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William Gooch and Law Books in Colonial Virginia

Warren M. Billings

Sir William Gooch was one of Virginia’s most successful and popular governors ever. Although he was without formal legal schooling, he stamped enduring impressions on the Old Dominion’s legal culture. Chief among them was allowing the printer William Parks to set up shop in Williamsburg. That authorization led to the origin of a line of Virginia-specific law books written by Virginians and printed in Virginia that stretches from the 1730s to the present. This essay not only recounts Gooch’s promotion of the printing press, but it also speaks to William Parks as a printer and an accomplished entrepreneur who collaborated with George Webb and John Mercer as legal authors.

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A major in the royal army, Gooch (1681–1751) resigned his commission and became lieutenant to Virginia’s governor general, George Hamilton, 1st earl of Orkney. Orkney’s office was a sinecure that the Crown bestowed on favorites who remained in Great Britain so Gooch went to Virginia as its governor in all but name and salary. Gooch arrived in Williamsburg in September 1727. Leading colonists greeted him guardedly at first but his endearing personality and willingness to defer to them soon won them over. His administration coincided with pivotal moments in Virginia’s legal development. In the closing years of the previous century the Crown had stiffened its control of Virginia and had brought colonial legal practices closer to those in Great Britain. Then too, a host of

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lawyers had jostled their way into the great planter elite, and by
the 1720s they had perfected the practice of law into a decidedly
professional occupation.\(^2\)

The lawyer’s craft depended on books. Their books were imported
from England because there were no printing presses in the colony.
Hundreds of titles filled the shelves of private and court libraries
all across the colony. As Gooch discovered, among the largest of
those libraries was the one kept by the Council of State in Williams-
burg that had been founded in 1620. It was tax funded and avail-
able to the councillors of state who sat as judges in the General
Court as well as to litigants and anyone else. To one degree or an-
other, the Council library and the other libraries held volumes that
ranged from reported decisions of the Crown courts at Westmin-
ster, compilations of English statutes, and parliamentary debates;
to practice manuals, formularies, dictionaries, encyclopedias, and
guides to conveying real property; to treatises on ecclesiastical,
criminal, foreign, and maritime law; and to the very nature of Eng-
lish law itself. Several English editions of the Virginia statutes ex-
isted but they were obsolete, inaccurate, exceedingly scarce, of lit-
tle value, and seldom found in anyone’s collection.\(^3\)

Soon after Gooch took up his government the possibility of prepar-
ing an authentic, up-to-date compilation of the statutes in force
caught his fancy. His acquaintance of John Mercer, a prominent
Stafford County lawyer and lover of books, may have influenced his
thinking. Mercer knew William Parks and had helped him to pro-
duce the first printed edition of Maryland statutes. That connection
might have led Mercer to introduce the printer to the governor.
Whatever the impulse, Gooch flouted King Charles II’s prohibition
against printing presses in Virginia and permitted Parks to open
his shop on Duke of Gloucester Street just west of the Capitol.\(^4\)

\(^2\) Chapter 7 of my forthcoming Statute Law in Early Virginia: Gov-
ernors, Assemblymen, Revisals and the Forging of Colonial Virginia,
which is due from the University of Virginia Press in 2021, treats
these developments at length.

\(^3\) Brent Tarter, “The Library of the Council of Colonial Virginia,” in
Warren M. Billings and Brent Tarter, eds. “Esteemed Bookes of
Lawe” and the Legal Culture of Early Virginia (Charlottesville, 2017)
37–57; Warren M. Billings, “Send us . . . what other Lawe books
you shall thinke fitt”: Books That Shaped the Law in Virginia,
1600–1860,” Virginia Magazine of History and Biography, 120

\(^4\) The present building was reconstructed during the restoration of
Colonial Williamsburg that commenced amidst the Great Depres-
sion. It is open to the public. Visitors can witness master printers
As an early American printer Parks (1698–1750) was second in importance only to the equally entrepreneurial Benjamin Franklin, whom he knew. A Shropshire lad, little can be said of Parks in his early years. He learned the printer’s trade while still a youth and set himself up as a publisher of books and newspapers in the town of Ludlow. Then he re-established his business in Reading, where he had less competition but he soon looked elsewhere for more profitable prospects. Sensing that better opportunities awaited him in America around the year 1726 he and his family emigrated to Annapolis, Maryland. His experience as a publisher and printer attracted Thomas Bordley a leading Maryland politician who seems to have recruited Parks to publish the colony’s laws and its legislative journals. Parks also ran the colony’s post office, sold imported books, and was the public printer. He continued his Annapolis and Williamsburg operations until he shut down the one in Maryland and settled permanently in Williamsburg. In time he went on to serve as an alderman and mayor of Williamsburg and died of pleurisy while on a trip to England, where he was buried.5

The Williamsburg shop, which was gradually enlarged, offered more than printing and binding. It was the town post office, and Parks was its postmaster. It was stocked with imported books and those he marketed for customers who were among a far-flung clientele of buyers and sellers. Parks sold stationery, sealing wax, quill pens, penknives, and ink. The constant need of paper was the reason he added the first papermill south of Philadelphia. In search of its builder he turned to Benjamin Franklin who assisted him in hiring the contractor who put up the mill. After Parks founded and edited the Virginia Gazette the shop became a newspaper office as well.6

Parks pitched his scheme for an edition of the statutes to Governor Gooch, the Council of State, and the House of Burgesses during a meeting of the General Assembly in February 1728. They accepted

operate an eighteenth-century printing press and see other aspects of Parks’s business activities.


his proposal, whereupon the House appointed an oversight committee comprised of Speaker John Holloway, Attorney General John Clayton, burgess Archibald Blair, House clerk Sir John Randolph, and Council clerk William Robertson, “or any three of them, . . . to agree with the s’d Wm. Parks for the printing a Complete Body of the Laws of this Colony, and to take a certain number of Books to be distributed at public charge among the Governor, Council Burgesses & Several Justices of the Peace of this Colony.” By virtue of their offices these five were appropriate choices because they were potent politicians and high ranking lawyers.  

There is no longer a record of the agreement the oversight committee struck with Parks. It may reasonably be assumed that the General Assembly promised to compensate Parks at a fixed sum that he would receive when the job was finished. He was expected to raise the money to cover production costs from subscribers, which was the usual way printers accumulated the necessary working capital. Evidently, written into the contract too was latitude for Parks to acquire a new press from England and time to complete the Williamsburg shop but he was slow to move the statutes project along. In fact, Parks lingered to the point where either he realized that he was in over his head and needed editorial assistance, or the oversight committee compelled him to engage a knowledgeable helper. The committee recommended George Webb in 1732, and it was Webb who finished the editorial work and brought the project to print.  

A ghostly figure, George Webb (d. 1758), now is all but forgotten though in his day he was greatly respected for his legal erudition and clerical abilities. A London merchant’s son, he had settled in New Kent County where he became a prosperous merchant planter. He taught himself law and assembled a law library that sustained his legal interests. By turns, he was a vestryman and warden for St. Peter’s Parish, New Kent, a justice of the peace, sheriff, and clerk for several committees in the House of Burgesses. Because of his reputation the oversight committee regarded Webb

as the obvious choice to work with Parks, and he was hired. Webb skillfully drew up a corrected, handwritten rendering of the statutes and drafted a “table,” or index, as a help for users. The size of the manuscript was so great that it had to be printed in sections. Each section was set, proofread, pulled, and laid aside. The type was reset in the next section, and so it went until all were finished.
Finally, Parks collected the sections into leather bound books that he delivered to the oversight committee. No record of the press run exists, although it likely numbered around a thousand copies. That number would have been enough to hand one to Governor Gooch, the justices of the peace, burgesses, councillors, all the subscribers, and still have copies to give away or sell privately.10

A Collection of All the Acts of Assembly Now in Force in the Colony of Virginia finally came out in 1733.11 It is a sizeable folio volume that runs in length to 622 pages. It is printed on leaves of off-white paper that measure 12 by 8 inches. The pages were impressed with an imported Dutch pica font and they contain a liberal measure of decorative embellishments.12 With its large lettering and striking portrayal of the Virginia coat of arms, the title page presents a bold statement about the contents that follow. After the title page is “A List of Subscribers to the Laws of Virginia” which records nearly 250 names and “many others, not yet come to hand.” Lawyers were the most frequent subscribers but so were clergymen, coffeehouse proprietors, merchants, government officials, ship captains, physicians, and even printers. A majority were Virginians though at least a fifth of the subscribers lived in Maryland, North Carolina, New York City, Philadelphia, Boston, Bristol, London, and Shropshire. The number of subscribers and the scope of their residence is a vivid testimonial to size and geographic range of Parks’s clientele.

Next comes the statutes that were enacted at every legislative session from March 1661/1662 to the third session of the General Assembly of 1727–1734 (May to July 1732). Each session is classified by when and where it convened and during which reign it met. Every statute is situated in the order of its enactment, whereas those that were repealed, disallowed, or obsolete are entered by title only and those that were still in force are printed in full. Webb’s bounteous annotations appear as marginal glosses that remark on particular acts or direct the reader to additional apposite information that could be located elsewhere. There are a few footnotes where Webb discussed instances of a statute that was a variation on English common law or where it represented a partial borrowing from an act of Parliament. Once in a while, Webb

10 The estimate is based on a similar quantity that the House ordered for a printing of the revised code of 1748.
11 Now a rarity, it is available in various digital formats. The Virginia State Bar underwrote the publication of a facsimile that was issued in 1976 by Gateway Press of Baltimore.
12 The font was probably designed by the German type designer Peter de Walpergen (d. 1703) who flourished in the Netherlands and England.
intimated his aggravation with what he was doing. In one of those notes he said of a clause in a lengthy act about land titles, “The Sense of this Part of the Clause is hard to be understood.” He acerbically scorned another part of the same act saying “This Clause seems to be useless.” The last part of the book is “A Catalogue, of the General Titles and Things, Contained in the Ensuing Table” that comes before is a topical index.

*A Collection of All the Acts of Assembly* so satisfied the House, the Council, and Gooch that Parks was not only paid, he was named the public printer to boot. From 1733 to his death, he routinely published supplements to the book as well as legislative journals, a variety of blank forms, writs, and other legal papers. However, noticeably absent from his official publications were any reports of cases decided in the General Court. That was because General Court judges delivered their opinions orally and no one recorded their opinions. After the General Assembly adopted the revised code of 1748 Parks was ordered to print it but he died before the job was done.

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As for George Webb, he was unrecognized in *A Collection of All the Acts of Assembly*. He had to petition the House to pay him. Petitioning the burgesses that “he was employed to prepare a complete Copy of the Laws of this Colony, for the press . . .; that he hath finished the same with great Care and Exactness, and has been at very great Expense in that Business; [and] that he hath likewise composed a very comprehensive Table,” he presented a bill for his expenses, and he prayed to be made whole. He was paid £200 for his “Trouble and pains.”

While Webb was editing *A Collection of All the Acts of Assembly* he seems to have hatched the idea for a book that is unique in the history of American legal literature. As he envisioned it, the book would be a modern *vade mecum* for Virginia justices of the peace that would be grounded in Virginia law and customs that would supplant English manuals such as Michael Dalton’s *Country Justice* and Michael Swinburne’s *Treatise of Testaments and Last Wills*. Those two venerable English practice manuals had guided Virginia

14 Ibid., 511–622.
magistrates for more than a century. Both were scarce, dreadfully out of date, and scarcely relevant any longer. Ever the entrepreneur, Parks saw an opportunity to expand his income and his legal publications so he encouraged Webb agreeing to publish the book, if and when Webb actually wrote it. Apparently, Governor Gooch added his blessing too. Webb began drafting the manuscript in June 1733 and completed it three years later. After he delivered the manuscript to the printer, Parks wrought it into an octavo book that bears the title *The Office and Authority of A Justice of Peace . . . Adapted to the Constitution and Practice of Virginia*.18

The *Virginia Justice* is a plain book that is printed on 378 pages of stark white paper. Parks applied the same type he used for *A Collection of All the Acts of Assembly* only now it showed signs of wear that did not affect legibility. The title page lacks adornments; on its verso is Attorney General John Clayton’s imprimatur. Webb wrote an effusive dedication to Governor Gooch that he followed with a preface which unabashedly told readers that this book was “the First in its Kind hitherto Produced in these Parts of the World.”20 The contents consist of 299 “Titles” that Webb arrayed alphabetically by subject, and there is an unpaginated topical index. Although the format replicates the style of an English j.p. manual there were important differences in style and substance. For one thing, the text was entirely in the vernacular and devoid of lengthy citations to authorities who wrote in Latin, Law French, or other foreign tongue. For another, the book dealt with subjects not found in English models, and for another still, it drew attention to English precedents the Virginians had modified to fit colonial necessities and those that addressed subjects that had no precedents in English law.

Despite its utility and instructional value the *Virginia Justice* proved to be something of a financial disappointment for Webb and Parks. They likely wanted the General Assembly to order magistrates to buy the book at public expense, thereby assuring author and publisher a fixed return, but that wish failed to materialize. There was a spurt of sales after the book hit the market, they petered out, and the remaining copies grew dusty on Parks’s bookshelves before the last of them were finally sold in 1750. By then

18 This and the succeeding discussion of the *Virginia Justice* proceed from Billings, “A Virginia Original,” 161–71.
19 The details of the design and dimensions are described in Wroth, *William Parks*, 53.
the *Virginia Justice* stood in need of a second edition, but William Hunter\(^\text{21}\), who bought the shop after Parks died, was unenthusiastic. So was Webb. He had parted company with the General Assembly after a financial dust-up arising from his work for the committee that drew up the revised code of 1748. Then too, Sir William Gooch had retired to England, and his successor Robert Dinwiddie never cultivated a relationship with Webb. And so an unrevised *Virginia Justice* remained authoritative until 1774 when a pair of William Hunter’s successors, Alexander Purdie and John Dixon, issued Richard Starke’s *The Office and Authority of a Justice of Peace Explained and Digested, Under Proper Titles*.\(^{22}\)

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**The Office and Authority of a Justice of Peace.** Courtesy of a Private Collector.

John Mercer (1705–1768) is as obscure as George Webb.\(^{23}\) Like Webb, he was a first-generation Virginian. Born in 1705 in Dublin, Ireland, the precocious Mercer was treated to a healthy plateful of formal schooling by parents who gifted him with little else. He left Dublin when his was just fifteen and opened an export-import business in Stafford County. A prospering merchant he parlayed his connections into a strategic marriage that ushered him into the

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colony’s great planter elite as he became a self-taught lawyer, book collector, and author. Within a matter of years he developed what was arguably the largest law practice of the day which he supported with one of the biggest private libraries in the colony. (His library educated his nephew George Mason (1792–1795) who went on to fame as one of the patriots who created the American republic.)

Mercer was a vestryman at Aquia Church, Stafford County, a county justice and its presiding justice but he never held a seat in the House of Burgesses. His ferocious temper complemented a razor-like tongue, an unguarded outspokenness, and a bullying demeanor were unappealing traits that probably explains his failure to win voters. Then too, his personality frequently landed him in trouble with the House and the Council of State and to repeated suspensions of his law license.

His first suspension happened about the time Mercer got his subscriber’s copy of *A Collection of All the Acts of Assembly*, and with time on his hands he decided to digest it for publication. He humbled himself and asked the Council of State for leave “to Print an Abridgement compil’d by him of all the Laws of this Colony & to have the benefit of the Sale thereof.” Gooch and the councillors approved but they commanded him to “deliver the said Abridgement to be Examined by the Attorney General,” the Speaker of the House John Randolph, and barrister Edward Barradall. They were to “Report their Opinion whether the same be fitt to be Printed.” Their report was favorable, and the Council embraced Mercer’s project. Authorization in hand, Mercer gave his manuscript to William Parks who published it in 1737 as *An Exact Abridgment of all the Public Acts of Assembly, of Virginia*.

An Exact Abridgment and the Virginia Justice look alike. Same in size, Parks printed both with the same type and on the same white paper, and they have similar unadorned title pages. An Exact Abridgment is the longer of the two volume. It is armed with tables, sample precedents, and a list of errors that accompany the main

24 Mason wrote the revolutionary Fairfax Resolves, he drafted the Virginia Declaration of Rights and the Virginia Constitution of 1776, he signed the Declaration of Independence, he was an active player at the gathering that produced the federal Constitution but refused to sign it because it lacked a bill of rights, and he opposed its adoption by the 1788 Virginia ratification convention. The federal Bill of Right is based on the Declaration of Rights.
text. Mercer dedicated his book to its unnamed subscribers instead of Governor Gooch. Because “Books of this Nature; and as the Method and Tables . . . may not be altogether so plain,” Mercer devised the preface as a tutorial for the readers.\(^\text{27}\) The text itself

\(^{27}\) Mercer, *An Exact Abridgment*, iv.
summarizes the statutes by subject and arrays them alphabetically.

As Mercer knew the allure of an abridgement was its ease of use and its compact size. It easily fit in a lawyer’s saddlebag as he rode from court house to court house. It and a copy of *The Virginia Justice*, equipped a user with a handy portable law library of sorts. Notwithstanding the utility, there was a drawback to *An Exact Abridgment*. It was outdated almost as quickly as it was printed. Even so, it was a Virginia-specific utensil that filled a vacancy in a lawyer’s tool bag. For that reason Mercer and Parks brought out a small addition in 1739. Twenty years later a Scots printer from Glasgow published the corrected and updated version of Mercer’s book. Regrettably, neither edition was financially rewarding. He and Parks grossly misjudged the number of copies they could market. Mercer and he assumed a greater than normal demand so he printed about fifteen hundred copies, which was three times his normal press run. The Scots printer also miscalculated. Thus, when Mercer died his executor struggled to dispose of hundreds of leftover copies of the two editions at half price.\(^\text{28}\)

Without Sir William Gooch there would have been no printing press in early eighteenth-century Williamsburg and William Parks may well have remained in Annapolis. Without Parks and his press *A Collection of All the Acts of Assembly* would not have existed. Without Gooch’s permission and Parks’s encouragement George Webb and John Mercer may never have written the *Virginia Justice* and *An Exact Abridgment*. And without those foundational volumes there would have been no Virginia-specific legal literature written by Virginians and printed in the Old Dominion for generations to come.

Reflections on the monographs of
David Yale QC, FBA

Lesley Dingle*

Preamble

David Eryl Corbet Yale was Lecturer, then Reader, in English Legal History at Christ’s College, Cambridge from 1952 until he retired in 1992.

David was born 31st March 1928 at Southsea (near Portsmouth), where his father, who was in the British Army, was stationed. When his father was attached to the Indian Army, the family moved to the Far East, and David spent his earliest years (2-8 yrs) in India. In 1936 he was despatched back home to live with his grandmother in Wales, and spent most of the war (1942-46) as a boarder at Malvern College. He went up to Queens’ College Cambridge just after WWII in 1947, where he gained his BA, before obtaining a fellowship at Christ’s College in 1950. Here, he graduated LLB in 1951, and was called to the Bar (Inner Temple) the same year. In 1952 he began lecturing/researching legal history at Christ’s in an illustrious career that spanned the next forty years.

I interviewed David for the Cambridge Eminent Scholars Archive at his home near Porthmadog, on the edge of Snowdonia in north-west Wales, in November 2019, in his 91st year. The transcripts and audio records of these conversations, as well as his full bibliography, are available at https://www.squire.law.cam.ac.uk/eminent-scholars-archive/mr-david-eryl-corbet-yale

During his career, David produced nineteen journal articles, fifteen case notes, and five very substantial monographs on the writings of three Tudor-period jurists. The production of the monographs occupied, not to say consumed, the entirety of his career. It is the latter upon which I shall make some remarks, illustrating these with comments made by David during our conversations. To allow readers to see the full context of the quotations, I cite the question number in the interview transcripts reproduced in the Eminent Scholars Archive as Qx.

The background to David Yale’s studies is that he followed a lineage

* Foreign & International Law Librarian, Squire Law Library, Cambridge; Founder of the Eminent Scholars Archive.
of Cambridge legal historians of the common law that included Frederic Maitland 1, and Toby Milsom 2. Surprisingly, his inspiration to follow this path came not from within Cambridge, but from a casual remark by a specialist in real property at King’s College London, Harold Potter 3. As David commented ruefully, the resident Cambridge legal historians of the inter-war years (Harry Hollond 4 and Harold Hazeltine 5) had allowed the subject to “become rather a lost cause” (Q5). His career was thus undertaken, at least partly, before the modern flowering under John Baker 6, David Ibbetson 7, Neil Jones 8, and the latter part of the Milsom era.

With Milsom’s precipitous departure in 1955, David, and Michael Prichard 9, carried the subject forward alone until John Baker’s appearance at the Squire Law Library in 1971 from University College London. Thus in the early 70s, Cambridge efforts on the early history of the common law was sustained by an infusion of ideas fermented in the colleges of London University.

David Yale’s monographs

David’s main output fell into two categories, three monographs on

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1 Frederic William Maitland (1850-1906), Downing Professor of English Law (1888-1906).
3 Harold Potter (1896-1951) Professor of English Law, King’s College London (1938-51).
7 David. J. Ibbetson, Regius Professor of Civil Law Cambridge (2000-).
8 Neil Jones, Reader, Fellow and Director of Studies in Law, Magdalene College.
9 Michael J Prichard (1927 -), Lecturer in Law (1953-95), Gonville & Caius.

the works of Lord Nottingham\(^{10}\), and two involving the writings of

\(^{10}\) Heneage Finch, 1st earl of Nottingham (1621-1682), Attorney General (1670-75) Lord Chancellor of England (1675–82).
Matthew Hale\textsuperscript{11} (one co-joined with the work of William Fleetwood\textsuperscript{12}, and undertaken in collaboration with Michael Prichard). These monographs consisted of transcriptions of original, or copies of, writings by these two 17th century jurists, preceded by lengthy and detailed commentaries on their significance to developments in legal notions and procedures (and/or jurisdictions) in the 17th century.

**Heneage Finch**

David’s initial research in the early ‘50s was on the writings of Heneage Finch, Lord Nottingham, whose works Harold Potter had originally advised David to study: “I found Potter in the Squire Library one Saturday afternoon and I said, “Have you any ideas?” He said, “Oh you had better do something on early Equity.... He then told me that Nottingham was a good bet and he suggested I run Nottingham as a trial, so I did.” (Q29). His goal was to assess the claim that Finch could be acclaimed as the Father of Modern Equity, and David set upon his task over the next twelve years with verve and application.

In 1962, he rounded off his work on Nottingham when he completed the text of his CUP monograph entitled *Lord Nottingham’s “Manual of Chancery Practice” and “Prolegomena of Chancery and Equity”* \textsuperscript{13}. These two tracts, as David explained in Q93, were based on Nottingham’s own working notes and remarks, along with collections of his predecessors’ decisions. Nottingham had used them to develop his own notions during the formative stage of his judgeship in Chancery, so although David completed this book seven years after the Selden Society volumes I and II of *Nottingham’s Cases* \textsuperscript{14}, readers ought to consult it before they tackle the latter. This would preserve the historical sequence of Nottingham’s own legal development, and place in perspective one important aspect of the evolution of Equity, as illustrated in the *Cases* volumes.

This aspect relates to the fraught period in English history that included the Civil War, and was characterised by differences between the civil and common law practitioners in the application of

\textsuperscript{11} Sir Matthew Hale, (1609-1676), barrister, judge and jurist.
\textsuperscript{12} William Fleetwood (1535?-94), Recorder of London (1571-91).
\textsuperscript{14} *Lord Nottingham’s Chancery cases*, v. 1. Selden Society, Vol. 73, 1957,

Equity in Chancery brought into the focus by Parliament’s confrontation with King Charles I during the 1640s. This highlighted differences between Parliament lawyers and Royalist prelates, and culminated during the republican Commonwealth period (post-Civil War) by Parliament’s attempts to reform Equity (1654). Not all the changes wrought were overturned with the Restoration (1660 onward).

David Yale discussed this dichotomy, but his treatment drew criticism from one reviewer, J P Dawson of Harvard, who thought that David had over-emphasised it. David defended his analysis, and commented that “I don’t know that I did make too much emphasis about that or too little...I think the conflict was quite real considering that there were quite formal propositions in Parliament to abolish the Court outright....they were in the full swing of reform...they’d abolished Star Chamber, they’d abolished wards and liveries....why, in the throes of radical reform, one can’t abolish Chancery, is also a question which they actually did debate. I think it was on the cards.” (Q96). For a period, therefore, Equity was an endangered species and perhaps Nottingham saved it from extinction. Such details are essential to reconstitute the historical tapestry against which to appreciate David’s assessment of Lord Nottingham’s legacy.

Despite the chronological imbalance of David’s order of publication of Nottingham’s works, by 1961 he had produced two lengthy introductory chapters for his Cases volumes I and II, and concluded that, indeed, Nottingham could be considered the Father of Modern Equity. At the risk of over-simplifying David’s reasoning, the fulcrum on which the argument hinged was Nottingham’s inclination to resolve that in Equity, decisions should no longer be primarily matters of conscience, the Chancellor having traditionally been the Keeper of the King’s Conscience.

The original logic in Equity had been that conscience was a matter of morality rather than legality, and so was liable to individual interpretation, originally the King’s, but with time, the Chancellor’s in the King’s name. Before Nottingham’s time there had been no notion of appealing to precedent in Equity, as understood in modern terms, but Heneage Finch veered, if that is not too strong a term, towards bringing method into the process. Method entailed rules, thereby limiting discretion. Precedent offered the route to

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16 Am Jl Legal Hist, 1966, 10(1), 82-94, at 84.
17 Nottingham Cases vol I, p. xxxvii.
achieve this and modern Equity was conceived, if not actually born. As David concluded, Nottingham was the “Father of systematic equity” 18, which led inexorably to the modern concepts thereof.

At the time, this notion was contentious, and David cited Vaughan CJ in 1670 saying “equity is a universal truth and there can be no precedent to it,” 19 but this view did not prevail. He summed up his conclusion in answer to Q84: “Nottingham, I think, was the person who decided for the future that equity should not be a matter of an individual conscience of the Lord Chancellor but should be a system of law on the grounds of equity, that is to say to some extent following precedent and following prescribed patterns of development.”

Commenting on reviews to the Cases volumes, a fascinating throwback arises to remarks David had made (in Q53) regarding his relationship with Toby Milsom, who had developed very firm notions on the development of the common law in the middle ages. One of the reviewers of Vol I remarked approvingly that David’s approach was reminiscent of that of Holdsworth20, whom the reviewer, Hanbury21 greatly admired. He said that David had expressed himself in a manner that exemplified the notion favoured by Holdsworth that “much of legal history must be found in biography”. As David remarked to me, such personalising of developments in legal history “was the sort of statement which would have been strongly repudiated by Toby Milsom....it was against his principle [that] a biographical explanation is something ....not [to] have [been] thought of as sufficient law.” (Q85). Milsom would have sought a more nuanced, evolutionary route for the change in direction of Equity.

Sir Matthew Hale

After completing his researches on Lord Nottingham, David Yale concentrated his attentions on a concatenation of three of Sir Matthew Hale’s manuscripts relating to the prerogative powers of the English monarch22. In our current era of constitutional flux (for example Brexit and leaving the EU), his work has a resonance, making it particularly topical.

18 Op cit, p. xlv.
19 Op cit, p. li.
David outlined Hale’s understanding of the source of the then contemporary King’s powers as having been rooted in the community, thus being customary. This made them part of the common law of the realm, in contrast to a law of special courts. Although the King’s office was the source of all legitimate authority, Hale did not believe that the law was changeless - customs change - and the King’s prerogative were part of this changing law. One of the book’s reviewers, Charles Gray, a leading scholar in legal history and contemporary of David’s, was fulsome in his praise for this analysis. Gray pointed out that at the time Hale was writing, the powers of the crown were “virtually coterminous with constitutional law”. The King was, effectively, the government, not part of it. Yet as Hale recognised, the King by himself could not make a statute, but all statutes were King’s law, and he was bound by them, though not subject to their penalties.

Given the recent (2019-20) constitutional conundrums thrown up by political events, I asked David to comment on the stark decline in the modern monarch’s powers in the UK. His response was pithy, to say the least. “[T]he Head of State obviously had a role to play outside statutory law and that’s what we mean by the common law powers core prerogative. They are common law powers [with] which the executive head has to make the constitution serve its purpose…. in modern times those have been limited in the sense of shifting of powers to the legislative part of the Government. But the diminishing role….is a very obvious feature of modern law. We had one the other day, didn’t we, Brenda Hale and their Lordships declaring Her Majesty “out of order” on publishing a prorogation order. It’s certainly part of the prerogative to suspend or end parliament and call for a new election, but people are surprised now that the thing is remitted to a judgement at all. It’s a question of deciding how to limit the prerogative and still leave the executive with some powers in cases of emergency, like war and peace and so forth.”

23 Op cit p. xxxix.
24 Op cit p. xl.
26 Which would have been probably 1640-1660, p. xxv
28 The Prerogatives of the King p. xlviii - xlix.
29 https://www.bbc.co.uk/news/uk-politics-49810261
Brenda Marjorie Hale, Baroness Hale of Richmond, DBE, PC (b.1945-), President of UK Supreme Court (2017-19).
A subsidiary observation made by David of Matthew Hale’s analysis epitomises the difficulties legal historians have in understanding legal thinking in eras before mass communication and recording - at least widespread printing, let alone electronic communications. Namely, that knowledge was restricted to those with access to libraries and other specialist repositories of information. This accounted for David’s identifying a fundamental flaw in Hale’s view of history, and hence Hale’s model of the constitution. Hale saw history as a seamless diorama of political theory, not as we know today of its having been punctuated by wars and conquests. And Hale was a well-educated, well-read lawyer.

I believe this conundrum harks back to Toby Milsom’s basic tenet that Maitland’s interpretation of mediaeval law viewed through the lens of Victorian law caused him to mis-interpret certain concepts. David’s analysis in *The Prerogatives of the King* illustrates this point so well.

David’s last-published monograph was the jointly-authored *Hale and Fleetwood on Admiralty Jurisdiction* whose compilation occupied the last 17 years of his Readership. David and Michael Prichard had originally undertaken to write a general review of the history of the Admiralty Court (in ~1960), but by the early ’70s had re-focused on considering mainly its jurisdiction, as documented in the writings of William Fleetwood and Matthew Hale.

Michael and David prefaced their transcriptions of these 16-17th century works by what Barton considered a “very full and learned introduction....in which they trace the history and the procedure of the court from its early beginnings to the 19th century”. He considered this to “belong to the genre of legal polemic making use of historical material rather than of legal history.”

Their lengthy introduction is divided into three parts, two of which deal with the respective ambits of the civil and criminal jurisdictions of the court. The accounts contain a feast of topics, many of which relate to long-abandoned legal practices - benefit of clergy, and corruption of blood and *peine forte et dure* being two of the more colourful notions to modern lawyers - but all written with authority and in an engaging style.

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31 John Latimer Barton (1929-2008), Reader in Roman Law, Merton College Oxford.
Today, the Admiralty Court is no more, or merely a shadow of its former stature, and this monograph points to where the seeds of its demise were fertilised, germinated and finally sprouted. Selecting two of the more important causes for the court’s decline, we can first look at a unique feature of the Admiralty Criminal Court that makes it such a fascinating subject for study. This was the interplay between the common law and Admiralty law (which was civil law), which during his own interview for the Eminent Scholars Archive, Michael Prichard had described thus: “the Admiralty Criminal Court was quite unique, because it was set up in 1535 as a common law assize court, but staffed by civilians, that is Roman lawyer civilian, clerks. It was a curious combination of civil law procedure, when the actual trial, however, was in English criminal law, and presided usually by an English common law judge, though technically the one who’s in charge of it was the admiralty judge. An almost unique combination of civilian and common law judge. It must be about the only time they ever sat side by side on the bench administering the same law.” (Q87).

David Yale amplified this “rather special arrangement...[which] was set up by statute by Thomas Cromwell’s endeavours in the reign of Henry VIII, 1535, as a court which could convict pirates. The problem [had been] that when the pirates went on the rampage and captured a ship they immediately threw into the sea and killed all of the mariners who might otherwise be survivors and become witnesses to the act of piracy... The idea was that if you could change the Admiralty civilian court into a statutory court for piracy, and for other crimes as well, then you could get juries who would convict more readily in the absence of witnesses. It was the... feeling that to capture and hang pirates was a desirable move.... to get a more effective murder trial against them because they usually, under the civil law, needed a couple of witnesses before you could convict anyone of any serious offence. Well, if the witnesses had all been duly murdered, the pirates went liable to be discharged in a civilian court for lack of evidence. That was really what was alleged by Cromwell and others, and I dare say it’s basically the truth of the matter.” (Q103).

A second crucial factor was emphasised by another reviewer, Frank Wiswall who commented that Prichard and Yale “[came] as close

33 https://www.squire.law.cam.ac.uk/eminent-scholars-archive/mr-michael-j-prichard
34 Thomas Cromwell, 1st Earl of Essex, KG, PC (1485-1540), Chief Minister to Henry VIII (1532 - 40).
35 Frank L Wiswall, Jr, Maritime lawyer, practices at Castine, Maine, USA.
as we are ever likely to get to the truth of the original nature of the actions *in rem* and *in personam*.” In their section on “ambit of civil jurisdictions”, Prichard and Yale had pointed out that in Tudor and Stuart Admiralty courts a wide variety of causes of actions were remedied by the court, “by *in rem* and *in personam* process alike”. In contrast, during the course of the 18th century, the Admiralty ceased to use *in personam* “because recourse to it was blocked by prohibition”, and as a consequence “most commercial contracts had to be litigated elsewhere”.

Although when Frank Wiswall came over from the States and worked with David Yale while studying at Cambridge in 1965, he had been primarily Michael Prichard’s student. Michael remembered him well. “Frank was one of my really quite outstanding research students. He came over because he had been an American maritime lawyer, and admiralty jurisdiction in America has always had a rather special place that it lost in this country, because it is a federal jurisdiction. So, they’ve had the problem of federal jurisdiction [versus] state jurisdiction and, therefore, many of the problems that we had in the seventeenth century..... They’ve always had this notion of the Admiralty Court of America being almost the guardian of the seamen, as opposed to the officers and it [has] that charitable notion. It’s always been a big subject in America, and Frank came over to do its history and did a remarkably good PhD.”

A further difference dealt with by Frank Wiswall between US and English Admiralty law, and which David highlighted in our interview, was that “American Admiralty...is rather different from English Admiralty because they had to deal with inland waters like the Great Lakes, not just saltwater.” Thus while Admiralty Law is still a vibrant jurisdiction in the US, it is not difficult to see why the English Admiralty Court withered, and Barton emphasised in his review of “Hale and Fleetwood” that as early as the turn of the 18th century Holt CJ had held that the Admiralty court had jurisdiction over the thing, but not the person.

David reflected during our conversation on the current situation in

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37 *Hale and Fleetwood on Admiralty Jurisdiction* p. cxxix
38 Op cit p. cxxxv.
39 Which was published as *The Development of Admiralty Jurisdiction Since 1800*, CUP, 1970. 241pp.
English Admiralty matters. “In this country it’s been taken over by the common law. Today if you get a dispute over mariners’ wages, for example....the ship has been discharged and the mariners have been discharged, but their pay has been withheld, what they do in Admiralty law is to go into the court having arrested the ship as a pledge for the payment of the money not paid. It works remarkably well but the in rem procedure, a civilian procedure, is the only one which is available and surviving in the hands of the common law. It’s no longer a civilian court. There is no Court of Admiralty now it’s a jurisdiction exercised by the High Court of the old Admiralty matters and litigation. [But] it has still one vital point of separate procedure when it chooses to exercise it.” (Q104).

One might simplistically conclude that Thomas Cromwell’s determination to hang pirates sowed the seeds of the court’s eventual demise.

David Yale’s four monographs published with the Selden Society\(^{42}\) are a testament to his long association with the society, which he also served as their Literary Director on two occasions spanning fourteen years: 1976-80 (with Toby Milsom), and 1980-1990 (with John Baker). In his retirement, the Society honoured him with their Presidency (1994-97), and in 1999 created The David Yale Prize for outstanding research by a younger scholar.

David also served as Editor of Cambridge Studies in English Legal History for CUP (1970-93), and in 1980 was elected a Fellow of the British Academy for his services to legal history. He was made an Honorary QC in 2000, and an Honorary Bencher at the Inner Temple in 2009.

\(^{42}\) Founded in 1887 by Frederick Maitland to study and advance the knowledge of the history of English Law. Appropriately, it is named after John Selden (1584–1654), jurist and legal scholar who was a contemporary of both Matthew Hale and Heneage Finch.
Like Sand from the Pyramids*: Using Rare Books and Manuscripts to Facilitate Object-Based Learning in the Law School Classroom

Melissa M. Hyland**

You were like a traveler who brings a little box of sand
From the wastes about the Pyramids
And makes them real and Egypt real.
You were a part of and related to a great past,
And yet you were so close to many of us.1

Introduction

Pedagogy in law schools is undergoing something of a renaissance. Gone are the days when law school classes consisted entirely of lectures, coupled with the sharp questioning of a few students while the majority listened passively and took notes.2 The ABA Standards now require law schools to incorporate more forms of

* Adapted from lines 10-11 of the poem “Father Malloy” by Edgar Lee Masters. See Edgar Lee Masters, “Father Malloy,” SPOON RIVER ANTHOLOGY (1915).

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experiential learning into the curriculum, and the use of varied teaching methodologies is also strongly encouraged. Law faculty are implementing new teaching methods designed to foster student engagement and to provide students with opportunities to learn in different ways.

In a legal education field filled with varying strategies for training the next generation of lawyers, it is imperative that law librarians and archivists contribute to this scholarly discussion by highlighting the many educational benefits to be gained from utilizing the rich collections of rare legal books and manuscripts in law libraries. While law librarians and archivists understand the importance of rare legal books and manuscripts to the educational mission of law schools, little scholarly attention has yet been devoted to exploring the educational theories that can explain why classroom sessions using special collections produce such powerful learning experiences and how they might be used in a more intentional manner to contribute to student achievement in the classroom.

This article advocates adding object-based learning, utilizing rare legal books and manuscripts, to the legal education toolbox. Object-based learning is an educational methodology that explains the many learning benefits resulting from student engagement with tangible objects of material culture. Studies into the use of this methodology with undergraduate and graduate students are rather

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4 See, Schwartz, Sparrow & Hess, supra note 3, at 123 (outlining a variety of experiential methods and exercises); Gerald F. Hess, Principle 3: Good Practice Encourages Active Learning, 49 J. LEGAL EDUC. 401 (1999) (discussing various means for implementing the active learning methodology into the law school classroom).

5 See e.g., Lois Hendrickson, Teaching with Artifacts and Special Collections, 90 BULL. OF THE HIST. OF MED. 136 (2016) (“Despite decades of interest in teaching with primary sources, however, pedagogical engagements with material culture are focused primarily on curriculum units for K-12.”); Ann Schmiesing & Deborah Hollis, The Role of Special Collections Departments in Humanities Undergraduate and Graduate Teaching: A Case Study, 2 PORTAL: LIBRARIES AND THE ACADEMY 465 (2002) (“There is little research in either pedagogical or library science journals on the role that special collections departments can play in enhancing the teaching of the humanities.”).
new, but research indicates that object-based learning produces measurable positive results across the curriculum.6

Part I of this article provides an overview of object-based learning, with subsections addressing its relationship to active learning, its incorporation of multiple learning styles, and its ability to encourage affective learning. Part II recounts my experience with object-based learning activities in both Legal History and Advanced Legal Research courses. Finally, Part III considers some of the challenges for implementing object-based learning in the law school classroom. Ultimately, it is my hope that this article launches a larger conversation amongst law librarians and archivists about how we might utilize the rare treasures in our institutions to both enrich student learning and support our law faculty in their educational mission.

I. An Overview of Object-Based Learning

Object-based learning (“OBL”) originated in museums, where curators sought to facilitate the delivery of subject-based knowledge and foster engagement with important concepts and issues inherent in their collections.7 University archives and museums in the United Kingdom were the first institutions of higher education to adapt this methodology for postsecondary education.8 At University College London, Helen J. Chatterjee and her colleagues worked alongside faculty to design OBL activities that utilized archival materials and rare books as objects to introduce students to new knowledge and help them to engage with more abstract theories and ideas implied by the objects.9

6 See Leonie Hanna et al., Object-Based Learning: A Powerful Pedagogy for Higher Education, in Museums and Higher Education Working Together: Challenges and Opportunities 159, 163 (Anne Boddington, Jos Boys & Catherine Speight eds., 2013).
7 Arabella Sharp et al., The Value of Object-Based Learning Within and Between Higher Education Disciplines, in Engaging the Senses: Object-Based Learning in Higher Education 97 (Helen J. Chatterjee & Leonie Hannan eds., 2015).
8 Id. at 97.
9 Id. Qualitative studies at University College London using student surveys also indicated that OBL sessions provided students with “a distinct sensory experience that extends beyond [the] didactic precedence of the traditional classroom or lecture theatre [sic] setting, enhancing the acquisition of knowledge and understanding.” Id.
Law librarians and archivists will recognize the practical elements of object-based learning. Any classroom presentation or visit to the special collections in which law students are actively engaged with rare books and manuscripts is technically a form of object-based learning. Moreover, librarians and archivists understand from firsthand experience how students react when handling items of historical legal importance. The power of that tactile experience contributes to meaningful learning that remains with students long after a session ends. The following subsections outline the essential elements of an OBL session and highlight the educational benefits of this unique teaching strategy.

**A. Component Parts of an Object-Based Learning Activity**

In its simplest form, an OBL activity requires only two things: an object and a plan for using that object to support student learning. The object in OBL is broadly defined and includes any item of material culture that connects to the learning objectives set by the instructor. Rare legal books and manuscripts, the focus of this

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11 See Silver, supra note 10, at 90 (“[A] rare book possesses a magnetism that has the power to exert its influence on those with whom it comes into contact.”); Claire M. Germain, *Rediscovering Rare Books in an Electronic Age*, 20 LEGAL REFERENCES SERVICES Q. 93, 96 (2001).


13 Helen J. Chatterjee et al., *An Introduction to Object-Based Learning and Multisensory Engagement*, in Engaging the Senses: Object-Based Learning in Higher Education 1, 8 (Helen J. Chatterjee & Leonie Hannan eds., 2015) (“For example if a student of Shakespeare is to understand how the plays were read or received in eighteenth-century England, what better way to engage with this question than by turning the pages of a contemporary book of Shakespeare's works, acknowledging the price paid by its owner, the value of the binding, the format of its pages, and, potentially, the marginal annotations of its first or subsequent readers.”).
article, fit neatly within this definition, as they are unique textual objects already used to introduce students to the study of historical bibliography and its focus on the book as a tangible record of its time and place. It is those unique characteristics of the book as an object that can be utilized in OBL. In order to select the appropriate objects for an OBL session, the instructor and the librarian must clearly outline the learning objectives and select objects that represent elements of those learning objectives, whether those objectives be fundamental knowledge acquisition or higher-level engagement with concepts and ideas.

The lesson plan for an OBL activity must be intentionally designed to support student learning throughout the session. Following an initial introduction to the objects and a tutorial on proper handling procedures, the instructor then assumes the role of facilitator as students interact with the objects and become more active participants in the learning process. At this point, students need instructional support, rather than direct instruction, to ensure that their activity progresses toward the learning objectives. Educational scholars refer to this critical instructional support as “scaffolding,” defined as the provision of background information or questions at just the right moment to ensure that students reach the stated learning objectives. Scaffolding provides the necessary support needed for learning environments with high levels of student activity and can be artfully used to guide students to practice new skills, critically engage with new information, or reevaluate prior knowledge.

Instructional support in OBL is also provided by the objects themselves. The objects create the context required for learning to occur, while the instructor provides needed background information and raises critical questions throughout the session.

14 Id. at 8; Lind, supra note 10, at 311-12.
15 Chatterjee, supra note 13, at 9-10.
16 Cindy E. Hmelo-Silver et al., Scaffolding and Achievement in Problem-Based and Inquiry Learning: A Response to Kirschener, Sweller and Clark, 42 EDUCATIONAL PSYCHOLOGIST 99, 100 (2007).
17 Id.
18 Id. at 101.
20 Hmelo-Silver et al., supra note 16, at 101 (“Teachers play a significant role in scaffolding mindful and productive engagement with the task, tools, and peers. They guide students in the learning process, pushing them to think deeply, and model the kinds of...”)
Objects, as tangible records of history and culture, represent “a vast continuum of abstract ideas and interrelated realities,” and they provide students with “a context from which to speak about, question, and write about the represented concepts through their interactions with the objects.” Context is particularly important when students lack any background knowledge about a topic or are considering a conceptually challenging idea for the first time.

**B. Object-Based Learning is a Form of Active Learning**

OBL is a form of active learning and places student activity at the center of the learning process. In an active learning session, students are “doing things and thinking about the things they are doing.” Various other educational strategies also fall within the umbrella of active learning, including inquiry-based learning and experiential learning. The types of classroom activities that constitute active learning vary widely and can be adjusted to meet the needs of a specific topic or class session. For example, during a normal lecture, pausing instruction and asking students to clarify and revise their notes with a classmate constitutes active learning in its simplest form. Increased student activity can be achieved with the use of brief, focused practice exercises interspersed throughout a lecture. These short bursts of student activity serve to break up the lecture and allow students to test their new knowledge or skills. Similarly, an experiential learning activity questions that students need to be asking themselves, thus forming a cognitive apprenticeship.

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22 Id.


24 Chatterjee et al., *supra* note 13, at 1.


29 Id. at 9.
asking students to draft a noncompete agreement based on a specific client scenario requires possibly the highest levels of student engagement and activity. In each of these examples, student activity and involvement contribute to increased engagement with the underlying content.

Active learning stands in contrast to passive learning, which is characterized by an overall lack of student activity. In the passive learning environment, a professor lectures and students listen. There is little participation by students, and learning depends largely on students’ abilities to maintain attention and absorb new information. Students learn from both passive and active teaching strategies, and both methods are necessary to law school instruction. However, research indicates that active learning strategies are better-suited to instructional objectives requiring higher-level thinking, including discussion of abstract concepts, application of knowledge to new situations, and the development of problem-solving skills. Students involved in active learning sessions actually participate in their learning, a process which aids in drawing connections between their own background knowledge and new concepts. In the law school classroom, active learning sessions help students “understand legal concepts and theory, improve critical thinking, and develop professional skills and values.”

OBL fits neatly within the active learning pedagogy umbrella because it provides students with the opportunity to actively engage with physical objects as a part of the learning process. Students are holding rare books in their hands, turning brittle pages, and scanning their eyes over marginalia and ownership marks from centuries past. Hands-on activities involving rare books and manuscripts require students “to ‘think’ as well as to physically ‘do,’” which engages them in the learning process and draws them into new knowledge in ways that cannot be as easily achieved in the

30. Id. at 3-4.
31. Hess, supra note 4, at 401.
33. Hess, supra note 4, at 401; Downing, supra note 28, at 2.
34. Bonwell & Eison, supra note 25, at 21; Havelock, supra note 2, at 382; Brown & Ellison, supra note 12, at 41; Prince, supra note 26, at 225.
35. Hanna, supra note 6, at 161.
36. Hess, supra note 4, at 402.
Socratic classroom. OBL thus hinges on the activity and involvement of students in the session, and much of its effectiveness derives from that intimate connection between students and the objects of the past.

While OBL is certainly a form of active learning, it is also distinctively different from other instructional strategies within the active learning pedagogy. The physical act of handling the rare objects involves learning styles not often utilized in the modern classroom. As discussed more in the next subsections, OBL is inherently multisensory, requiring students to take in information through multiple senses to fully grasp an object’s meaning. Moreover, OBL also has the unique ability to appeal to students’ emotions and interests, thus creating an affective learning environment that encourages them to make deep and lasting connections with the knowledge gleaned from the objects.

C. Object-Based Learning is a Multisensory Learning Experience

For many years, educational scholarship focused on the idea of learning styles. Educational scholars believed that people learned best when information was presented to them via their preferred learning style, whether that be visual, auditory, tactile, or kinesthetic. More recent research found that learning is a more fluid process, and people benefit from using a variety of learning styles. Students retain content for longer periods of time when new information is presented in multiple forms. A comprehensive law

37 See Chatterjee, supra note 13, at 3.
39 Id. at 107-08 (discussing how learning styles taxonomies became prevalent in educational literature).
40 Id. at 108 (noting that an individual’s preference for a certain learning style had “little, if any, relationship to an individual’s objectively measured specific-aptitude profile”); Peter C. Brown et al., Make It Stick: The Science of Successful Learning 4 (Harvard Univ. Press, 2014) (“People do have multiple forms of intelligence to bring to bear on learning, and you learn better when you ‘go wide,’ drawing on all of your aptitudes and resourcefulness, than when you limit instruction or experience to the style you find most amenable.”).
41 Brown et al., supra note 40, at 4; Chatterjee, supra note 13, at 8 (“While it is likely that individuals will have a preference for one or more learning styles, the value of object-based learning is that it
school curriculum strives to incorporate a variety of learning styles, so that students have the opportunity to encounter knowledge and ideas multiple times and in different ways.

OBL is a multisensory learning experience that incorporates both students’ visual and tactile senses.\(^{42}\) Cognitive scientists and education scholars alike recognize that memory and the ability to retrieve information is sharpened when multiple senses are engaged in the learning process.\(^{43}\) When a student engages with new information in a multisensory learning activity, larger networks of the brain are activated and that multisensory exposure results in superior memory capacity.\(^{44}\)

OBL studies in museums also support the research on multisensory learning – finding that tactile engagement with objects aids in the development of “richer” memories when compared with learning activities that rely on visual or auditory delivery alone.\(^{45}\) OBL is unique amongst educational methods because it engages students’ tactile sense, requiring them to physically handle and manipulate objects as a part of the learning process. Thus, at any given moment in an OBL session, students are actively using their visual, tactile, and perhaps even auditory, senses to take in new information. As Shams and Seitz noted in their study on the benefits of multisensory learning, our world is a multisensory world, and the human mind “has evolved to learn and operate in natural environments in which behavior is guided by information across multiple sensory modalities.”\(^{46}\) Providing law students with the opportunity to learn through their sense of touch not only provides affords the learner opportunities to engage with knowledge in multiple ways, using multiple modalities and thus accommodating a range of different styles and individual preferences.\(^{47}\).

\(^{42}\) Anne Tiballi, *Engaging the Past: Haptics and Object-Based Learning in Multiple Dimensions*, in *ENGAGING THE SENSES: OBJECT-BASED LEARNING IN HIGHER EDUCATION* 57, 61 (Helen J. Chatterjee & Leonie Hannah eds., 2015).


\(^{44}\) Shams & Seitz, *supra* note 42, at 414.


them with another means for understanding new information, but it creates a more natural learning environment in which they use multiple senses to grapple with new concepts and ideas.

**D. OBL Engages Students in Affective Learning, Leading to Increased Student Motivation and Attention**

In addition to providing students with a multisensory learning experience, OBL is also a unique opportunity for affective learning in the law school classroom. Affective learning generally refers to those educational activities that engage students’ emotion and interest, usually with the result of producing increased motivation and attention. These types of learning activities connect with and appeal to students’ memory and emotions in ways that a classic lecture usually cannot and positively impact memory retrieval, decision-making, and creativity. Meaning-making, and indeed the learning process, is richer when students naturally feel invested in or intrigued by the subject matter. Emotion is “what will connect people to a topic, humanizing the issues involved, showing them why they should concern themselves, and forging within them a stake in the knowledge communicated.” Affective learning tends to naturally occur whenever students are presented with objects rich in history or culture.

Cognitive scientists have also found that emotional state impacts how individuals think. For instance, when a student in an OBL session encounters an object that elicits specific emotions, whether it be happiness or anger or something in between, those emotions actually cause the brain to switch between different ways of thinking. Moreover, despite what might be the obvious conclusion that a positive affect is ideal for learning, early research into affective learning suggests that the various human emotions all contribute to learning and memory development. Thus, teaching strategies

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48 Id.
51 Picard et al., *supra* note 47, at 254.
52 Id. (citing MARVIN MINSKY, *THE EMOTION MACHINE: COMMONSENSE THINKING, ARTIFICIAL INTELLIGENCE, AND THE FUTURE OF THE HUMAN MIND* (Simon & Schuster, 2007)).
53 Id.
should encourage students to make meaningful connections with new information on both cognitive and affective levels.

OBL is uniquely suited to fostering an affective learning environment. In discussing the power of the displayed object in a museum, Stephen Greenblatt observed that such an object can “reach out beyond its formal boundaries to a larger world, to evoke in the viewer the complex, dynamic cultural forces from which it has emerged and for which it may be taken by a viewer to stand.”

Objects of historical and cultural importance have an innate ability to cause wonder, essentially “stop[ping] the viewer in his or her tracks, to convey an arresting sense of uniqueness, to evoke an exalted attention.” The result of an OBL session is an active, multisensory learning experience that naturally appeals to students’ interest, thereby producing a stronger retention of learning objectives.

**E. The Potential Benefits of Object-Based Learning for Law Students**

Law students often begin their legal studies with little background knowledge of legal doctrine, and it takes time to develop both the doctrinal knowledge and the analytical skills necessary for legal practice. In such unfamiliar terrain, it can be immensely helpful to provide students with a context for their learning – a baseline in the acquisition of new knowledge that can be equally accessed by learners with different backgrounds and unique life experiences.

Rare books and manuscripts can serve as that initial anchor for students, providing them with a concrete example from which to approach interpretation and analysis.

Ultimately, OBL is not an educational methodology that can replace traditional methods of legal instruction. The scheduling of periodic OBL sessions into a law course schedule can provide both a refreshing break from periods of intense passive learning and also create a more relaxed learning environment in which students are

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54 Greenblatt, *supra* note 12, at 42.
55 *Id.*
56 Duhs, *supra* note 21, at 184.
57 Havelock, *supra* note 2, at 382, 401-02.
59 *Id.* at 62 ("OBL becomes a means to overcome that first conceptual hurdle by approaching interpretation not theoretically but practically.").
encouraged to ask questions, interact with the objects, and consider legal issues raised by those objects. For law students, OBL provides an opportunity to approach new knowledge and ideas from a distinctly different angle. Rather than gleaning the information from reading cases and listening to lectures, OBL allows students to interact with objects that quite literally personify the knowledge they are charged with mastering.

A balanced law school curriculum incorporates multiple teaching methodologies to ensure that students are learning the fundamental legal principles and are provided with ample opportunity to practice and sharpen their growing legal skills. OBL is one such teaching strategy that can simultaneously foster active student engagement, appeal to multiple learning styles, and pique students’ emotions and curiosity using rare objects.

II. Examples of Object-Based Learning in the Law School Classroom

The following are two examples of OBL sessions designed to introduce law students to information that was either entirely new to them or to encourage students to discuss the concepts and issues raised by the objects themselves. The first example of OBL is drawn from my work as an embedded librarian in a legal history course, and the second example is taken from my work as an instructor of a legal research class.

For the past two years, I had the opportunity to serve as an embedded librarian in the Legal History course taught by Professor John V. Orth at the UNC School of Law. Professor Orth structured this course so that it alternated between lecture days and discussion days. On lecture days, he introduced students to the important individuals, events, and trends in the development of the American legal system. On discussion days, he led students in discussions of the concepts and ideas underpinning the development of the common law tradition, seeking to enrich their understanding of American, and more specifically, North Carolina, legal history.

As the embedded librarian, I brought selected books to each class session, and I came prepared with an understanding of the provenance, unique features, and relevance of each item to the class.

60 Professor John V. Orth serves as the William Rand Kenan, Jr. Professor of Law at Carolina Law. He teaches first-year Property, Trusts & Estates, and Legal History. His professional biography can be viewed at https://law.unc.edu/people/john-v-orth/.
topic. Rare books both supplemented the historical information conveyed via lecture and served as enrichment tools on discussion days. A typical class session involved the use of 2-3 items from the rare book collection, and they were introduced to the students at the beginning of each session. During this general introduction of the rare books, Professor Orth and I provided students with important background information on the objects and their places within the larger topic or discussion of the class period. Because Professor Orth wanted to draw a connection to North Carolina legal history, I intentionally highlighted any connections that the objects had to North Carolina attorneys or important moments in North Carolina legal history.

A series of three classes of lecture and discussion on William Blackstone provides a clear example of the potential of OBL in the law school classroom. During the first lecture in the module, Professor Orth introduced students to William Blackstone and his major works. We supplemented this lecture with a folio of Blackstone’s *The Great Charter and the Charter of the Forest with Other Authentic Instruments* (1759) and a two-volume set of *Law Tracts* (1762). These editions were used during lecture to help the students understand the gradual progression from Blackstone’s original lectures at Oxford University to his development of the *Commentaries on the Laws of England*.

The UNC Law Library copy of *Law Tracts* is of special importance to North Carolinians because it was originally owned by William Hooper, North Carolina’s representative to the Continental Congress and a signer of the Declaration of Independence. His bookplate and signature are found within both volumes, and students are always fascinated to learn that they are holding the same books that this important figure used in his legal practice. Thus, even though we spent the class period largely thinking about the development of the English common law, Professor Orth was able to use

61 Appendix A is an outline of the rare books selected for use during the first half of the Spring 2020 semester. I used this chart to track titles that Professor Orth and I selected for use with the students, and I included special notes about the objects that I wanted to share with the students. Classes 3-5 from Appendix A are specifically discussed here.

62 The rare book collection at the Kathrine R. Everett Law Library includes over 2,000 volumes that trace the development of law and legal practice in North Carolina after 1783 and provide an overview of Anglo-American legal literature after 1500.
this specific copy of Blackstone’s *Law Tracts* to highlight for students how important Blackstone was to the development of North Carolina’s legal tradition.

The second class in this series was a discussion day focusing on Blackstone’s *Commentaries*. Students read portions of the *Commentaries* before class and had a general idea of how they were organized and structured. At the beginning of the session, Professor Orth read aloud from a late 18th century letter written by a young North Carolina attorney to his father in England. In that letter, the young man asked his father to purchase and send him his own set of Blackstone’s *Commentaries*, as it was critical to his study of the law. I brought two editions of the *Commentaries* for students to explore – a 1796 edition printed in Dublin and an earlier 1771 edition printed in Philadelphia. Both editions came from the libraries of prominent North Carolina attorneys, but the Philadelphia printing of the *Commentaries* was of special relevance to the discussion. That edition contains a complete list of subscribers, including names like John Adams and several important figures from North Carolina history. Even though the class focused on developments in the English legal tradition, this volume impressed upon students how influential Blackstone was to the development of America’s legal system.

During the last session on Blackstone, which closed off the series and reiterated the importance of Blackstone for the development of America’s legal tradition, I brought in two law school textbooks – one used for many years at UNC School of Law (1899) and another used during the earliest years of the law program at Trinity College (1895), later Duke Law School. These textbooks, used to train North Carolina attorneys during the early 20th century, were commentaries authored by John Manning, Jr. and Samuel Mordecai on Blackstone’s *Commentaries*. Both copies contain student

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63 John Manning, Jr. was appointed as professor of law at the University of North Carolina in 1881, filling the role previously held by the law program’s founder, William H. Battle. Manning also served North Carolina as a practicing attorney, representative to Congress, and member of the North Carolina General Assembly. See Elizabeth W. Manning, *John Manning, Jr.*, NCPEDIA (Jan. 1, 1991, [https://www.ncpedia.org/biography/manning-john-jr](https://www.ncpedia.org/biography/manning-john-jr)).

64 Samuel Mordecai was appointed as senior professor and dean of Trinity College School of Law in 1904. Prior to serving at Trinity College, he practiced law in Raleigh and lectured as an assistant professor of law at Wake Forest College. See Mark C. Stauter, *Samuel Fox Mordecai II*, NCPEDIA (Jan. 1, 1991, [https://www.ncpedia.org/biography/mordecai-samuel-fox-ii](https://www.ncpedia.org/biography/mordecai-samuel-fox-ii)).
marginalia, and students were impressed to see the direct connection between Blackstone and legal education in North Carolina. The books served as a physical connection to past generations of law students, and there could be no clearer way to underscore the importance of Blackstone to North Carolina law than through this physical record.

The development of the common law, the influence of English legal scholars on early American attorneys, and the role that early English law books played in shaping North Carolina legal practice are all concepts that might have been communicated to students via lecture. Instead, students in Professor Orth’s Legal History course were introduced to the actual texts that physically manifested those concepts. They saw the ownership marks, read the notes in the margins, and felt the weight of the books held in the hands of attorneys who shaped North Carolina’s legal future. Students also used these objects as a springboard for discussion and reflection on these concepts. Professor Orth gradually led students to a deeper understanding of these issues through student interaction with the objects and instructor questioning designed to get them thinking about the larger themes implied by the physical objects. These OBL sessions provided students with not only an understanding of who Blackstone was but also insight into how an English legal scholar played such an important role in the development of a legal system for a new country similar to, and yet different from, the birthplace of the common law. The learning in those OBL sessions was deep and meaningful.

OBL can also be utilized effectively in single sessions targeting a very specific learning objective. In an Advanced Legal Research course at UNC School of Law, I used an OBL session to introduce students to the history and development of the case reporting system in North Carolina. To support an introductory lecture on case reporting in the common law tradition, I selected a series of reporters that highlighted for students how the system changed over time. Early editions of nominative reporters were chosen for their content, so that students could see how these early reports were written by observers and often contained more than just a reporting of a case holding. These were juxtaposed against more modern reporters that carried the more familiar judicial opinions.

Following an introductory lecture on the development of the case reporter system, students divided into groups of three and received a set of case reporters to review. Students then discussed with their group members the noticeable similarities and differences between

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65 Sharp et al., *supra* note 7, at 113.
the reporters, and groups shared with the class their impressions of those early reporters and considered how third-party records of events might be considered unreliable for determining judicial precedent. Students left that OBL session with a clearer understanding of the development of the common law case reporter system and understood from their own personal interaction with nominative reporters why it is so helpful that the modern reporting system now relies on judges to draft their own opinions. Again, this OBL session helped the students to both learn new content knowledge and understand the importance of judicial precedent from a different angle – as seen through older nominative case reporters.

OBL activities supplement and enrich the law school curriculum. They spark students’ interest and provide a means for their active participation in their own learning. OBL adds a multisensory element to otherwise lecture-heavy courses and provides a useful context for students engaging for the first time with more conceptually challenging ideas. In the two examples included in this article, students encountered new information and ideas, and they used the rare books as tools to aid them in considering that new content from a variety of different angles. The rare books, teeming with historical significance, provided students with a direct connection to the past and inevitably produced that sense of awe that one experiences when handling objects of rarity and importance.66 They also allowed students to look and think beyond the classroom setting, challenging them to consider the ramifications of our history for the development of the future. Throughout the semesters in which I incorporated rare law books into the law school classroom, I repeatedly had students visit my office to tell me how much the books enriched their experiences and piqued their interest in the law library’s collection. My experiences with students at the UNC School of Law bears out what Chatterjee and her colleagues found with university undergraduates – OBL truly does enhance student learning.

III. Implementation: Further Opportunities and Challenges

The introduction of increased student activity into the classroom naturally necessitates a higher level of preparation by the instructor. As OBL incorporates not just increased student activity, but also the introduction of additional objects into the classroom, no discussion of OBL would be complete without a recognition of some of the unique challenges inherent in successfully implementing this type of learning activity.

66 Greenblatt, supra note 12, at 42.
A Training Students in the Handling of Rare Materials

Chief among these challenges is the simple fact that students will be handling rare legal books and manuscripts – items that often times cannot be replaced and are of special value to law schools and libraries. Nothing lasts forever, and that is never truer than in the case of rare legal books and manuscripts. Any interaction with these materials will inevitably contribute, even in smallest of ways, to the degradation of the books over time. However, rare books and manuscripts serve an important educational function and should be accessible to faculty and students for teaching and learning.67 Most collections are not meant to be hidden away in climate-controlled rooms, totally shielded from view.68

Proper training in the handling of rare materials can do much to alleviate many of the concerns associated with bringing rare materials into the classroom.69 When using rare materials in the Legal History course, for example, students were initially instructed on the proper procedures for handling rare books and manuscripts. A brief lecture on how to handle rare books and manuscripts took only a few minutes and was done on the first day of the semester. Students also practiced proper handling techniques with sturdier items from the collection, including how to hold books in their hands, carefully turn brittle pages, and use book cradles and other tools to allow books to safely rest open for closer examination.

One other strategy that can effectively reduce aimless perusing in rare books is to mark relevant sections ahead of time. For instance, when I wanted to draw students’ attention to a specific section of marginalia in a text, I inserted a place-marker into the book and explained to students that relevant sections for that day’s class had been marked. The instructional support required for any OBL session is also an opportunity for a librarian to monitor the use of the rare objects throughout the session, both to answer student questions and to ensure that students continue to safely handle the objects.

67 See e.g., Germain, supra note 11, at 93 (“Books should be treated not as museum pieces but as usable objects, accessible to all.”).
68 Meredith E. Torre, Why Should Not They Benefit from Rare Books?: Special Collections and Shaping the Learning Experience in Higher Education, 57 LIBRARY REVIEW 35, 38 (2008) (“A rare book, no matter how intrinsically valuable or monetarily priceless, signifies little until a human engages with it.”).
69 Id.
Finally, certain objects can be kept in reserve at the front of the room for students to view with the direct supervision of the librarian. These include any books of exceeding rarity, objects that are particularly fragile, or books that are so large that they do not easily lend themselves to handling by students. Folios are a good example of this kind of object because they are so large and impressive that students want to see them, but they also cannot be expected to carefully lift or move the items on their own. In the Legal History course, we introduced students to those texts along with any other items brought for student use, but students waited until the end of session to view those larger items. Students often asked deep and thoughtful questions about these items because they already had the benefit of hearing the lecture and interacting with other selected materials during earlier parts of the class.

B. Advanced Preparation and Coordination

Another unique challenge for OBL is the preparation and coordination that is required in advance to ensure that (1) the selected objects support the stated learning objectives and (2) students are provided enough background information to ensure they meet the goals for the session.

Professor Orth and I met to review the course syllabus and discuss authors, titles, and topics to be supported by the law library’s rare book collection. Following this initial meeting to arrange the general schedule for the rare books, I spent time in the rare book collection tracing our various copies of the desired texts and ensuring that I had a thorough understanding of their provenance and any unique features.

Following that initial planning session, the rare books chosen for use in class tended to evolve on a class-to-class basis, guided largely by student interest and the discussions that took place. In support of a lecture on Roger Taney, we planned to use a contemporaneous reporter containing the *Dred Scott* decision, so that students could view the opinion in the same form that attorneys at the time used. After looking through our rare book collection, I discovered that we had a special printing of the *Dred Scott* case published in 1857 by Benjamin C. Howard, the fifth reporter of decisions from the U.S. Supreme Court. In his introduction to this small volume, Howard explained to his readers that a special printing of *Dred Scott* was made due to high levels of public interest. Professor Orth was able to use this book to press home the importance of this judicial opinion in the years preceding the Civil War, and the fact that it showed up in the collection of a North Carolina attorney from that period strongly suggested that legal practitioners in the
state were well aware of this fact. One might have simply told students that *Dred Scott* was a critical flashpoint in the road to civil war, but placing physical proof of its historical importance into students’ hands left a stronger impression.

As the “expert” on the rare legal books, the law librarian or archivist also needs to ensure they are comfortable discussing the objects, including their ownership history, construction, illustrations, and marginalia. In addition to the questions that students asked about the rare books related to the learning objectives of the class, students also asked quite a few questions related to historical bibliography. Law students will inevitably surprise you by asking these unexpected questions – a pleasant surprise, but still a turn of events that can and should be considered in advance. For example, students are often fascinated by the overall good condition of folios in our collection and their sharp illustrations. When examining folios for the first time, I commonly hear, “This book is so big and beautiful. How was this used back then? It’s too big to carry into the courtroom.” That question opens the door to an interesting discussion on printing practices and access to books, particularly legal books, during various points in history.

All of this is to stress that OBL is an *intentional* teaching methodology – it is not something that can be implemented on a minute’s notice and without adequate preparation. Not only must the objects be selected with attention to the learning objectives, but the preparation of information and questions to guide student learning also must be considered in advance. Librarians participating in classroom sessions also need to be familiar with the rare books, so that student questions related to the objects themselves can be adequately answered.

**Conclusion**

It is my hope that this piece encourages further consideration of how law librarians and archivists, those with privileged access to the rare legal treasures in their home institutions, might utilize those priceless resources toward the mission of every law school to train the next generation of attorneys. While this article focused on the uses for these materials in legal history and research courses, the potential for OBL in the law school class using rare books and manuscripts extends far beyond those courses. Indeed, *any* course that explores the development of law practice can benefit from the use of these rare objects to enrich student learning.

Students in a contract drafting course may benefit from studying older contracts to trace the development of contract clauses and
language over time. They can critique the contract language, consider options for improvement, and identify areas of weakness in which newer clauses might serve to better protect the clients’ interests. Similarly, students in civil procedure and trial advocacy courses can benefit from interacting with earlier texts on practice and procedure, tracing the development of certain procedural rules or practices over time.

The ultimate purpose of OBL is to ensure that our students and faculty are taking full advantage of the learning opportunities inherent in the objects of rich cultural heritage, history, and meaning found in many law library collections. OBL engages students on an emotional level via a multisensory experience, producing deeper connections with information that lead to enhanced memory retention. This type of learning activity also engages students in active exploration, discussion, and reflection, often using the objects as context for considering new information or abstract ideas. A truly engaging law school curriculum can and should take full advantage of the knowledge and learning to be gained from OBL and rare books and manuscripts.
# Appendix A

## Rare Books Support for Legal History (Spring 2020)

<table>
<thead>
<tr>
<th>Class &amp; Theme</th>
<th>Rare Books Used</th>
<th>Notes</th>
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<tbody>
<tr>
<td>Class 5: Lecture on Blackstone’s Commentaries and Connection to America</td>
<td>Commentaries on the First Book of Blackstone by John Manning (1899) (RBR KD660.B533 1899).</td>
<td>Manning book is printed by UNC Press and was a required textbook for law students at UNC. Manning was a professor of law at UNC. The 1899 edition contains lots of student marginalia.</td>
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<td>Manuscript - Commentaries on the First Book of Blackstone by John Manning (1895) (RBR KFN 7491.A1 M362 1895).</td>
<td>The Mordecai Law Lectures textbook was used by students at Duke University, then known as Trinity College. Mordecai was the dean of the law school.</td>
</tr>
<tr>
<td>Class 6: Lecture on Lord Mansfield</td>
<td>Burrow’s Reports of Cases in the Court of King’s Bench during the Time of Lord Mansfield’s Presiding on</td>
<td>This reporter series contains Lord Mansfield’s cases and was printed by Burrow, a man who</td>
</tr>
<tr>
<td>Class 7: Lecture on Jeremy Bentham, John Austin, Albert Venn Dicey</td>
<td>worked with Mansfield to control and shape the printing of judicial decisions. <em>State Trials</em> contains the Somersett case on slavery. Also includes a forward by Francis Hargrave, the attorney who represented Somersett.</td>
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<tr>
<td><em>the Court</em> (1790) (Vol. 2, 3, 4) (RBR KD200.1756 B8.A2 1790) (brought three volumes)</td>
<td><em>Hargrave’s Law Tracts</em> (1787) (RBR KD532.H32 1787)</td>
<td></td>
</tr>
<tr>
<td><em>State Trials and Proceedings for High Treason</em> (1775) (Vol. 11) (FOLIO RBR KD371.P6.C65 1775)</td>
<td><em>Hargrave’s Law Tracts</em> was authored by the attorney who represented Somersett in his case.</td>
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<tr>
<td></td>
<td>RBR KFN7430.A22 1804 (Martin) (contains NC state constitution)</td>
<td></td>
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<tr>
<td></td>
<td>RBR KFN7445.A19 1797 (copy of original Martin reports, which became vol. 1 of NC Reports) (owned by the creator of the Connor Act)</td>
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</table>
| Class 11: Kent, Story, Shaw | *Story’s Commentaries on:*  
- *Bills of Exchange*  
  (KF958.S76 1847) (2d ed.)  
- *Promissory Notes*  
  (KF957.S76 1847) (2d ed.)  
- *Agency*  
  (RBR KF1345.S76 1839)  
  (KF801.S76 1847) (2d ed.) |
  (New York, 1856) (KF4545.S5 U54 1857r)  
  A special printing of the *Dred Scott* case, decided by Chief Justice Roger Taney. Includes the entire opinion and all supporting/dissenting opinions. |
N.C. Reports (Devereux Vol. 2) (1833) (RBR KFN7445.A19 1833) (c.1)  
N.C. Reports (Hawks Vol. 1) (1823) (RBR KFN7445.A19 1823) (c.1) | The NC Reports from 1833 contained the State v. Thomas Mann case, in which Ruffin handled a slavery question.  
The NC Reports from 1823 contains cases from the period when Ruffin was the official court reporter. Used as an example of the nominative reporter system. Also explains why some NC Reports volumes are larger than others – because arguments of counsel were removed from later editions. |
Printed by Oliver Steele, 1816).
(RBR KF505.R4 1816).


Creating a Biographical Dictionary of the Justices of the Supreme Court of Pennsylvania: A Bibliographical Essay

Joel Fishman*

As a student of Pennsylvania legal history, one of my goals is to create a website on the history of the Pennsylvania judiciary. In submitting a proposal to the Pennsylvania Supreme Court, the Court and the Court Administrator approved the creation of a biographical dictionary of the Court’s judiciary. The Supreme Court dates itself back to 1684 when William Penn created a Provincial Court to hear appeals from the county justices of the peace (act 158 of 1684). There are approximately 165 justices dating from 1684 to the present. Following the information provided on the court’s current website (www.pacourts.us), my work includes Name of Justice, Birth Year and Death Year, Term of Service, Education, Professional Experience, Honors and Awards, Memberships and Associations, Publications, and Sources. This article describes some of the sources used to create such a biographical directory.

For background information, the creation of the court system and the selection of justices is based on the Pennsylvania Constitution. There have been five constitutions with the following provisions. The 1776 Constitution provided for the appointment of justices by the Supreme Executive Council (Ch. II, Section 20) and hold office for seven years and can be re-elected (Ch. II, Section 23). The 1790 Constitution provided for appointment by the governor and with consent of the Senate (Article V, Section 2). The 1790 Constitution provided for appointment by the governor of justices (Article V, Section 2) and judges of the Courts of Common Pleas (Article V, Section IV), but does not mention specific term of years. The 1838 Constitution provided for a term of fifteen years appointed by the governor and with consent of the Senate (Article V, Section 2). An 1850 constitutional amendment provided for an elected judiciary beginning in 1851. In 1874, Article V, Section 2 provided for election of the judiciary with justices of the Supreme Court for a term of twenty-one years and not eligible for re-election. Judges of the Common Pleas courts were elected for ten-year

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terms. In 1968, Article V, Section 15, provided for ten-year term of office for all of the judiciary. Retention election provides for a vote of yes-no by electorate to keep the judge for another ten-year period. Article V, Section 16 provided for the retirement of the judiciary at age 70; a 2001 amendment changed it to the end of the calendar year one turned 70; and a 2016 amendment raised the retirement age to 75 years of age at the end of the calendar year. Currently, if a vacancy occurs, the governor may nominate a replacement with consent of the senate (Pennsylvania Constitution, Art. IV, Section 8).

State Publications and Websites

The Pennsylvania Courts Website, www.pacourts.us. The Website provides biographical information on the current justices of the Supreme Court and two intermediate courts providing the information similar to what I am compiling for the earlier justices. There is also an historical list of Chief Justices and Associate Justices by commission date. Annual reports also contain information about the justices. County courts, like Allegheny County (www.alleghecnycourts.us) publish annual reports, with biographical information on judges who may be elected to higher courts.

Court Reports. The official reports published by the state’s Supreme Court generally contain a list of judges in the front of the book, usually after the copyright page. These listings may include references as to when a justice/judge comes into office. Various volumes contain the induction, memorial, and presentation of portraits proceedings. Unfortunately, most of the justices are not included in these volumes. The historical volumes from 1790 (Dallas’s Reports) to 1963 (411 Pa. (1963)) are available in State Reports: An Historical Database in HeinOnline. (As an aside, the four volumes of Dallas’s Reports covering from (1754 to 1806) are also the first four reports of U.S. Reports. U.S. Supreme Court cases don’t begin until the middle of volume 2.) For a history of the Pennsylvania Supreme Court reports, see Joel Fishman, The Reports of the Supreme Court of Pennsylvania, 87 Law Libr. J. 643-93 (1995).

Pennsylvania General Assembly, www.legis.state.pa.us. Journals of the Legislature. Legislative journals date back to the eighteenth century. The Eighth Series of the Pennsylvania Archives contains the Votes and Proceedings of the House of Representatives of the Province of Pennsylvania, 1682-1776. (see below under Pennsylvania Archives.) The official online version is available of the Journals back to 1949 can be found under the House and Senate tabs at the Pennsylvania General Assembly Website, www.legis.state.pa.us.
The Journals provide the governor’s letter to the Senate nominating the justice and provides for the Senate approval. LLMC Digital has a collection of Legislative Records (see below). Unfortunately, there are only some Legislative Records available in the HathiTrust.

*Pennsylvania Manual* (1927 to present). This is a government publication like the *United States Government Manual* and contains information on all of parts of the state government. It may also be considered a “blue book” for state government information (see the website, *State Blue Books and Encyclopedias*, GODORT). been known as the blue, red, or green books in other states. This book is published biannually in December of the odd year to coincide with the new General Assembly. Since 2003 (volume 116), the Manual has been published online at the Pennsylvania Department of General Services website, [dgs.pa.gov](http://dgs.pa.gov) (2017 ed.). The sections are divided into 1. Pennsylvania Past and Present. 2 Constitution of Pennsylvania. 3. General Assembly. 4. Executive. 5 Judiciary. 6 Local Government. 7. Elections. 8 The Federal Government. 9. Appendices. [10.] Index. For the judiciary it provides a short history of the judiciary, the list of all justices and judges for the three appellate courts and county courts. Biographies are given for the appellate courts by court and an alphabetical listing of judges for the common pleas courts. There is only a listing of magisterial district judges. Biographical information is slightly longer for the appellate judges compared to the county judges. The Pennsylvania Court of Judicial Discipline is under this category but separate from the other entries. The preceding title, called *Smull's Legislative Hand Book and Manual of the State of Pennsylvania* (1888-1922), contained the names of the judiciary, but no biographical information was given.

*Pennsylvania Archives*. This set of 138 volumes consists of ten series of works, of which only those relating to the judiciary do I cite to here. These volumes are available in the HathiTrust. Eddy, Henry H. *Guide to the Published Archives of Pennsylvania covering the 138 Volumes of Colonial Records and Pennsylvania Archives, Series I-IX* (1949). This guide summarizes the contents of each series first chronologically by editor and then a more detailed history by time period.

Colonial Records (16 vols.) contains the Minutes of the Provincial Council (1683-1775), vols. 1-9; the Minutes of the Council of Safety and Committee of Safety (1775-1777), vols. 10-11; and Supreme Executive Council (1777-1790), vols. 11-16. First Series (12 vols.) contain reproduce papers selected chiefly from the Secretary of State from 1664 to 1790. (1852-1856). Fourth Series (12 vols.) contain addresses, messages, proclamations and few other papers of

**Biographical Directories/Dictionaries**

*American National Biography Online.* This is the online version of the print edition published in 2004. There are a limited number of biographies accessible for justices and they are usually between one and five pages long. Source notes are useful for book, periodical, dissertation sources. It is the updated of the Dictionary of American Biography but contains lesser number of biographies.

*Bender, John T., Ed. Pennsylvania Superior Court Ceremonial Services* (2 vols., 2008). President Judge Emeritus compiled this work of all inductions, memorials, etc. found in the *Pennsylvania Superior Court Reports* and added biographies for those who had no official ceremony.

*Biographical Dictionary of the United States Congress*, [http://bioguide-eretro.congress.gov/](http://bioguide-eretro.congress.gov/). All members of the U.S. Congress dating back to 1776 is available. Each biography provides basic biographical information, service in Congress, Research Collections (repositories with original documents), and Extended Bibliography (works by author and books/articles about him/her).


*Dictionary of American Biography* (1928-). This multivolume dictionary contains more biographies of the older justices but is not available online. There are different editions of the work and supplements updating the set.

*Encyclopedia of Pennsylvania Biography, Illustrated* (1914-). This multivolume encyclopedia contains articles on Pennsylvanians, but in no chronological or alphabetical order. The articles are generally longer than some of the shorter biographical directories.

Fishman, Joel. *Judges of Allegheny County, Fifth Judicial District, Pennsylvania, 1788-2008* (2d ed. 2009). This work provides biographical information on all judges within the county. Information on the judges of first half of the twentieth century information is derived in part from weekly advance sheets of the *Pittsburgh Legal Journal* that are available only at the Allegheny County Law Library.


Horle, Craig W., Ed., et al. *Lawmaking and Legislators in Pennsylvania...A Biographical Dictionary* (1991-2005). Volume 1 covers from 1680-1709, volume 2 covers 1710-1756, and volume 3 in two parts covers from 1757-1775. Each volume has an extensive introduction on the history of the General Assembly. The legislators range from a page to as many as 48 pages for William Allen (III:232-280). (The entry for Benjamin Franklin is 41 pages long (III:531-72)). Each biography provides a list of the major positions in the government at the head of the article, a detailed biographical entry, and a list of sources at the end of the article. This source is like ODNB one of the best biographical dictionaries available for research purposes.


*The National Cyclopædia of American Biography* (1893-1984) contains more than 60,000 entries in 63 numbered volumes and an additional 14 volumes labeled A-N. For a listing of the volumes, see *The Online Books Page* for this title that are available in the Hathitrust and Internet Archive. The entry may be a couple of paragraphs to a page or two.


*Oxford Dictionary of National Biography* (60 vols., 2004). This major, multivolume dictionary of English biographies contain justices
that may have served on the provincial courts of the colonial period.

Pennsylvania General Assembly, www.legis.state.us. The General Assembly has sections for biographical sketches of the House and Senate members; however, it appears that there are gaps.

Twentieth Century Bench and Bar (1903). This is a two-volume work containing short biographical sketches of all the attorneys admitted to the bar in the late eighteenth and nineteenth centuries by county and then by date of admission. Some of the judges have longer entries than regular lawyers. The information is derived from admission information presented to the bar or from an admissions book docket kept in the prothonotary’s office. The sketches may be just a paragraph up to two pages. Philadelphia contains only a portion of the lawyers admitted to the bar.


### Bibliographies

Bauman, Roland. Dissertations on Pennsylvania History, 1886-1976 (1978). This bibliography covers all topics in Pennsylvania published during the described time period. This bibliography was probably drawn from Xerox Dissertations and Theses, now part of the Proquest Databases.


Hall, Kermit. A Comprehensive Bibliography of American Constitutional and Legal History, 1896-1979 (5 vols 1984). This is a well-
known bibliography of constitutional and legal history divided by topic as well as by state.

This work updates Wall bibliography.


**Treatises**

For the Supreme Court, there are only two histories, G. S. Rowe, *Embattled Bench: The Pennsylvania Supreme Court and the Forging of a Democratic Society, 1684-1809* (1994) is a scholarly history of the court for the time period covered. The recent publication of John J. Hare, ed., *The Supreme Court of Pennsylvania: Life and Law in the Commonwealth, 1684-2017* (2018) will be a standard source of the history of the court. Hare also contributed to the history of the Pennsylvania Superior Court in Patrick R. Tamsila and John J. Hare, *Keystone Justice: The Pennsylvania Superior Court* (2000). The older, valuable history of the Pennsylvania courts is Frank M. Eastman, *Courts and Lawyers of Pennsylvania: A History (1623-1923)* (4 vols. 1922). This work provides a history of the judiciary from the colonial period, centering on various major episodes arranged chronologically. The biographies of the justices run from a paragraph to several pages, e.g., John Bannister Gibson. The county courts are arranged by judicial districts providing information about the district based on statutory law, and sketches of the judges. Some judicial districts like the first (Philadelphia) or fifth (Allegheny) have single chapters, while most districts are combined into chapters.


Hampton L. Carson’s *The History of the Historical Society of Pennsylvania* (2 vols. 1940) provides an important history of the Society, but its contents include useful biographies of many of the leading members of the bench and bar of Philadelphia.


Roberts, Thomas P. *Memoirs of John Bannister Gibson: Late Chief Justice of Pennsylvania; with Hon. Jeremiah S. Black's Eulogy, Notes from Hon. William A. Porter's Essay Upon His Life and Character, etc. etc.* (1890).


Sharpe, James McDowell. *A Memoir of George Chambers, of Chambersburg, Late Vice-President of The Historical Society of Pennsylvania* (1873).

### County Histories

In Pennsylvania, most of the counties have had histories written on them, usually in the late nineteenth and early twentieth centuries. Most of these histories are single or two-volume works. Generally, there is a chapter on the Bench and Bar. The list of titles for each state can be found at the US Gen Web Archives, [http://usgwarchives.net](http://usgwarchives.net). Obviously, a search of a main university library or large public library electronic catalog may also retrieve other works. For Pennsylvania County Histories and Pennsylvania Biographies.

### Periodicals and Newspapers

*The Reports of the Bar Association of Pennsylvania* (1895-1964) contained articles written by justices and articles about the justices. The annual volumes up to the 1950s possess obituaries arranged by county of deceased members of the bar. Some entries may be more than a page. For an index to bar association reports and proceedings, see the older source, Dennis A. Dooley, ed., *Index to State Bar Association Reports and Proceedings* (1942) (available in Spinelli’s Law Library Reference Shelf in HeinOnline).


Three bar association publications are the Pennsylvania Bar Association Quarterly (1929-), Philadelphia Lawyer (formerly The Shingle) (1938-) and the Pittsburgh Legal Journal (1853-). These periodicals contain articles authored by justices and biographies of the justices.

Three historical journals that contain articles are the Pennsylvania Magazine of History and Biography (1877-), Pennsylvania History (1934-), Western Pennsylvania History (1999-) (formerly Western Pennsylvania Historical Magazine (1918-88), Pittsburgh History (1989-99)).

The major newspapers in Pennsylvania contain articles on the judiciary based on elections, inaugurations, retirements, obituaries, and other pieces dealing with court decisions and other various aspects. The Legal Intelligencer (1842-) (Philadelphia legal newspaper) and the Pittsburgh Legal Journal (1853-) are the two major legal newspapers in Pennsylvania. More currently, the Lawyers’ Journal (1999-) replaced the monthly Pittsburgh Legal Journal with a biweekly newspaper. The Pennsylvania Law Weekly (1987-; previously the Pennsylvania Law Journal-Reporter) contained interviews with some of the justices in the 1980s and 1990s. Many local newspapers are available on the Internet. Historic Newspapers database contains some of the major newspapers including the New York Times that sometimes picks up obituaries of Pennsylvania justices.

Two genealogical periodicals are The Pennsylvania Genealogical Magazine (1895-) and the Western Pennsylvania Genealogical Quarterly (1974-).

The major periodical and newspaper databases are HeinOnline’s Law Library Journal and Bar Association Journal databases;
JSTOR and EBSCOHOST for nonlegal periodicals, and LegalTrac for legal periodicals and legal newspapers.

**Websites**

*Ballotpedia*. [www.ballotpedia.com](http://www.ballotpedia.com). This website contains some biographical information on each judge along with the election information on the voting giving the numbers and percentages of votes.

*Google Books*, free database, containing primary and secondary sources of pre-copyright period before 1923.

*HathiTrust*, available through academic libraries. A useful database of multiple types of documents, both primary and secondary sources of pre-copyright period before 1923.

*HeinOnline*, available through academic, county, bar, law firm libraries. HeinOnline contains the largest collection of legal periodicals in its Law Journal Library and Bar Journal Library in full-text pdf version back to volume 1 of each journal. Two collections contain state statutes, Session Laws Library and State Statutes: A Historical Archive. The first database contains the Pennsylvania Laws of Pennsylvania, while the second database contains different versions of annotated codes including Purdon’s Statutes. The State Court Reports: A Historical Archive contains the appellate Reports of the Supreme Court from 1790 to 1963 as well as various county court reports.

*LLMC Digital* (Law Library Microform Consortium), available through academic, county, bar, law firm libraries. For Pennsylvania, the database contains Supreme Court reports from 1790 to 1923 (vol. 277) and county court reports. The Journals of the House of Representatives (1724-1942) are available. The Journals for both houses are published from 1853 to 1989 (with some late nineteenth century gaps) dates further back than 1949 found at the General Assembly website. Session laws date from 1715 to 2005 (few gaps in late nineteenth century).

*Political Graveyard*, [www.politicalgraveyard.com](http://www.politicalgraveyard.com). This site provides a short listing of the birth dates and death dates as well as some of the major positions the person may hold.

*Wikipedia*, [www.wikipedia.com](http://www.wikipedia.com). The website provides useful information on the justices. A search is by the person’s name and the word ‘judge’. For most of the individuals, a biography can be located providing birth year or birth date, educational background,
experience, terms of office, general biographical information. Footnotes provide source references and there are also links to other databases like Find a Grave or Political Graveyard.

**Writings of the Justices**

In researching the writings of the justices, the following electronic catalogs were used: Allegheny County Law Library, University of Pittsburgh Libraries, University of Pennsylvania Biddle Law Library, Yale Law Library, and Worldcat. The databases listed above under Periodicals and Newspapers were also used. I have used an unpublished manuscript, Joel Fishman, Lori Hagen, and Elizabeth Post, *The Writings of the Justices of the Supreme Court of Pennsylvania* (2009).
SAMPLE BIOGRAPHIES

Chief Justice Thomas McKean
1734-1817

Term
July 28, 1777-December 17, 1799

Education
Studied law under David Finney, New Castle, Delaware, 1750
Admitted Middle Temple, London, in absentia as a special student

Professional Experience
Admitted to the Delaware Courts, 1754; admitted to Chester
County and Philadelphia County bar, 1754; Supreme Court of
Province of Pennsylvania, 1758; Attorney at Law, New Jersey,
June 1765; Solicitor and Counsellor at Law, New Jersey, October
31, 1766
Deputy Attorney General, Sussex County, Delaware, 1756-1758
Governor John Penn appointed McKean, Sole Notary and Table-
lion Public for Lower Counties, July 10, 1765
McKean, Caesar Rodney, George Read, Delaware Committee of
Correspondence, June 5, 1765-
Governor John Penn appointed McKean, Justice of the Peace,
Justice of the Court of Common Pleas and Quarter Sessions, and
Orphans’ Court, New Castle County, Delaware, July 10, 1765-
1774
Customs Collector, Port of New Castle, September 10, 1771
Elected Delaware House of Assembly, 1762-1779; Speaker, 1772,
1773, 1776
Delaware Delegate to Stamp Act Congress, October 7-19, 1765
Committee of Correspondence for Lower Counties, October 23,
1773
Elected Delaware Delegate to First Continental Congress, August
1, 1774
Delaware Delegate, First Continental Congress, 1774
Delaware Delegate, Second Continental Congress, 1775-1776
Member, Philadelphia City Committee, 1774
Elected Member, Delaware Constitutional Convention,
Member, Philadelphia City Committee of Observation and Inspec-
tion, August 1775, Chairman on August 18, 1775
Delegate, Pennsylvania Constitutional Convention, June 18-25,
1776
Delegate, Federal Constitutional Convention, July 1776
Colonel, 4th Battalion of Pennsylvania Associators, July 15-18,
1776
Member, Delaware House of Assembly, 1776-1777, 1778-1789; Speaker, February 12, 1777-September 22, 1777
Acting President, Delaware, September 22, 1777-October 20, 1777
Delegate, Continental Congress, December 22, 1779-March 1, 1781
President, Confederation Congress, March 1-November 4, 1781
Delegate, Confederation Congress, November 5, 1781-February 1, 1783
Supreme Executive Council appointed McKean, Chief Justice, Supreme Court of Pennsylvania, 1777-1799
Elected to Pennsylvania High Court of Errors and Appeals, 1780-1805
Delegate, Pennsylvania Constitutional Convention, 1789-1790
Governor of Pennsylvania, December 17, 1799, reelected 1802, 1805; served until December 20, 1808
Pennsylvania House of Representatives impeached McKean, 1807

Honors and Awards
Signer, Declaration of Independence
Wrote the first Delaware Constitution adopted September 20, 1776
Honorary LL.D. degree: Princeton College, 1781; Dartmouth College, 1782; University of Pennsylvania, 1785
Honorary A.M. degree: University of Pennsylvania, 1763
Thomas McKean High School, New Castle County
McKean Street, Philadelphia
McKean Hall dormitory at University of Delaware, Penn State University

Memberships and Associations
Trustee, New Castle Common, 1763?
Trustee, Academy at Newark, Delaware, 1769
American Philosophical Society, March 1768
Trustee, Loan Office of Newcastle County, Delaware, 17 renewed in 1768 and 1772
Trustee, Market Square and Court House Square
One of the Founders and Trustees, Wilmington Academy, April 10, 1773
Pennsylvania Society of Cincinnati, 1785
Founder, Hibernian Society, 1790

Publications
With Caesar Rodney, Laws of New Castle, Kent and Sussex Counties Upon Delaware, 1763
With George Read, Votes and Proceedings of the House of Representatives of the Governments of the Counties of New-Castle, Kent and Sussex upon Delaware, for the Years 1765, 1766, 1767, 1768, 1769, 1770
A Charge Delivered to the Grand Jury by the Honourable Thomas McKean at a Court of Oyer and Terminer, and General Gaol Delivery...on the 21st Day of April, 1778, 1778
With James Wilson, Commentaries on the Constitution of the United States, 1793
A Calm Appeal to the People of Delaware (1793)
Opinion of Chief Justice M'Kean. "The Chief Justice of Pennsylvania Is Requested to Answer the Following Queries, at the Particular Desire of the Judges of the Election for the Township of the Northern Liberties, the District of Southwark and the Townships of Moyamensing and Passyunk." (1798)
Pennsylvania. Militia Legion of Philadelphia. Legionary Orders. December 28th, 2799 [i.e., 1799]. Yesterday the Commandant Was Honored by a Communication from the Governor, Which Indicating at Once Both Sensibility and High Consideration for the Corps, Ought, He Conceives, to Be Given in the Terms in Which it Is Expressed.... (1799)
The Inagural [sic] Address of Thomas M'Kean, Governor of Pennsylvania, to Both Houses of the Legislature; with Their Answers, and His Replies. : to Which Are Added, Remarks (1800)
Governor's Message. To the Senate and House of Representatives of the General Assembly of the Commonwealth of Pennsylvania (1800)
Objections of the Governor to the Bill, No. 107, Entitled, an Act to Alter the Mode of Appointing the Comptroller and Register General, 1805

Sources
Chief Justice George Sharswood
1810-1883

Term
December 2, 1867-1882; Chief Justice, December 4, 1879-December 31, 1882

Education
University of Pennsylvania, A.B., 1828
Studied under Joseph R. Ingersoll, 1828-1831

Professional Experience
Admitted to the Philadelphia bar, September 5, 1831
Private Practice, 1831-1837
Member, Pennsylvania House of Representatives, 1837-1838
Member, Select Council of Philadelphia, 1839-1840
Member, Pennsylvania House of Representatives, 1841-1842
Editor, American Law Magazine, 1843-1846
Associate Judge, Philadelphia District Court, April 8, 1845-1867; President Judge, 1848-1867
Professor, University of Pennsylvania Law School, 1850-1867
Dean, University of Pennsylvania Law School, 1852-1868
Elected Justice, Supreme Court of Pennsylvania, October 8, 1867
Retired from Office, January 1, 1883

Honors and Awards
Latin Salutory Oration, 1828
Sharswood Fellowship, University of Pennsylvania, 2007

Memberships and Associations
Trustee, University of Pennsylvania
Law Academy of Philadelphia: President, 1836; Vice Provost, 1838-1855; Provost, 1855-1883
President, Board, Deaf and Dumb Asylum
Trustee, General Assembly of the Presbyterian Church
Director, Princeton Theological Seminary
Vice President, American Philosophical Society

Publications
The Revised Code of Pennsylvania. 13 no. 25 Am. Quarterly Rev. 30 (March 1, 1833) (it is unsigned, but Hewitt attributes it to him)
Story’s Laws of the United States, 1789-1836. (2d ed., 1839-40. 3 vols; vols. 4 and 5, 1837-1848)
Harrison, S. B. Supplement to Harrison’s Analytical Digest to 1846 (1846).
Deniston, Stephen C. Crown cases reserved for consideration, and decided by the judges of England (1853)
Moody, William. Crown cases reserved for consideration, and decided by the judges of England (1853)
Popular Lectures On Commercial Law. Written for the Use of Merchants and Business Men (1856)
Address Delivered at the University of Pennsylvania, Before the Society of Alumni, on the Occasion of Their Annual Celebration, December 10th, 1856 (1857)
Blackstone, William Commentaries on the Laws of England. (1859; 1860; 1861; 1863; 1865; 1866-1867; 1870; 1871; 1872; 1883; 1891; 1894; 1896; 1898; 1900)
Opinion On The Elective Franchise. Appendix to the Argument of Carrie S. Burnham (1873)
Tudor, Owen D. A Selection of Leading Cases on Mercantile and Maritime Law (1st Am. Ed., 1873)
The Origin, History and Objects of the Law Academy of Philadelphia. Addresses delivered before the Academy, 1883 (1883).
With Henry Budd. 1 Leading Cases in the Law of Real Property Decided in the American Courts (1883)

Sources
56 Pa. iii; Induction Ceremony, 88 Pa. xv; Memorial Ceremony, 102 Pa. 601 (1883); George W. Biddle, A Sketch of the Professional and Judicial Character of the Late George Sharswood, Chief Justice of the Supreme Court of Pennsylvania (1883); Hon. George Sharswood: The Nominee for Judge of the Supreme Court of Pennsylvania (1867?); Samuel Dickson, George Sharswood—Teacher and Friend. 55 Am. L. Reg. 401 (1907); Luther E. Hewitt, Appendix: Bibliography, 55 Am. L. Reg. 428 (1907); Report of the Thirteenth Annual Report of the Pennsylvania Bar Association 517 (1907); 7 Enc. of Pa. Bio. 2243 (1916)

Justice Anne X. Alpern
1903-1981

Term
September 6, 1961-January 1, 1962

Education
Pennsylvania College for Women; University of Pittsburgh, A.B., 1923
University of Pittsburgh School of Law, LL.B., 1927

Professional Service
Admitted to Allegheny County Bar, September 26, 1927; U.S. Court of Appeals for the Third Circuit, 1946
Attorney, Cunningham, Galbreath & Dickson, 1927-1934
Assistant and then First Assistant City Solicitor of Pittsburgh, 1934-1942, first woman appointed to that position and then Solicitor
Solicitor, City of Pittsburgh, 1942-1954
Elected Judge, Court of Common Pleas of Allegheny County, November 1953
Judge, Court of Common Pleas of Allegheny County, December 16, 1953-January 20, 1959
Governor David Lawrence appointed Alpern as first woman Attorney-General, 1959
Attorney-General, Pennsylvania, 1959-September 1961
Governor David Lawrence nominated Alpern, Justice, Supreme Court of Pennsylvania, July 21, 1961 to serve the unexpired term of Chief Justice Charles A. Jones
Governor David Lawrence nominated Alpern, Judge, Court of Common Pleas of Allegheny County, January 24, 1962, confirmed by the Senate on January 29, 1962; served from January 29, 1962-January 1964
Elected Judge, Court of Common Pleas of Allegheny County, November 1963
Judge, Court of Common Pleas of Allegheny County, January 1964-January 1974
Partner, Berkman Ruslander Pohl Lieber & Engel, 1974-1981

Honors and Awards
Phi Beta Kappa, University of Pittsburgh
Distinguished Daughters of Pennsylvania, 1952
Junior Chamber of Commerce Award for distinction in the field of law, 1953
Distinguished Service Award, National Institute of Municipal Law Officers, 1953
Newspaper Guild Award
Pennsylvania Bar Association in 1994 created an award in Alpern’s name for women who excelled in their profession and impact of women in the law

Memberships and Associations
President, National Institute of Municipal Law Officers, 1947-1948
American Bar Association House of Delegates; Chair, Committee of Board of Public Education

Publications
Unsnarling the Traffic Jam by the Use of the Parking Authorities, 36 Virginia L. Rev. 1029 (1950)
Remarks of Judge Anne X. Alpern [enactment of Bill of Rights, December 15, 1958], 106 no. 52 Pittsburgh Legal J. 3 (December 27, 1958)

Sources
Justice Michael A. Musmanno
1897-1968

Term
January 1952 to October 12, 1968

Education
George Washington University, B.A., M.A.
Georgetown University Law School, LL.B., 1918
National University, Master of Patents Law and LL.M.
American University, S.J.D.
University of Rome, Doctor of Jurisprudence, 1924
Postgraduate work at Harvard, Oxford and Notre Dame Universities

Professional Experience
U.S. Army, World War I
Member, Pennsylvania House of Representatives, 1929, 1931 regular and special sessions
Elected Judge, County Court of Allegheny County, November 1931
Judge, County Court of Allegheny County, January 1932-January 1934
Elected, Judge, Court of Common Pleas of Allegheny County, November 1933; re-elected November 1943
Judge, Court of Common Pleas of Allegheny County, January 1934-January 1952
Lieutenant Commander, Commander, Captain, United States Navy, World War II
President of the United States-Soviet Commission on Forcible Repatriation of Soviet Citizens, 1944-1947
Judge, Nuremberg Military Tribunal II, 1947
Elected Justice, Supreme Court of Pennsylvania, November 1951
Died in Office, October 12, 1968

Honors and Awards
World War II: Legion of Merit; Bronze Star for Valor; Purple Heart; Army Commendation Ribbon; Marine Good Conduct Ribbon; Navy Expert Pistol Shot; Italian Silver Medal of War; Italian Air Force Observer Badge
Most Outstanding American of Italian Lineage, Unione Abruzzese, 1956
Gold Medal of Achievement, Italo-American Society of Boston, 1956
Pope Paul VI awards Ecumenical Council Medal, 1966

Memberships and Associations
Delta Sigma Rho Fraternity
Psi Chi Omega Fraternity

Publications

Books

Proposed Amendments to the Constitution: A Monograph on the Resolutions Introduced in Congress Proposing Amendments to the Constitution (1929)

Does Man Live Again?: A Debate on Immortality Between Judge M. A. Musmanno and Clarence Darrow, Held at Carnegie Music Hall, Pittsburgh, Pennsylvania, December 12, 1932 (1932)

After Twelve Years (1939)

Ascoltate il flume. Romanzo (1940?)

Military Tribunal II: The United States of America Against Oswald Pohl, defendants, Concurring Opinion (1945?)

General Mark W. Clark, The Man and the Soldier (1946), translated into Italian as Il Generale Mark W. Clark l'uomo e il Soldato; La Guerra: non l'ho voluta io (1947)

Listen to the River (1948)

Ten Days to Die (1950)

Across the Street From the Courthouse (1954)

Justice Musmanno Dissents: the Dissenting Opinions of Justice Michael A. Musmanno, Associate Justice of the Supreme Court of Pennsylvania, Filed During the Period January, 1952 to September, 1955 (1956)

Verdict: the Adventures of the Young Lawyer in the Brown Suit (1958)

The Eichmann Kommandos (1961)

The Death Sentence in the Case of Adolf Eichmann: a Letter to His Excellency Itzhak Benjvi, President of Israel, Jerusalem (1962)

Eulogy to President John F. Kennedy: Delivered before the Civic Forum of the State of New York at Memorial Services Commemorating the First Anniversary of the Martyrdom of President Kennedy, Hotel Statler Hilton, New York City, November 22, 1964 (1964)

An American Replies to a Defamation of the Italians (1965)

The Story of Italians in America (1965)

Black Fury (1966)

Columbus WAS First (1966)

That's My Opinion (1966?)

The Glory and the Dream; Abraham Lincoln, Before and After Gettysburg (1967)

Articles

A Philadelphia Lawyer in the Roman Courts. 74 no. 31 Pittsburgh Legal J. 14 (July 31, 1926)
The Italian Positive School of Criminology. 74 no. 35 Pittsburgh Legal J. 5-11 (August 28, 1926)
The Troublesome Third Term Question. 75 no. 52 Pittsburgh Legal J. 19-22 (December 24, 1927)
The Federal Constitution. 77 no. 36 Pittsburgh Legal J. 7-10 (September 7, 1929)
Judge Musmanno Thanks Republicans and Democrats. 81 no. 39 Pittsburgh Legal J. 5 (September 30, 1933)
Judge M. A. Musmanno Leads for Common Pleas. 81 no. 38 Pittsburgh Legal J. 3-6 (September 23, 1933)
Judge Musmanno Thanks Republicans and Democrats. 81 no. 39 Pittsburgh Legal J. 5 (September 30, 1933)
Editorial Judicial Primaries. 81 no. 39 Pittsburgh Legal J. 38-39 (September 30, 1933)
A Statement to the Grand Jury. 98 no. 10 Pittsburgh Legal J. 3-6 (March 11, 1950)
Jurist Opposes House Bill 11. 89 no. 29 Pittsburgh Legal J. 5-6 (July 19, 1941)
Farewell Address by Judge Michael A. Musmanno. 100 no. 1 Pittsburgh Legal J. 21-25 (January 5, 1952)
Dissenting Opinions. 6 Kansas L. Rev. 407 (1958)
Justice Musmanno Asks United Nations to Condemn Cuban Executions as Violations of International Law. 107 no. 5 Pittsburgh Legal J. 15-17 (January 31, 1959)
Sacco-Vanzetti Jury. 5 Villanova L. Rev. 169 (1959-60)
Sacco-Vanzetti Case: A Miscarriage of Justice. 47 ABA J. 28 (1961)
Objections in Limine to the Eichmann Trial. 35 Temple L.Q. 1 (1961)
The Sacco-Vanzetti Case. 11 Kansas L. Rev. 481 (1963)
Explosion in the Law. 6 Duquesne U. L. Rev. 253 (1968)
Sources

Chief Justice Ralph J. Cappy
1943-2009

Term

Education
University of Pittsburgh, B.S. (honors), 1965
University of Pittsburgh School of Law, J.D., 1968

Professional Experience
Admitted to Allegheny County bar, 1968
Law Clerk, Judge Henry Ellenbogen, Court of Common Pleas of Allegheny County, 1968-1970
Private Practice, 1968-1978
Lecturer, University of Pittsburgh School of Law, 1970-1972
Instructor, City of Pittsburgh Training School and Allegheny County Police Academy, 1970-1974
Trial Defender, First Assistant Homicide Attorney, Deputy Director, Office of the Public Defender of Allegheny County, 1970-1975
Director, Allegheny County Public Defender’s Office, 1975-1978
Lecturer for Allegheny County, Pennsylvania Bar Associations, Pennsylvania Bar Institute on various legal education programs
Elected Justice, Supreme Court of Pennsylvania, November 1989; retained November 1999
Liaison to Supreme Court Appellate Procedural Rules Committee, Minor Judiciary of Pennsylvania, the Pennsylvania Board of Law Examiners, reorganization of the First Judicial District, 1990-1994
Liaison to the Supreme Court Civil, Domestic Relations and Orphans’ Court Procedural Rules Committees, Pennsylvania Board of Law Examiners, 1994
Liaison to Civil Procedural Rules Committee, Pennsylvania Board of Law Examiners, Pennsylvania Continuing Legal Education Board, Judicial Council, 1996
Member, U.S. Judicial Conference Committee on Federal-State Jurisdiction, 1996
Retired on January 6, 2008
Partner, Buchanan Ingersoll & Rooney, 2008-2009

Honors and Awards
Distinguished Alumni Award, University of Pittsburgh School of Law
Distinguished Laureate Alumni Award, University of Pittsburgh, 1999
Citation of Merit, Mothers Against Drunk Driving
Man of the Year, Pennsylvania State Police
Man of the Year, Pennsylvania Fraternal Order of Police
Judicial Award, Pennsylvania Bar Association, 1997
Gold Medal for Distinguished Service Award, Order of Sons of Italy
Man of the Year, Sons of Italy
Golden Medal Award as Man of the Year, Order of Sons of Italy in America
Man of the Year, Italian Heritage Foundation
Italian American Man of the Year, Pittsburgh Italian Scholarship Fund
Philadelphia Bar Association Gold Medal
Bar Medal, Pennsylvania Bar Association, 2007
Harry Carrico Award, National Center for State Courts, 2007

Memberships and Associations
American, Pennsylvania, Allegheny County Bar Associations
Justinian Society, 1990
American Judicature Society, 1994
Fellow, American Bar Foundation, 1996
Association of Trial Lawyers
Justinian Society, 1990
Board of Trustees, University of Pittsburgh, 1992-2009; Chair, Board of Trustees, 1995-2009
American Judicature Society, 1994
American Bar Association, 1995
Fellow, American Bar Foundation, 1996
First Vice Chair, Board of Directors, University of Pittsburgh Medical Center, 1996
Second Vice Chair, UPMC Shadyside Hospital Board of Directors, 1996
Member, Board of Children's Hospital of Pittsburgh, 1996
Member, Advisory Board of Cyril H. Wecht Institute of Law & Forensic Science, Duquesne University
Delta Sigma Phi Fraternity

Publications

Sources
The Mystery of Missing Marvin: 
Determining the Alumni Status of a 
Century-Old Student

Marcus Walker***

In my opinion, you would probably never choose to become a li-
brarian or an archivist if it weren't in your nature to enjoy an oc-
casional mystery or puzzle. As such, I invite you to come along on 
one of mine.

An intermittent long-term project of mine is to compile a complete 
(well, complete-as-possible) historical list of law school graduates. 
Fortunately, much of the most difficult part already had been done, 
as many of the pre-Great Depression law school catalogs included 
a cumulative roster of alumni.

Something that caught my attention in the last of those rosters was 
a four-year stretch just after World War I. Here a short contextual 
history may be helpful, and perhaps interesting.

By the point the United States officially joined the First World War, 
enrollment at the erstwhile Law Department of the University of 
Louisville and the then-independent evening Jefferson School of 
Law shrunk to where both schools attempted to combine their re-
spective programs for the 1918-1919 term. When even the joint 
session failed to draw enough students, Jefferson closed for the

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* Marcus Walker is the Law School Archivist and Digital Collections 
  Librarian (and occasionally the Assessment Librarian) at the Uni-
  versity of Louisville Louis D. Brandeis School of Law. He has done 
  the library school thing (University of Kentucky, 2014) but not the 
  law school thing because there is a limit to his masochism.

** For such a simple seeming inquiry, I certainly had to reach out 
to a lot of people. Those who were particularly helpful in locating 
information beside the persons cited within include: Tom Owen, 
University of Louisville Archivist for Regional History; Tyler Lehrer 
and Gioia Spatafora at University of Wisconsin-Madison Archives 
and Records Management; Christy Causey, duPont Manual High 
School Teacher-Librarian; Charles Sayre and Mike McDaniel of the 
duPont Manual High School Alumni Association; and Lance Hale, 
Archivist of the State Archives Center, Kentucky Department of Li-
braries and Archives.
school year while the University Law Department refocused its coursework for the needs of the military.¹

Following the war, Jefferson picked up from essentially where it had been; its four 1920 graduates almost mirrored the five from 1918.² The Louisville Law Department on the other hand sought to raise admission standards with the goal of eventually gaining accreditation with AALS, taking advantage of a unique opportunity – none of the five first-year students enrolled in the 1917-1918 session returned.³

An initial measure the Law Department undertook was lengthening the curriculum.⁴ The expansion was originally approved in 1919, but the first three-year course began in Fall 1920.⁵

¹ JEFFERSON SCHOOL OF LAW ANNOUNCEMENT 1919-1920, at 3; Law Department of the University of Louisville and Jefferson School of Law, LOUISVILLE COURIER-JOURNAL, Sept. 24, 1918, at 5; Letter from Arthur Y. Ford, President of the University of Louisville Board of Trustees, to Col. E.W. Hubbard, Commanding Officer of the University of Louisville Student Army Training Corps, Oct. 11, 1918.

² THE JEFFERSONIAN 1924, at 29-30 (Jefferson Sch. of Law, Louisville, Ky.).

³ Compare UNIVERSITY OF LOUISVILLE BULLETIN, 1918-1919, at 122-131 (Students are listed alphabetically, not by course; there are fifteen total students – five first-years and ten second-years), with UNIVERSITY OF LOUISVILLE BULLETIN, 1920-1921, at 185 (Students listed by course; none of the eight are the same as those enrolled in 1917-1918) As a side note, one of those students, M. Joseph Donovan, had already graduated from Jefferson in the spring and would be sworn in to practice the following February: THE JEFFERSONIAN 1924, supra note 2, at 29; Court of Appeals, LOUISVILLE COURIER-JOURNAL, Feb. 2, 1918, at 10.

⁴ Letter from W.L. Lafferty, Dean of the University of Kentucky College of Law, to John L. Patterson, Dean of the University of Louisville College of Arts and Sciences (Nov. 1, 1918) (Lafferty suggested the increase; why the letter was directed to the liberal arts dean or if similar correspondence was sent to the Law Department dean is unknown) (on file with the University of Louisville Archives and Special Collections).

⁵ UNIVERSITY OF LOUISVILLE BULLETIN, SCHOOL OF LAW ANNOUNCEMENTS, 1919-1920, at 9 (“The course of study covers two school years of eight months each . . . .”), UNIVERSITY OF LOUISVILLE BULLETIN, 1920-1921, at 134 (“The course of study covers three school years of eight months each . . . .”); Minutes of the Meeting of the Board of Trustees of the University of Louisville (Apr. 15, 1919)
Given the above, the curiosity was the alumni roster listed a graduating student in 1922, but none for 1920 – the opposite of what otherwise might be expected. However, the Board of Trustees Minutes supported the roster: no 1920 law graduates and a single graduate for 1922.

The Class of 1921 needed no explanation, as any student matriculating the 1919-1920 school year would only be subject to the shorter course, it made sense there was a full graduating class that year.

The sole 1922 law graduate was due to a delayed graduation. The student, Evert B. Baker, began his coursework in Fall 1919, but “had several conditions to make up at the close of the term” in 1921. Upon completing them, he was awarded his degree the following year.

The Class of 1920 was more complicated, as although neither the Board of Trustees Minutes nor alumni rolls referred to above (“On motion of Mr. Jefferson, seconded by Mr. Keisker, the plan of re-organization of the Law School and by the Executive Committee of the Board, was approved, . . . the course to cover a period of three years . . . ”); Minutes of the Meeting of the Board of Trustees of the University of Louisville (May 21, 1920) (“On motion the Board expressed its approval of the plan to establish a three year [sic] course in the Law School. . . .”). It is unclear the reason an ostensibly identical plan needed reapproval (there was no mention of a particular year in either, for example); however, at the 1919 meeting, the then-current Dean resigned and a new candidate – Shackelford Miller Sr. – was approved, but never took the position.

E.g., University of Louisville Bulletin, School of Law Announcements, 1927-1928, at 54.

Minutes of the Meeting of the Board of Trustees of the University of Louisville (May 21, 1920); Minutes of the Meeting of the Board of Trustees of the University of Louisville (June 7, 1922).

University of Louisville Bulletin, School of Law Announcements, 1927-1928, at 54-55. Full being relative; there were six graduates in 1921. While smaller than most other classes, it compares with the Classes of 1918 (also six), 1924 (seven), and 1927 (four).

Minutes of the Meeting of the Board of Trustees of the University of Louisville (June 7, 1922).
named any law graduates that year, the 1920-1921 catalog did list one – Marvin H. Taylor.¹⁰

A name or a lack of one in the catalog, while not unofficial, is also not absolute: Taylor being listed in 1920 could have been in anticipation of a graduation that never happened, or his name failing to be included in successive alumni rosters might instead have been an error perpetuated by sourcing faulty preceding lists.¹¹

Taylor did not have an entry in any School of Law alumni directory, although early in research the reason was ambiguous at best – unlike the catalog rosters which aimed to include the names of the full class, the directories only include graduates living at the time they were published.¹²

Taylor’s official academic record would be the most apparent source for a definitive answer; unfortunately, neither the Registrar’s Office nor University Records had it extant.¹³ (Given the number of floods in Louisville during the intervening century, this honestly was not much of a surprise.¹⁴) The Kentucky Department

¹⁰ UNIVERSITY OF LOUISVILLE BULLETIN, 1920-1921, at 181 (Taylor was listed as a ‘Doctor of Laws’ recipient; not an inconsiderable distinction since the LL.D. is an honorary degree); UNIVERSITY OF LOUISVILLE BULLETIN, SCHOOL OF LAW ANNOUNCEMENTS, 1927-1928, at 54; UNIVERSITY OF LOUISVILLE BULLETIN, SCHOOL OF LAW ANNOUNCEMENTS, 1928-1929, at 58; UNIVERSITY OF LOUISVILLE BULLETIN, SCHOOL OF LAW ANNOUNCEMENTS, 1929-1930, at 59. (Lists of alumni were discontinued after 1929.) Further, no successive Board of Trustees meeting appended the roll of 1920 graduates, in comparison to the explanation given for Evert’s 1922 graduation.

¹¹ There is precedent for the latter: The first female graduate, N.A. Courtright, does not appear even in the rosters immediately following her graduation in 1911.

¹² Or, more accurately, living and in contact with the law school; see, e.g., UNIVERSITY OF LOUISVILLE LAW ALUMNI DIRECTORY, 1846-1960, at 1; UNIVERSITY OF LOUISVILLE SCHOOL OF LAW SESQUICENTENNIAL HISTORY & LAW ALUMNI/AE DIRECTORY 1996, at 1.

¹³ E-mail from Kassie Marie Flanery, University of Louisville Registrar’s Office, to author (Aug. 9, 2019) (on file with author); E-mail from Kyna R. Herzinger, University of Louisville Archivist for Records Management, to author (Aug. 7, 2019) (on file with author).

¹⁴ If you are interested in the history of flooding in the Louisville area, see Louisville Metropolitan Sewer District’s list of top ten crests at https://louisvillemsd.org/programs/programs-and-projects/floodplain-management/flooding-history-louisville and an
of Libraries and Archives had the official order from June 1920 admitting Taylor to the bar, but since there was no mention of education, his graduation could not be implied as at that time it was not yet necessary to complete law school to sit for the exam.

No fewer than three different local newspaper articles – the University of Louisville graduate feature in 1920, a birthday bio from April 1927, and his November 1941 obituary – credit Taylor with a law degree. (His early death explained why he did not appear in the alumni directories.) Moreover, Taylor referred to and considered himself a graduate – he joined the University’s Alumni Association in 1935, his 1937 du Pont Manual alumni roster listing mentions a 1920 LL.B. from Louisville, and he attended the law school alumni dinner held at the 1939 Kentucky Bar Association convention.

extensive collection of photographs (particularly of the 1937 and 2009 floods) in the University of Louisville Digital Collections: https://digital.library.louisville.edu/cdm/search/field/subjec/searchterm/Floods--Kentucky--Louisville/mode/exact.

15 In Re: Licenses to Attorneys, Ky. Ct. App. Order Book 101, at 213 (1920-1921) (on file with the Kentucky Department of Libraries and Archives); Appeals Court Spring Term On, LOUISVILLE COURIER-JOURNAL, Apr. 13, 1920, at 9 (The Court of Appeals was the highest court in Kentucky at the time).

16 CARROLL’S KY. STAT. §98a (1922) (effective Mar. 29, 1918). Persons needed to be twenty-one years of age or older, score seventy-five percent or better on the bar exam as graded by a board of examiners, and pay a prescribed fee in order to be licensed, but any formal education was yet to be required.


18 ROSTER OF ALUMNI 1892-1937, at 89 (Du Pont Manual Training High Sch., Louisville, Ky.); U. of L. Alumni Meeting to Be Held Tuesday on Belknap Campus, LOUISVILLE COURIER-JOURNAL, June 9, 1935, §2, at 6; Bar Head to Address Meeting, LOUISVILLE COURIER-JOURNAL, Mar. 29, 1939, §2, at 1 (Noteworthy is that all the other persons listed beside Taylor other than Dean Lott and University President Kent were graduates – David Castleman, 1902; Emmet Field, 1917; Raymond Bossmeyer, 1936; William W. Crawford, 1901; and Alec L. Ratliff, 1910).
So while there was significant evidence Marvin Taylor graduated from the law school, there was also a notable counterpoint: The Manual alumni bio also listed a Bachelor of Arts from University of Wisconsin-Madison in 1918, but the Office of the Registrar at Wisconsin only credits Taylor with having completed three semesters between 1914 and 1916. A lesser note of concern was a small conflict in another attribution: Despite the claim in Taylor’s obituary he was never a candidate for public office, Taylor did run for city council in 1935.

While previous search engine queries for departed graduates and personnel have had mixed results, I was fairly optimistic given Taylor was a veteran of World War I.

Indeed, one of the top hits for “Marvin Hunter Taylor” was a page about a journal Taylor kept during his service written by his grandson, Dr. Nathaniel Lane Taylor, who is fortunately (and almost unbelievably so) a professional genealogist. After contacting him, he sent a link to an image of a very interesting document:

19 ROSTER OF ALUMNI, supra note 18; E-mail from Katie Paar, University of Wisconsin-Madison Office of the Registrar, to author (Aug. 29, 2019). Taylor considered himself a “Wisconsin man,” at least as he served: Marvin H. Taylor, Extracts from the Letters of a Junior Officer of Infantry, 1917-1918, at 4 (Nathaniel Taylor ed., 2009) (unpublished manuscript) (on file with Dr. Nathaniel Lane Taylor). Interestingly, he was listed as a member of a class at Wisconsin, albeit for 1919; see THE BADGER 1920, at 374 (Lincoln A. Quarberg, ed., U. of Wis.-Madison, 1919). Also notable is that while the 1927 and 1941 articles, supra note 17, mentioned Taylor attending Wisconsin, neither stated he earned a degree from there.

20 There may be a good reason the newspaper might not have wanted to bring that to attention. According to the tally given in the paper, Horace Taylor defeated Marvin Taylor in the race for Second Ward alderman, yet both the preliminary and final tabulations for every city council race, including the Socialist Party candidate whenever there was one, were, “ahem”, remarkably similar. See Allan M. Trout, Chandler Goes Ahead By 77, LOUISVILLE COURIER-JOURNAL, Nov. 8, 1935, §1, at 1+; State Gives 94,659 Lead To Chandler, LOUISVILLE COURIER-JOURNAL, Nov. 10, 1935, §1, at 1+.

Any reason he received a degree despite not being included in the Trustees minutes would clearly be speculative, though it is not difficult to imagine that Taylor made special arrangements to complete his coursework, particularly as the bar exam was held within the law school final exam period.  

Despite Taylor being the only graduate from the University of Louisville law program in 1920, he would not be the only name under the Class of 1920 in a modern list of alumni, as the aforementioned Jefferson School of Law merged with University of Louisville Law School in 1950, granting Jefferson graduates alumni status at UofL.

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22 The bar exam was held May 25-26, 1920; the law school examination period was May 17-29. See, e.g., In Re: Licenses to Attorneys, supra note 15; UNIVERSITY OF LOUISVILLE BULLETIN, SCHOOL OF LAW ANNOUNCEMENTS, 1919-1920, at 6.

23 Despite Taylor being the lone graduate from the University of Louisville law program in 1920, he would not be the only name under the Class of 1920 in a modern list of alumni, as the afore-
So, who was Marvin Taylor? I invite you to visit his grandson’s site for a more in-depth answer, but I do believe I can provide a good short biography:

Marvin Hunter Taylor was born on April 15, 1896 in Louisville and graduated from hometown duPont Manual High School in 1914. Perhaps foretelling his career and certainly heralding one of his talents, Taylor won two awards in declamatory contests at Manual – a silver medal as a sophomore followed by a gold his senior year.\(^\text{24}\)

Taylor spent time both at the University of Wisconsin in Madison as well as the University of Louisville the following three years before serving in World War I.\(^\text{25}\) After returning to the States, Taylor
spent a semester at the University of Chicago before completing his legal education at Louisville in 1920.26

Beside his involvement with the law school and UofL, Taylor remained connected to Manual, sitting on the high school’s athletic board and holding office in the alumni association.27 In addition, Taylor sat on the board for the Louisville and Jefferson County Children’s Home (also referred to as Ormsby Village).28

Taylor also continued his connection with the military as a part of the Kentucky Reserve Officers Association and the American Legion.29 Interestingly, Taylor was part of an investigation into ‘un-

H. Taylor lives, I counted eleven blue stars gleaming in the windows of the houses on a single square.’)

26 UNIVERSITY OF LOUISVILLE BULLETIN, 1920-1921, supra note 10; Email from Andrew Thompson, University of Chicago Special Collections Research Center Accessions Supervisor, to author (Sept. 3, 2019).

27 Davis, supra note 24; Manual Boosters, The Crimson (du Pont Manual High School, Louisville, Ky.) April 1930, at 233 (Vice-President of Alumni in 1928 and member of the Athletic Board of Control in 1929); Earl Ruby, Bourbons Gag Flyers 44-0 and Offer to Light Red Field, LOUISVILLE COURIER-JOURNAL, Sept. 10, 1934, at 9-10 (Taylor part of Manual athletic board meeting regarding a stadium lighting deal); T.W. Beard, Sr., Heads Alumni Of Manual, LOUISVILLE COURIER-JOURNAL, June 18, 1938, §1, at 8 (Taylor elected as vice-president); Caldwell Settle Heads Du Pont Alumni, LOUISVILLE COURIER-JOURNAL, June 17, 1939, §2, at 1 (Taylor named as trustee).

28 Downing Reappointed To Civil Service Board, LOUISVILLE COURIER-JOURNAL, Jan. 22, 1941, §2, at 8 (Taylor reappointed to Children’s Home board); Ormsby Village Officials Predict Cut In Program, LOUISVILLE COURIER-JOURNAL, June 20, 1941, §3, at 1 (Taylor noted that there might be an increase in load on the home during World War II); Eugene D. Hill Named On Orphan Home Board, LOUISVILLE COURIER-JOURNAL, §2, at 1 (Hill replaced Taylor on board). A report of the home and a source where it is referred to by both names can be found at, Ormsby Village Called Outstanding [sic] In Report of National Organization, Louisville Courier-Journal, Mar. 24, 1940, §1, at 4.

29 E.g., M.L. Sosnin, National Defense and War Veterans, LOUISVILLE COURIER-JOURNAL, Mar. 21, 1926, §5, at 7 (Encourages pride in the 400th Infantry Regiment, of which Taylor was mentioned as the being the secretary); Officers Honor Lexington Man, LOUISVILLE COURIER-JOURNAL, May 24, 1928, at 3 (Capt. Taylor named as third
American’ activities at the University of Louisville conducted by the latter organization in 1935.\textsuperscript{30}

A staunch Republican, Taylor served as the party’s county election commissioner in addition to his aforementioned candidacy for city council.\textsuperscript{31}

Marvin Hunter Taylor died on November 6, 1941 after complications with pneumonia following a surgical procedure. He was survived by his wife, the former Emma Katherine Schmitt, and his son, Marvin Jr.\textsuperscript{32}

It is difficult to describe Marvin Taylor as ever truly ‘missing’ with a descendant who has traced their family’s history back before the Mayflower, and he certainly would have never seen his own alumni status as any mystery at all. However, his untimely passing during vice-president of the Reserve Officers’ Association); \textit{Louisville Day at Camp Knox to Attract Hundreds Today}, \textit{Louisville Courier-Journal}, July 25, 1931, at 1+ (Maj. Taylor, president of the Kentucky Reserve Officers’ Association, was invited and named in the article).

\textsuperscript{30} \textit{Legion Is to Probe U. of L. ’Red’ Activity}, \textit{Louisville Courier-Journal}, Apr. 21, 1935, §1, at 1+.

\textsuperscript{31} \textit{E.g.}, \textit{Ex-Service Men O.K. Ernst and Thatcher}, \textit{Louisville Courier-Journal}, Oct. 28, 1926, at 2 (Taylor’s support given in a political ad in favor of U.S. Senator Richard P. Ernst and Congressman Maurice H. Thatcher); \textit{Young Republicans Will Meet Tonight}, \textit{Louisville Courier-Journal}, Oct. 2, 1935, at 4 (Taylor listed as one of the principal speakers); \textit{12-Man Council Plans to Liberalize G.O.P.}, \textit{Louisville Courier-Journal}, Dec. 20, 1938, §2, at 1 (Taylor listed as member under legal); \textit{G.O.P. Here Enlarges Policy Body}, \textit{Louisville Courier-Journal}, Jan. 11, 1939, §2, at 1 (Taylor again listed as council member; this is a reconfiguration of the previous council, suggesting if nothing else Taylor’s status with the local party); \textit{Election Body Delays Todd Certification}, \textit{Louisville Courier-Journal}, Aug. 29, 1939, §2, at 1 (Taylor appointed as the Republican member on the Jefferson County Election Commission); \textit{Ten Out of 12 Louisvillians Hail Willkie}, \textit{Louisville Courier-Journal}, July 27, 1941, §3, at 1 (Taylor not only still supported Wendell Willkie, his opinion of Willkie had improved following the 1940 election).

a period where retention of many records was more haphazard or happenstance than deliberate or scheduled placed him within a particularly broad gap of information, and to navigate that gap to definitively return a century-old alum to the list of law school graduates is quite satisfying.33

Thank you for allowing me to share this mystery with you and I wish you the best of luck in your own future sleuthing.

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33 Part of the information gap may have been overcome sooner had I considered searching University Archives for Alumni Association records prior to finalizing this article. Taylor is referred to as 1920 Law graduate in at least three locations within that iteration of the University’s alumni periodical, e.g., The Alumni Association of the University of Louisville Officers and Board of Directors, THE ALUMNI MAGAZINE (U. of Louisville Alumni Ass’n), inside front cover (Summer 1935); Alumni Personals, THE ALUMNI MAGAZINE (U. of Louisville Alumni Ass’n), at 7 (Summer 1935); Necrology, supra note 32. Then again, I may not have otherwise had the opportunity to meet Dr. Taylor, read his grandfather’s World War I journal, or see that diploma, and that would have been a loss.
Books reviewed in this issue:

Daniel Yazdani, *The Habit of a Judge: A History of Court Dress in England & Wales, and Australia*


Mr. Yazdani’s book is a colorful, beautifully produced historical catalog of judicial garb in England, Wales, and Australia. One need look no farther than the book’s cover, which reproduces a sitting portrait of the English Judge Robert Chambers (1737-1803). That jurist and Oxford Vinerian Professor can be seen wearing scarlet robes and hood, both trimmed with miniver (ermine), linen bands, and a “full-bottomed” wig. Below the hood may been seen the ends of one or more black appurtenances, one of which is likely to be the end of a “cincture,” or rope-like belt. One can only hope that the weather was cool when Judge Chambers sat for the artist Robert Home.

Early on, Yazdani tells us (p. 4) that “The present ceremonial dress of a Judge of the High Court of England and Wales . . . was essentially settled during the reign of King Edward III” (i.e., 1327-1377). Yazdani soon touches upon the astonishingly detailed dress code prescribed by the “Judges Rules of 1635” (pp. 7 ff.), first assuring his readers that these “regulations by no means created new forms of dress; rather it [sic] formalized in writing what hitherto had been the norm, in the interests of uniformity of practice” (p. 4). Clearly, England’s bench was content to dress itself in medieval garb. So much so that in 1875, when Parliament created a new High Court of Justice to replace “the old Common Law Courts of Exchequer, Common Pleas, and King’s Bench,” the judges decided “that the 1635 Judges’ Rules would apply to all justices of the High Court” (p. 16).

Following his discussion of the 1635 Rules, Yazdani proceeds to catalog English judicial garb in detail, not omitting the layers of ornamentation that have accumulated since the reign of Charles I. He begins with the robe, frequently scarlet, but also—depending on the term of court or nature of the occasion—green, particolored, black, or violet, all of them faced, often, with taffeta (pp. 35, 37-40, 52-62). Over the robe, judges wore a mantle, which was a form of lined cloak. The mantle was “viewed,” says Yazdani, “as a symbol of magisterial and regal authority” (p. 64). Thirdly, judges wore the hood, a complex garment consisting of a “shoulder piece” worn under the mantle and a “cowl piece” which fell behind the wearer’s head, “looking like a big bag of miniver” (p. 76). An adjunct to these features was the “casting hood,” worn over the judge’s right shoulder, with its “liripe” (not unlike a tail) hanging down in front (pp. 77-80).
Tying the whole costume together was the “cincture and girdle,” a “rope-like vestment” which was “said to be a symbol of priestly or royal dignity and chastity” (p. 94).

Having cataloged the principal garments of Common Law judges, Mr. Yazdani is not nearly through. Next he describes the black and gold robes of Chancery Judges, the black gowns (silk) worn by Queen’s Counselors, the black gowns (not silk) worn by junior barristers, the court coats and waistcoats worn beneath these gowns, the neckwear (bands or jabots) worn by judges and lawyers, the gloves worn (or carried in hand) on certain occasions, and finally the profession’s headwear—coifs, caps, and wigs. Concerning the latter, Yazdani provides an interesting discussion (pp. 136-156) of the introduction and strange persistence of legal wigs.

Introduced by the “Restoration” monarch Charles II—who for extremes of fashionable pretension was the equal of his contemporary, Louis XIV of France—judicial wig-wearing carried on far, far beyond the wig’s demise in ordinary aristocratic life. Why? Yazdani’s explanation relies upon the scholar J.G. McLaren, who wrote that by cherishing the wig, “the profession assiduously created exclusivity and distinctiveness,” thereby allowing its members to “proclaim a special social status” for themselves (p. 137). This peculiar survival took separate forms for the bench and the bar—the barristers wearing a short wig, confusingly called a “bench” wig, and the judges typically wearing the conspicuous “full-bottomed” wig or “peruke.” The latter underwent certain changes but arrived by the middle of the nineteenth century at the “modern ‘doormat effect’” (p. 149).

Over the last century or so there have been several proposals to alter judicial dress so as to make it simpler, more modern, or more comfortable. Yazdani covers two such initiatives (pp. 160-162) in some detail. These date respectively to 1970 (concerning which “It was eventually agreed . . . that there should be virtually no change”) and 1985 (whereupon “no changes took place and . . . it was decided that the matter . . . would not be pursued any further”). He makes no effort to explain such deep-rooted reaction, but leaves his readers to conclude that an outspoken, influential core of

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1 Sometimes a judge wore a black scarf in conjunction with the casting hood; see Yazdani, pp. 86-93.

judges and lawyers were genuinely attached to their “habits,” sincerely believing that their garments evoked a spectrum of responses—respect, awe, fear—appropriate to any judicial moment.

In 2007, however, the Lord Chief Justice (Lord Phillips of Worth Maltravers) announced changes that were to take place the following year. He observed that “At present High Court judges have no less than five different sets of working dress, depending on the Jurisdiction in which they are sitting and the season of the year” (p. 173). The chief change was the introduction of a simple black robe created by a noted designer; the new robes included colored tabs at the neck, keyed to an elaborate scheme by which the judge's rank and court assignment could be identified. The new robes were to be worn by judges in the “civil and family divisions in open court.” These judges were also to “cease wearing wigs, wing collars, and bands.” 3 Judges in the criminal division underwent fewer changes of costume, and those consisted mainly of greater flexibility as to which seasonal robes they could wear (pp. 173-174).

Mr. Yazdani traces many of the same progressions of costume in the several jurisdictions of Australia, where he is a barrister (pp. 183-290). There the debates over judicial working dress are likely to pit traditionalists who identify with the long line of English customs against Australian nationalists who are seeking to move, symbolically at least, toward a more post-colonial regime.

As indicated above, Mr. Yazdani has put together a visually beautiful book, a chronological catalog of great potential usefulness to anyone who wishes to know the details of English judicial costume over the centuries. He makes little effort to provide anything like a complete context (social, political, economic) for his tales of judicial habit—but in his defense he is simply accepting, like almost all lawyers, the rules and customs of the courts in which he practices. In such cases familiarity breeds not contempt but acceptance; and long acceptance amounts, we can infer, to approval.

It may be appropriate to mention that about thirty years ago, this reviewer was driving his mother-in-law to lunch in Tuscaloosa. Classes were letting out, and we passed many faculty members also in quest of lunch. Taking in the blue blazers, oxford cloth shirts, striped ties and khaki trousers of the male faculty, my mother-in-law remarked: “It really is a uniform, isn’t it?” Startled

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3 Even so, judges in the “Criminal Division of the Court of Appeal” and District Court judges continued to wear bench wigs; see Yazdani, pp. 174, 175 (illustration).
(and clad in the identical get-up), I had to agree with her. Mr. Yazdani might say that I was wearing a male academic’s habit.

Paul M. Pruitt, Jr.
Bounds Law Library
University of Alabama
Banana Republic’s “Dissent Collar necklace,” inspired by the wardrobe of Associate Justice Ruth Bader Ginsburg, sold out within days of being rereleased in January 2019.¹ It seems that much of Justice Ginsburg’s popularity derives from her reputation as a fierce dissident standing athwart an increasingly right-leaning Court. Forgotten in all but a few circles is the fact that it was Justice Ginsburg’s close friend and philosophical opponent, the late Associate Justice Antonin Scalia, who earlier served as the Court’s resident dissenter.

Over the course of his three decades on the Court, Justice Scalia wrote 256 dissents: more than any of his contemporaries with the exception of Associate Justice John Paul Stevens.² Yet, whereas Justice Stevens’ jurisprudence drifted from right to left over the course of his tenure, Justice Scalia consistently championed a judicial philosophy known as “textualism.” Textualism, the view that “[i]t is the law that governs, not the intent of the lawgiver,”³ holds that judges should (1) interpret statutes without reference to legislative history or policy considerations and (2) interpret the Constitution according to the original public meaning of the text.

Now an ascendant theory, textualism was a radical departure from the then-prevailing mode of interpretation when Justice Scalia joined the Court in 1986. Indeed, just over a decade before Justice Scalia’s nomination, Associate Justice Thurgood Marshall, writing for the majority, implicitly rejected the plain meaning rule in Train v. Colorado Public Interest Research Group, Inc.⁴ Consequently,

⁴ 426 U.S. 1, 9–10 (1975) (“To the extent that the Court of Appeals excluded reference to the legislative history of the [Federal Water
Justice Scalia’s dissents represent his often-lonely crusade to promote textualism as a means of restraining what he saw as the Court’s propensity for “judicial social engineering.”

This volume is a noble attempt to collect the best of Justice Scalia’s dissents, but it leaves much to be desired. While coeditor and Kansas Supreme Court Justice Caleb Stegall’s introduction is an illuminating meditation on Justice Scalia’s rhetorical style, the dissents themselves are devoid of curation—save a very brief general introduction at the beginning of each chapter. Far superior in this regard are Kevin A. Ring’s Scalia’s Court: A Legacy of Landmark Opinions and Dissents (2016) and Scalia Dissents: Writings of the Supreme Court’s Wittiest, Most Outspoken Justice (2004), both of which lend extensive context to each selected opinion.

In the last decade, publishers have released an array of books about Justice Scalia. Some of these titles present unique perspectives on Justice Scalia’s intellectual legacy, others are interesting biographical accounts, and a few are useful anthologies of his writings. While this volume is an anthology, it is not a particularly useful one.

Pollution Control Act] in discerning its meaning, the court was in error.”).

5 ANTONIN SCALIA, SCALIA SPEAKS: REFLECTIONS ON LAW, FAITH, AND LIFE WELL LIVED 197 (Christopher J. Scalia & Edward Whelan eds., 2017) (“[O]nce [judges] are liberated from the original meaning, they are liberated from any other governing principle as well. Nothing constrains their action except perhaps their estimation of how much judicial social engineering the society will tolerate.”).


The continuing interest in Justice Scalia arises, at least in part, from the recent confirmation of two justices who profess to share his commitment to textualism. That two of its liberal justices are octogenarians invites rampant speculation about the future direction of the Court. This November, the American people will decide once and for all whether the Court will continue on a course of cautious liberal orthodoxy or take a hard textualist turn. Should the latter possibility prevail, Justice Scalia’s dissents will read like Nostradamus’ *Les Prophéties.* Accordingly, those interested in prognosticating what the rulings of a textualist Court may look like have several better scrying bowls from which to choose.

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