of Rome had refrained from rebelling, they lost possession of this land. Subsequent to this land reform, allies who had lost their land became more inclined to rebel against the control of Rome. (222)

*Public Land in the Roman Republic* provides a compelling argument as to the manner in which *ager publicus* aided in the expansion of the Roman Republic and its responsibility for the tensions that Rome would later have with its neighboring allies. It would make an excellent addition to any academic library collection that has significant holdings in the area of law or the humanities. I found this first volume in the Oxford Studies in Roman Society and Law to be quite impressive in drawing from the knowledge of several disciplines to increase our understanding Roman society. I look forward to future additions of this series as they examine later periods in the history of the Roman Empire.

Joshua Phillips  
Reference Librarian  
William M. Rains Library Law Library  
Loyola Law School


John Selden (1584 -1654) was the leading legal historian of the seventeenth-century England. He is a well-known figure for the period because of his learned writings and his participation in politics, especially in the parliamentary controversies of King Charles I from 1625 to 1629 and later
during the Long Parliament of the 1640s. David Berkowitz (John Selden’s Formative Laws (1988)) and Paul Christianson (Discourse on History, Law and Governance in the Public Career of John Selden, 1610-1635 (1996)) have written works on Selden’s public and political life, while Jason Rosenblatt has written an excellent work on Selden’s Hebraic writings and its influence on his contemporaries (Renaissance England’s Chief Rabbi: John Selden (2006)).

Professor G. J. Toomer, a noted intellectual historian of seventeenth-century Europe, has written an intellectual history of Selden in which he provides an extensive description of Selden’s writings from his earliest work in 1609 to his death during Oliver Cromwell’s rule. Selden’s writings are so important that it was thought appropriate to have a three-day international conference commemorating the four-hundredth anniversary of Selden’s first work; see http://www.cems.ox.ac.uk/selden/ of which Professor Toomer was one of the keynote speakers.

Toomer takes primarily a chronological approach to Selden’s writings, though he does categorize writings by topic. Selden’s earliest works are considered antiquarian and historical works. Selden’s first writing were antiquarian works. He assisted Michael Drayton in his Poly-olbion (1610), a collection of poems on English history and geography by adding descriptions to Drayton’s work. Another early work was a short treatise on duels (Duello) providing a history of them. And he wrote a preface to the Janus Anglorum (1610) on the ancient Britons and Anglo-Saxons.

Selden only wrote two works that were strictly on English legal history: Fortescue’s De Laudibus Legum Angliae and Dissertatio Ad Fletam. The former was a work by the sixteenth-century jurist on the nature of English government under the Lancastrian government. Toomer takes issue with Christianson that Selden did a “critical edition” of this work; rather he added an introduction and some notes but did not noticeably change the edition that was not done until 1869 (pp. 176-77 n.11). Of Fleta, a treatise on medieval law and Roman influence upon English law, the historian Harold D. Hazeltine thought “No one of Selden’s contributions to legal history...presents his learning and historical vision to better advantage than the Dissertatio ad Fletam.” (p.197) which has been reprinted as Selden Society volumes 72, 89, and 99.

During the second decade, Selden wrote Titles of Honor (1614), a description and history of the titles of nobility in England and the continent. His publication of De Dis Syris (1617; 2d ed, 1629) dealt with the gods of the ancient Jews and their relationship to the Greeks and Romans. His History of Tithes (1618) contradicted other current writers on the divine-right payment of tithes to the clergy. James I actually forced him to withdraw the book from circulation, though he did not actually apologize for his work. His writing on Mare Clausum (The Closed Sea)(1635) supported English control of the seas against Grotius’s Mare Liberum (1609)

Selden’s Table Talk (1654, published posthumously in 1689) has gone through the most editions of all of his works and still reprinted today.

More than half of the two volumes deal with Selden’s Hebraic and Oriental studies. Among his works were De Successionibus ads Leges Ebraorum in Bona Defecutorum (1631) on the Jewish law of inheritance; De Successione in Pontificatum Ebraeorum (1636), on succession of the Hebrew priesthood; De Jure Naturali et Gentium juxta Disciplinam Ebraeorum (1640), a response in part to Grotius’ works as well as a commentary on the Rabbinic Noachide laws, divine voluntary
universal laws from the time of Noah; *De Anno Civili* (1640), an account of the Jewish calendar and its principles as well as a treatise on the doctrines and practices of the Karaite sect; *Uxor Ebraica seu De Nuptiis et Divortiis Veterum Ebraeorum* (1640), a thorough survey of the Jewish law of marriage and divorce and of the status of the married woman under Jewish law; and *De Synedriis* (3 vols. 1650-55), a study of Jewish assemblies, including the Sanhedrin, with parallels from Roman and canon law. (Rosenblatt, 2).

Toomer summarizes Selden’s scholarship including both success and failures in Selden’s approach. Over half of the work deals with Selden’s Hebraic works. He is able to show how Selden uses both published and unpublished materials to support his views. Selden’s first work introduced printed Arabic into England. Selden’s use of Hebraic texts, both published books and unpublished manuscripts, brought a new level of knowledge to contemporary English authors. His work on Karaites sect who believed in Scripture only and not tradition was just one of the important contributions he made to Hebraic studies and were cited by such writers as John Milton.

Selden was an important contributor to scholarship both in the library he collected used by himself and by lending to other scholars as well as his encouragement of other scholars. Selden’s friends included Robert Cotton, John Young and other collectors of manuscripts or librarians at the major libraries in England. He accessed the Cotton library, the Records in the Tower of London, obtained manuscripts through purchase from friends on the continent, etc. At the time of his death, he had the richest, though not the largest, collection in England consisting of some 6,000 books. His noted executors, Matthew Hale, John Vaughan, Edward Hayward and followed his request to share his library and provide the bulk of the library went to the Boolean Library, Oxford University, though Hale and Vaughan kept various books and manuscripts (which unfortunately in Vaughan’s case were destroyed in a fire).

Toomer provides seven short appendixes (pp.829-50) on various aspects of Selden’s writings, though the first is an autobiographical note by Selden (pp. 828-29) and appendix B contains a summary of legal texts cited by Selden with references to modern sources (pp. 830-38). He also provides a bibliography of Selden’s writings (pp. 853-58), a bibliography of the texts and books to which Selden referred (pp. 858-89), and a source bibliography of books and articles (pp.889-993). He concludes with indexes to manuscripts (pp. 934-39), to Hebrew titles (pp. 941-43) and a general index (pp. 945-77).

Toomer’s knowledge of Selden’s work is extremely impressive from this reviewer’s point of view, especially his ability to critically analyze Selden’s Latin, Hebrew, Greek, and Arabic in his works. The recognition of his work at the above-mentioned conference is certainly warranted and any one interested in Selden will have to consult this book in any further research on this important seventeenth-century illuminary.

G.J. Toomer was educated in England and the United States, and taught as a Fellow of Corpus Christi College, Oxford, and Professor of the History of Mathematics at Brown University. For many years his scholarly efforts were concentrated on the history of mathematics and astronomy. In these fields, he published what has become the standard translation of the most important ancient astronomical treatise (Ptolemy’s Almagest, 1984), and the first edition of the Arabic version of the standard work on Conics in antiquity (lost in the original Greek: Apollonius Conics Books V to Vi, 1990). Since retiring he has devoted himself to the intellectual history of early modern Europe,
especially 17-th century England, in which he has published an account of the study of Arabic
(Eastern Wisedome and Learning, OUP 1996).

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

Outstanding Rare Book Acquisitions at
the Yale Law Library
by Mike Widener, Rare Book Librarian,
Lillian Goldman Law Library

The Yale Law Library has added close to 250
items to its Rare Book Collection since the
summer of 2010. Each of them is special in
the eyes of their librarian, but time and space
force him to describe only a few.

The star addition to the William Blackstone
Collection was John Trusler’s Concise View of
the Common and Statute Law of England
(London, 1780 or 1781). The book is actually a summary of Blackstone’s Commentaries. The
extraordinary feature of our copy is the ownership signature of Alexander Hamilton, as well as
signs that Hamilton may have used it in studying for the bar.

Additions to the American Trials Collection included two of the earliest printed American trial
accounts, both dealing with freedom of the press: The Brief Narrative of the Case and Tryal of John
Peter Zenger (Boston, 1738) is the second appearance in print of this landmark trial; and The
Speech of Mr. John Checkley, upon his Tryal (London, 1738) deals with Checkley’s prosecution for
libel by the religious authorities in Massachusetts.

The Argument of William H. Seward, in Defence of William Freeman (1846) is an important early use
of the insanity plea, and also a plea for racial tolerance on behalf of the African American
defendant. In addition, the library was fortunate to acquire a letter from Seward to John W.
Francis, a New York City doctor, pleading for Francis’ help in mounting the insanity defense. In
Annals of Murder, McDade says “The case did much to insure a better hearing for the insane who,
until then, received small consideration in the courts.”

For our collection of illustrated law books, we acquired several more editions of the works of Joost
de Damhoudere (1507-1581), among the most profusely illustrated books in the history of legal
literature. Damhoudere’s manual of criminal law, Praxis Rerum Criminalium, went through 34
editions in four different languages, and his Praxis Rerum Civiliun was published 13 times. We
acquired the first edition (Louvain, 1554) of the criminal law manual with its 57 woodcuts showing
crimes and criminal procedure, as well as the 1650 and 1660 Dutch editions. We also obtained the
only French edition of Damhoudere’s civil law handbook (Antwerp, 1572), and the 1626, 1649, and
1660 editions in Dutch.

Other illustrated books include Pierre Loriot’s De Gradibus Affinitatis (Lyon, 1542), with several
splendid trees of affinity and consanguinity; a 1915 collection of trademark cases issued by the
National Biscuit Company with color illustrations of the company’s trademarks and alleged
infringers; a curious 1683 German legal dissertation, *De Jure Circa Colores*, on the legal aspects of color; and *Detective Comics* no. 439 (March 1974), containing the definitive proof that Batman is a Yale Law School graduate. Eat your heart out, Harvard!

The high spot of the 20 items added to the Italian Statutes Collection came as part of a collection of 34 papal bulls (1566-1568). The *Bulla S. D. N. Pii Pape V. super prohibitio agitationis Taurorum* (Rome, 1567) is a bull about bulls! More precisely, it is Pope Pius V’s prohibition against bullfighting. Modern animal rights activists consider it to be a foundational document for their movement. Another acquisition, *Statuti della Val di Leder* (Venice, 1675), is not in OCLC.

Other notable acquisitions included a fine set of the *Siete Partidas* (Valladolid, 1587-1588); a first edition of Henry Finch’s *Nomotexnia* (London, 1613), with a length of iron chain still attached to the wooden boards; and a copy of *The Federalist* (New-York, 1802) that once belonged to Justice William Patterson of the U.S. Supreme Court.

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**From the Daniel R. Coquillette Rare Book Room, Boston College Law Library, Boston College Law School:**

The Michael H. Hoeflich Collection of Roman Law Books: In December 2009, Michael H. Hoeflich, John H. & John M. Kane Distinguished Professor of Law at the University of Kansas School of Law, donated his fine collection of antiquarian and modern Roman law books to the Boston College Law Library. Professor Hoeflich is a well-known scholar in many areas of law and legal bibliography, including legal history, comparative law, ethics, contracts, art law, and the history of law book publishing. His 1997 book, *Roman and Civil Law and the Development of Anglo-American Jurisprudence in the Nineteenth Century*, is a classic.

 Dating from 1536, Professor Hoeflich’s collection of nearly 300 titles includes both seminal and lesserknown works on Roman, civil, and canon law in Latin, German, French, and English. The collection is both broad and deep, reflecting his knowledge of and passion for Roman law, bibliography, and the bookmaker’s art. The books on display include a selection of the rare and antiquarian titles from Professor Hoeflich’s collection. A handout describing the entire exhibit is available at [http://www.bc.edu/content/dam/files/schools/law_sites/library/pdf/RBR_items/pdf/roman_law_HO.pdf](http://www.bc.edu/content/dam/files/schools/law_sites/library/pdf/RBR_items/pdf/roman_law_HO.pdf). A few of the especially attractive items appear at [http://www.bc.edu/schools/law/library/about/rarebook/exhibitions/Hoeflich11.html](http://www.bc.edu/schools/law/library/about/rarebook/exhibitions/Hoeflich11.html).

The exhibition was curated by Karen Beck, the Boston College Library’s former Curator of Rare Books / Collection Development Librarian. It will be on view through early June 2011. Some of the background text accompanying this exhibit was drawn from Peter Stein’s book, *Roman Law in European History* (1999); some of the descriptions of individual books were adapted from Michael von der Linn’s descriptions on the Lawbook Exchange website: [http://www.lawbookexchange.com/](http://www.lawbookexchange.com/).

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**From the Fred Parks Law Library, South Texas College of Law:**

The Fred Parks Law Library would like to announce our first four collections, now available online. Our inaugural collections celebrate the history of South Texas College of Law and the success of our nationally ranked Advocacy Program. We are also proud to feature a collection that brings to light a forgotten race riot and the largest murder trial in American history.
You can now view early South Texas School of Law catalogs, browse the photos of our winning Advocacy teams, examine YMCA postcards, and read through JAG documents on the three courts-martial that stemmed from the Houston Riot of 1917. These four collections are still growing and soon other collections and documents will be added, including a letter written in 1823 by Sir William Adams, “surgeon and oculist-extraordinary to the prince regent,” to the First Lord of the Admiralty, Robert Dundas, Lord Melville, supporting British recognition of Latin American countries newly independent from Spain. This is the beginning of an effort to bring materials from the South Texas College of Law Archives, Manuscript Collection, and Rare Book Collection to the attention of the South Texas community and allow greater access to materials that, due to their condition and age, must be kept in a closed stack, climate controlled environment.

You can go to http://libguides.stcl.edu/DigitalCollections to learn more about each collection or browse them directly at http://digitalcollections.stcl.edu/.

**From the Georgetown Law Library, Georgetown University Law Center:**

We've added some new sets of photo galleries to the Georgetown Law Library website, providing an online equivalent to visual exhibits we use on touch screen displays in the two library locations.

One is the Visual History of Georgetown Law Library: With Images from Our Archives: [http://www.ll.georgetown.edu/gallery/libraryHistory01web.cfm](http://www.ll.georgetown.edu/gallery/libraryHistory01web.cfm). Here you can find a historical overview of Georgetown Law Library, spanning from 1887 to the present. The display includes depictions of our first card catalog (printed in 1888), an 1891 photo of a coffee shop next to the Law Center, and many other images, culled from our Archives.

Another is Home Court: 1990-1994: [http://www.ll.georgetown.edu/gallery/homeCourt.cfm](http://www.ll.georgetown.edu/gallery/homeCourt.cfm). Now in its 24th year, the annual Home Court basketball game pits Georgetown Law faculty against Members of Congress to raise money to benefit the Washington Legal Clinic for the Homeless. This year's event took place on March 30 at Trinity Washington University. Full details are on the Home Court website: [http://www.homecourtdc.org/](http://www.homecourtdc.org/). To help celebrate and honor this important event, Georgetown Law Library has created a gallery of photographs from past Home Court events, taken from the Law Center Archives. In the photos, you'll find images of competitions from 1990 through 1994, including some related events.

**From the John E. Jaqua Law Library, University of Oregon School of Law:**

Inside the Courtroom—An Artist’s Perspective: Trials from Lane County, 1981-1989: These drawings are a small selection from a gift of 236 courtroom drawings presented to the John E. Jaqua Law Library. The drawings were commissioned by local television station KEZI during the 1980s and 1990s and used during its news broadcasts. KEZI employed several artists, working in a variety of media and formats, to cover local trials. The collection includes images from several well-known Lane County cases, including the Diane Downs murder trial, the Barbara Harris murder trial, and the official misconduct trial of former Lane County Commissioner Robert “Bob” Wood.

**From the Lillian Goldman Law Library, Yale Law School:**

Life and Law in Early Modern England: An Exhibition Marking the Centenary of the Elizabethan Club February - May 2011 Rare Book Exhibition Gallery Level L2, Lillian Goldman Law Library Yale Law School 127 Wall Street, New Haven CT

English law not only underwent deep changes in the late sixteenth and early seventeenth centuries, but also played a leading role in politics and culture. "Life and Law in Early Modern England," a new exhibit from the Lillian Goldman Law Library and Yale's Elizabethan Club,
illustrates this period with works drawn from the rare book collections of both institutions. 
The exhibit is on display February-May 2011 in the Rare Book Exhibition Gallery, located on Level L2 of the Lillian Goldman Law Library, Yale Law School, 127 Wall Street. The exhibit is open to the public, 9am-10pm daily. The exhibit can also be viewed online via the Yale Law Library Rare Books Blog, at http://blogs.law.yale.edu/blogs/rarebooks/archive/tags/Life+and+Law+in+Early+Modern+England+exhibit/default.aspx.

The exhibit was curated by Justin Zaremby, a 2010 graduate of the Yale Law School, assisted by Mike Widener, Rare Book Librarian at the Yale Law School’s Lillian Goldman Law Library.

"Life and Law in Early Modern England" is part of the year-long Centenary celebration of the Elizabethan Club, founded in 1911 as a meeting place for conversation and discussion of literature and the arts. For a complete calendar of Centenary events, visit http://www.yale.edu/elizabethanclub/centenary.html.

In conjunction with the exhibit, the Law Library and Elizabethan Club sponsored a public lecture by Professor Josh Chafetz (Law ’07) of Cornell Law School on February 26, entitled "In the Time of a Woman, Which Sex Was Not Capable of Mature Deliberation": Late-Tudor Parliamentary Relations and Their Early-Stuart Discontents."

In his introduction to the exhibit, Zaremby writes, "The occasion of the Club’s Centenary provides the opportunity to bring together two impressive collections of early modern texts at Yale to illustrate a rich moment in English legal history." The books and manuscripts on display date from 1570 to the 1670s. They include guides to legal practice, textbooks, a play performed at an Inn of Court, and works dealing with church-state relations, legal philosophy, court jurisdiction, and the claim of Mary Queen of Scots to the English throne. Among the authors included are several of the era’s leading figures, such as Francis Bacon, Francis Beaumont, Lord Burghley, Edward Coke, and John Selden.

For more information, contact Mike Widener, Rare Book Librarian, at (203) 432-4494 or mike.widener@yale.edu.

Karen Beck became the new Manager of Historical & Special Collections at the Harvard Law Library, effective February 14, after serving over 14 years as Curator of Rare Books and Collection Development Librarian at Boston College Law Library. Said Karen: “I am fortunate to be working with a great group of rare book and manuscript folks, and especially grateful to be working with Dave Warrington, who is continuing at HLS as the Librarian for Special Collections.” Congratulations, Karen!

Elizabeth Haluska-Rausch organized the Seventh Annual Rare Books Lecture at the Tarlton Law Library, University of Texas at Austin, on February 3. The lecture by Professor William E. Butler of Dickinson School of Law, Pennsylvania State University, was titled “Peter Stephen Du Ponceau: Legal Bibliophile.”

On December 1, 2010, Michael Maben (Indiana University Law Library) co-presented a talk at the Indiana University Digital Library Program’s brown bag session on the Law Library’s digitization project of the Brevier Legislative Reports which cover the Indiana General Assembly from 1858 to 1887. The PowerPoint and audio is at: http://www.dlib.indiana.edu/education/
Justin Simard, the 2009-2010 winner of the Morris L. Cohen Student Essay Competition, will graduate from the University of Pennsylvania Law School in May, and will begin working on his dissertation for a Ph.D. in history from Penn, centered around the Litchfield Law School.

Kasia Solon (Tarlton Law Library, University of Texas at Austin) introduced a talk by Professor Emily Kaden on February 23, as part of the lecture series, “Tarlton Talks: Faculty Speak About Research.” A video of the talk, titled “What Do Legal Historians Do All Day?”, is available via the Tarlton Library News blog, at http://blogs.utexas.edu/Tarlton-library-news/category/events/, along with the PowerPoint slides.

An easy way to beat the heat and humidity is to curl up next to an air conditioner with a good legal history book, and/or law review article. Yes, I used that sentence to start the column. Not the most graceful prose, but it got the job done.

There’ve been a number of new legal history books released in the past few months. If you want the large sweeping narrative of legal history, in the sense that law is derived from human interaction, Francis Fukuyama’s new book, The Origins of Political Order: From Prehuman Times to the French Revolution, will probably cover all your bases, provided that your bases aren’t after 1789. Primarily known for The End of History and the Last Man, Fukuyama’s books are of particular interest to librarians, as his take on the uses (and misuses) of technology speak to many current concerns of the profession. The Origins of Political Order was released on April 12.

In a less philosophical vein, Hampton Sides’ Hellhound on His Trail: The Electrifying Account of the Largest Manhunt in U.S. History presents the story of the pursuit of James Earl Ray, the assassin of Martin Luther King, Jr. It is especially compelling in its depiction of the FBI of the late 1960s, one of the most tumultuous times in the history of American law enforcement.

If you’re more interested in ideas than action, be sure to check out Gordon Wood’s The Idea of America: Reflections on the Birth of the United States. Woods, one of the most preeminent voices on the early American Republic (he’s even name-dropped as an authority by Matt Damon’s character in Good Will Hunting), argues that although it’s popular to see the American Revolution in terms of practical logistics and economics, there truly were deeply seated principles and concepts at play in determining the actions of the revolutionaries.

Another title that’s been getting a fair amount of press is Lawrence Goldstone’s Inherently Unequal: The Betrayal of Equal Rights in the United States Supreme Court, 1865-1903. Goldstone’s detailed criticism of the actions and decisions of the court in the wake of Plessy v. Ferguson is a necessary and vital addition to any library seeking to collect on both race relations and the history of the Supreme Court.
A recent article in *Cardozo Law Review De Novo* speaks to the same issue. Caitlin Watt and John A. Powell (like e.e. cummings, Powell eschews the use of capital letters in his name) track a particular aspect of racial relations and the law in “Corporate Governance, Race, and Identity Under the Fourteenth Amendment”. (2011 *Cardozo Law Review De Novo* 885), while Martin Carcieri tackles a different aspect of the same amendment in “Obama, The Fourteenth Amendment and the Drug War”. (44 Akron L. Rev. 303).

And now for something completely different: Darwin P. Roberts’ “The Legal History of Federally Granted Railroad Rights and the Myth of Congress’ “1871 Shift”” (82 U. Colo. L. Rev. 85). A United States Attorney, Roberts takes a detailed look at the history of the practice of land grants in relation to the railroad, and to the impact of this practice on the western United States. Roberts roots his argument in the idea that the shift in Supreme Court policy that occurred in 1871 did not occur at all, but rather is the result of a consistent misreading of precedent. For anyone interested in land law or the history of the American West, this is a very interesting read.

In addition to curl up with a good book, the coming of spring/early summer brings forth another element of legal history: the competition. In addition to our own Morris Cohen competition (for which I’m sure we’ve all encouraged our students, lawyers, patrons, etc. to submit something), the American Society for Legal History is sponsoring a number of competitions, the details of which can be found here: [http://www.aslh.net/awards.shtml](http://www.aslh.net/awards.shtml).

It also is the beginning of conference season. In April, The University of Michigan Law School held a two day seminar entitled, “We Must First Take Account: A Conference on Race, Law, and History in the Americas” ([http://www.law.umich.edu/centersandprograms/racelawhistory/Pages/wemustfirsttakeaccount.aspx](http://www.law.umich.edu/centersandprograms/racelawhistory/Pages/wemustfirsttakeaccount.aspx)). If you’re interested in seeing the papers presented at the conference, e-mail FirstTakeAccount@umich.edu. In addition to the smaller conferences, there’s of course our biggie for the year, AALL in Philadelphia. Of particular interest should be the LHHR sponsored programs, “Old into New: Collaborative Law Library Digital Collections,” held on Sunday, July 24, and “We the People: Constitutional National Treasures in Philadelphia Archives” and “Digging Legal History in Philadelphia: The Meriwether Lewis Project,” both being held on the morning of Monday, July 25.

Philadelphia promises to be a very compelling conference locale for those of us with an historical bent, whether your interests lay in the political (Independence Hall), the library sciences (The Library Company of Philadelphia), the cinematic (you can run up Rocky’s steps at the Philadelphia Museum of Art) or the just plain odd (The Mütter Museum of Physical Oddities at the Philadelphia College of Physicians). I look forward to seeing you all there!
LH&RB AALL Activities

Sunday 12:00 Noon – 1:15 pm LH&RB Roundtable and Luncheon: Morris Cohen Student Essay Contest Paper Presentation

Sunday, 1:30 pm – 2:45pm, we have Program A-5: Old into New: Collaborative Law Library Digital Collections

Sunday 5:30 pm – 6:30 pm LH&RB Business Meeting

Monday 8:45 am – 9:45 am Program D6: We the People: Constitutional National Treasures in Philadelphia Archives

Monday 10:45 am to 11:45 am “Digging Legal History in Philadelphia: The Meriwether Lewis Project

ALSO

Monday 8:45am-9:45am GD-SIS Program: Contemporary State Constitutional Conventions: Proposals for Pennsylvania and Beyond (Not an LH&RB Program, but to be presented by Joel Fishman and Mark Podvia; you will hopefully be attending the We the People program, but you might want to encourage others from your library to attend the GD-SIS program).