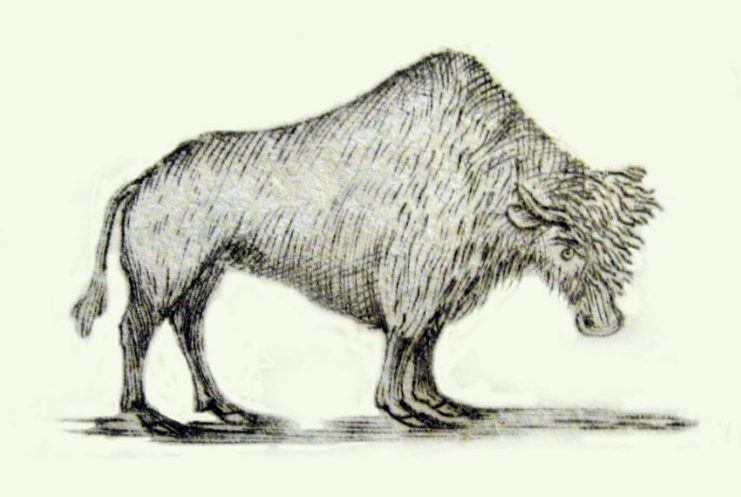
UNBOUND

A Review of Legal
History and Rare Books



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UNBOUND

A Review of Legal History and Rare Books

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Articles on legal history and rare books are both welcomed and encouraged. Contributors need not be members of the Legal History and Rare Books Special Interest Section of the American Association of Law Libraries.

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Cover Illustration: This depiction of an American Bison, engraved by David Humphreys, was first published in *Hughes Kentucky Reports* (1803). It was adopted as the symbol of the Legal History and Rare Books Special Interest Section in 2007.

BOARD OF EDITORS

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From the Editor

Coming out just in time to help warm frigid winter nights is the Fall/Winter issue of *Unbound*. Yes, Punxsutawney Phil said six more weeks of winter. Frankly, I am hoping that competing groundhog Octoraro Orphie from Quarryville, Pennsylvania, will be right. He said Spring is just around the corner. He is also long-dead and stuffed. Orphie issues his predictions telepathically from beyond the Rainbow Bridge.

We hope that you will enjoy this issue!

In our next issue we would like to feature articles related to our nation's Semiquincentennial. Among other possibilities, this could include articles about books or journals from the Revolutionary War period. Biographies of Founding Fathers—particularly lesser-known Founding Fathers—or stories of men and women from the period would likewise be welcome as would articles about Revolutionary War era courthouses or law libraries. Please give it some thought. The deadline for submission will be late June. Our deadlines are always a little flexible.

Please stay warm and be well!

Mark W. Podvia

DEDICATION

STEWART PLEIN

Lori Ann Hostuttler

We dedicate this issue of Unbound to the late Stewart Plein. Over the years Stewart published three articles in Unbound: "Bob's World: The Story of Bob, the WVU Law School Mascot," "The Devil's Children: The Hatfield Lawyers," and "What's in a Name: Book Provenance as a Research Tool." We will miss her.

The following tribute was written for the Appalachian Studies Association by Lori Ann Hostuttler, University Librarian and Director of the West Virginia & Regional History Center.

Stewart Plein passed away on August 16, 2025, after a short illness. Her loss is deeply felt on the campus of WVU and across the Appalachian region. Professionally, Stewart was a librarian, historian, and curator. Personally, she was a dear friend and mentor, to me, and to many others who might read this.

Stewart joined the WVU Libraries as a volunteer in the Rare Book Room in 2004 and earned her Master of Library and Information Science in 2009. She participated in numerous courses at the University of Virginia's Rare Book School and earned a Certificate of Proficiency. She began her career as a special collections librarian in 2011 at the WVU Law Library and in 2014 joined the faculty of the West Virginia & Regional History Center (WVRHC). In August 2024, she retired after a thirteen-year career at WVU.

Stewart was a book expert, and she developed the Rare, West Virginia, and Appalachian book collections at the WVRHC with skill and heart. She built and maintained strong donor relationships to the benefit of the Rare Book Collection in particular. During her tenure, she added significant collections such as the Presgraves Appalachian Collection, the Ebersole gardening and cookbook collections, and the Lowell and Susan Thing Margaret Armstrong Collection.

Stewart was also a gifted teacher whose enthusiasm and expertise inspired students of all ages. She was sought out on campus and shared her love of books with classes in a wide variety of academic

disciplines at WVU. She also taught Osher Lifelong Learning classes and gave presentations across the state. She was a supportive mentor to students, researchers, and colleagues who wanted to learn more. If you showed an interest, she made time to share her knowledge and passion with you.

In addition to the book collections, Stewart managed the WVHRC's newspaper collection and led the work of federal grants to make them more accessible. Her work resulted in the digitization of approximately 150 historic West Virginia newspapers and their addition to the Library of Congress' Chronicling America website. She also conducted pioneering research on Black newspapers in West Virginia, discovering new titles and information.

Stewart's curiosity was continual and infectious. She was a natural scholar who contributed articles, book chapters, blog posts and essays on a variety of book related and historical topics. She led engaging programs, delivered talks, and created exhibitions that beautifully highlighted WVRHC collections.

She was also an active member of the Appalachian Studies Association (ASA), always dedicated to promoting and improving the region that she dearly loved. She served on the Special Collections committee for many years and organized the silent auction for the 2021 conference in Morgantown. She felt great joy and satisfaction that she could make a difference in Appalachia, her heart and home.

Outside of work, Stewart loved nature and reveled in animals, plants, and birds. Her beautiful gardens were spectacular labors of love. She enjoyed many styles of music, British tv shows, and good scones and lemon curd. She was a Trekkie going back to the Original Series. She was warm, smart, and funny. Her natural wisdom and great sense of humor were hard to match.

Despite the sadness, I feel a deep joy and contentment because I had the opportunity to be Stewart's colleague and friend. She is an example of a professional and personal life well lived that I seek to emulate every day. Rest in peace, Stewart. We are all better for knowing you.

ARTICLES

Obsessed With Gambling: The 1921 Disbarment of Alfred J. Morganstern

Robert M. Jarvis*

In 1921, Alfred J. Morganstern, a prominent San Diego trial lawyer, was disbarred following years of heavy gambling. Although Morganstern is not the first lawyer to have his career ruined by gambling, he is the first lawyer disbarred for using client funds to support a gambling habit. A century later, his story remains a timely cautionary tale.

I. INTRODUCTION

Historical records being what they are, it is impossible to identify with certainty the first lawyer in the United States to have been disbarred due to a gambling addiction.[1] A good guess, however, is Alfred J. Morganstern (1869-1936).[2] A prominent San Diego trial

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* Professor of Law, Nova Southeastern University (jarvisb@nova.edu). The assistance of Brian Guido, Stephanie L. Hamashin, and Ignacio Sanchez-Alonso (California State Archives); Michael Hopkins (Michael Hopkins Photography); and Tarica C. LaBossiere (NSU Panza Maurer Law Library) is gratefully acknowledged.

[1] Having a gambling addiction is not a ground for disbarment. But stealing client funds, or neglecting one's professional obligations, due to a gambling addiction are grounds for disbarment. *See* Robert M. Jarvis, *Lawyers, Gambling, and Trust Accounts: Why the Expansion of an Old Vice Requires a New Approach to Protecting Client Funds*, 8 BUS., ENTREPRENEURSHIP & TAX L. REV. 111 (2024); Stacey A. Tovino, *The House Edge: On Gambling and Professional Discipline*, 91 WASH. L. REV. 1253 (2016); Dorothy M. Tucker & Diane L. Karpman, *Pathological Gambling and Professional Licensure—Do You Wanna Bet[?]*, 1995 PROF. LAW. Symp. Issue 143 (1995).

[2] My research has revealed only one disbarment case earlier than Morganstern's in which it is possible that the attorney had a gambling problem. In *In re* Hartridge, 146 N.Y.S. 421 (App. Div. 1914),

Disbarred attorney Alfred J. Morganstern (1869-1936). Photograph courtesy of 1 Notables of the West 664 (Press Reference Library, 1913); reproduction by Michael Hopkins Photography.

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a lawyer named Clifford W. Hartridge represented Harry K. Thaw, who was accused of murdering the famous architect Stanford White. Thaw's mother Mary advanced Hartridge $103,000 to work on her son's case. When Mary later asked for an accounting, Hartridge provided receipts for only $64,000. He claimed that he had used the remaining $39,000 to bribe various prostitutes, who otherwise would have testified against Thaw. The referee rejected this explanation and found that Hartridge had used the money for his own purposes, including visits to gambling houses. *See id.* at 422.

Neither the referee nor the appeals court suggested that Hartridge had a gambling problem, and newspaper articles published at the time of Hartridge's disbarment likewise made no mention of Hartridge having a gambling problem. *See*, *e.g.*, *C.W. Hartridge, Thaw Lawyer, is Disbarred*, BROOKLYN DAILY TIMES, Mar. 6, 1914, at 1 ("When Hartridge took hold of the Thaw case he was rated as not only an excellent trial lawyer, but was known to be a man moving in excellent society. . . .").

lawyer, Morganstern was disbarred in 1921 after years of heavy gambling.[3] In 1927, his petition for readmission was denied,[4] leaving him a broken man.

II. MORGANSTERN'S BACKGROUND

Alfred Jacob Morganstern (often misspelled "Morgenstern") was born on April 30, 1869, in Pittsburgh, Pennsylvania, the oldest child of Henriette Jette (née May) (1849-1922) and Jacob Morganstern (1844-96).[5] In 1881, the family moved to St. Paul, Minnesota; a year later, they celebrated Morganstern's bar mitzvah.[6] After graduating from high school, Morganstern became a court stenographer.[7] Following an apprenticeship with Henry H. Hayden, a Eau Claire, Wisconsin, trial lawyer, Morganstern was admitted to the Wisconsin bar in 1890.[8]

In April 1892, after briefly living in Washington state, Morganstern arrived in Stockton, California, and landed a clerk's job with the

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[3] The trial court's order of disbarment, entered January 9, 1922, is unpublished. For the order's affirmance on appeal, see *In re* Morganstern, 215 P. 721 (Cal. Dist. Ct. App. 1923).

[4] The decision of the California State Board of Bar Examiners, dated May 16, 1927, denying Morganstern's petition for readmission is unpublished. For the decision's affirmance on appeal, see Petition of Morganstern, 259 P. 90 (Cal. Dist. Ct. App. 1927).

[5] *See* WHO'S WHO ON THE PACIFIC COAST: A BIOGRAPHICAL COMPILATION OF NOTABLE LIVING CONTEMPORARIES WEST OF THE ROCKY MOUNTAINS 411 (Franklin Harper ed., 1913).

[6] *See Impressive Ceremonies: Confirmation Service at the Jewish Synagogue Yesterday*, ST. PAUL DAILY GLOBE, May 25, 1882, at 2 ("Confirmation in the Jewish religion . . . was conferred upon Masters Alfred Morganstern [and three others] at the temple yesterday . . . with great solemnity.").

[7] *See* 1 NOTABLES OF THE WEST 664 (Press Reference Library, 1913) [hereinafter NOTABLES].

[8] *See* HISTORY OF THE BENCH AND BAR OF CALIFORNIA 436 (J.C. Bates ed., 1912). For a profile of Hayden (1841-1903), see HISTORY OF EAU CLAIRE COUNTY WISCONSIN: PAST AND PRESENT 275-76 (William F. Bailey ed., 1914). This source describes Hayden as one of the most "successful and prominent lawyers of Wisconsin" and credits him with arguing "as many cases before the higher courts as any member of the bar in the state, outside of a few members of the Milwaukee bar." *Id.*

law firm of Louttit, Woods & Levinsky.[9] In August 1892, Morganstern moved to Los Angeles and became a court stenographer.[10] In 1896, having passed the California bar, Morganstern opened a law practice in San Francisco.[11] In 1905, Morganstern moved to Los Angeles.[12] In 1908, he moved to San Diego.[13]

Morganstern married twice. His first wife was Katherine M. "Katie" Donnelly (1870-97),[14] a native of St. Paul and a resident of Eau Claire.[15] After tying the knot in 1889,[16] the couple had two daughters: Josephine (1890-1946)[17] and Laura (1892-1976).[18] In 1902, Morganstern married fellow San Franciscan Bertha E. Strouse (1874-1944) in Carson City, Nevada.[19] This union produced a son named Alfred J. Morganstern, Jr., who went by "Jack" (1907-?).[20]

As explained below, Morganstern developed a gambling problem as a young man. As a result, he began passing bad checks to support

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[9] *See Personals*, MAIL (Stockton, CA), Apr. 13, 1892, at 1.
[10] *See Brief Locals*, L.A. EXPRESS, Sept. 2, 1892, at 8.
[11] Different sources use different dates when discussing Morganstern's admission to the California bar. While testifying at his 1926 readmission hearing, Morganstern guessed that he had been admitted in 1898, see In the Matter of the Petition of Alfred J. Morganstern for Reinstatement, Civ. 5485 (Cal. Dist. Ct. App.) (Hearing—Transcript of Testimony, at 26, dated Dec. 3, 1926) [hereinafter 12/3/26 Transcript] (copy on file with the author), but this almost certainly is wrong given that in 1896, he won his first case in the California Supreme Court. *See* People v. Cummings, 46 P. 284 (Cal. 1896).
[12] *See Theater Change: Two Managers Go Out, and a New One Comes in from San Francisco*, L.A. SUNDAY TIMES, Sept. 10, 1905, at 2 (pt. II).
[13] *See* NOTABLES, *supra* note 7.
[14] *See* Bates, *supra* note 8, at 435. An obituary has not been found for Katie and her cause of death is unknown.
[15] *See Matrimonial*, EAU CLAIRE NEWS (WI), Apr. 12, 1889, at 1.
[16] *Id.*
[17] For Josephine's obituary, see *Deaths*, S.F. EXAMINER, Oct. 17, 1946, at 15.
[18] For Laura's obituary, see *Funerals*, S.F. EXAMINER, Oct. 19, 1976, at 36.
[19] *See Married in Carson*, DAILY NEVADA STATE J. (Reno), Feb. 25, 1902, at 1. For Bertha's obituary, see *infra* note 60.
[20] *See Births—Boys*, L.A. HERALD, July 29, 1907, at 9. An obituary for Jack has not been found and the cause and year of his death are unknown.

his habit, which was the reason he was forced to move from Wisconsin to Washington and then from Washington to California.[21] Once in California, however, Morganstern's income as a lawyer provided him (for a time) with sufficient funds to indulge his passion.

In 1918, Morganstern ran for a seat on the San Diego superior court.[22] Although he lost in the primary,[23] to most observers he appeared to have the world on a string. In fact, however, Morganstern's gambling debts finally were catching up to him. Thus, shortly after the primary he was forced to sell his palatial home in San Diego's posh Mission Hills neighborhood (the buyer was future U.S. District Judge Ralph E. Jenney).[24] When this proved insufficient, Morganstern in 1919 filed for bankruptcy[25] but was stymied by one of his creditors (Katherine E. McNabb), who refused to go along with his reorganization plan.[26]

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[21] *See*, *e.g.*, *Tacoma News Brevities*, SEATTLE POST-INTELLIGENCER, Mar. 15, 1891, at 8; *A Petty Swindler: Stenographer Morganstern in Trouble Again—The Bogus Check Racket—After a Disreputable Career in Seattle He Transfers Operations to Snohomish and is Arrested*, SEATTLE POST-INTELLIGENCER, July 21, 1891, at 8; *At His Old Tricks: Alfred Morganstern Still Swindling Right and Left—Heard from at Los Angeles—He Played Court Reporter, Kept Women and Gave Worthless Checks—Now Among the Missing*, SEATTLE POST-INTELLIGENCER, Dec. 27, 1892, at 5; *At His Old Tricks Again: Stenographer Morganstern Cannot Restrain His Propensity for Borrowing*, DAILY LEDGER (Tacoma), May 30, 1893, at 5.

[22] *See Enters Race for Superior Bench—Attorney A.J. Morganstern Announces Candidacy for Judgeship Held by Guy*, S.D. UNION, July 1, 1918, at 5.

[23] *See Mix-Ups Still in Primary: Later Returns Bring No Changes in Various County Offices—Governorship and District Attorney Race in a Mix*, DAILY TIMES ADVOCATE (Escondido, CA), Aug. 29, 1918, at 4.

[24] *See* ALLEN HAZARD & JANET O'DEA, MISSION HILLS 20 (2015) (explaining that the home, which was designed by the noted architect Walter Keller, featured a "symmetrical façade [and had] a brick veneer, high-hipped roofline, and multiple French doors."). For a profile of Jenney (1883-1945), see *Ralph E. Jenney, U.S. Judge Here, Dies at 62 Years*, L.A. TIMES, July 14, 1945, at 1 (pt. I) (reporting that Jenney was born in Detroit, graduated from the University of Michigan in 1906, and moved to San Diego in 1912).

[25] *See Attorney is Bankrupt*, L.A. DAILY TIMES, Nov. 5, 1919, at 8 (pt. II) (reporting that Morganstern's assets, "consisting of a life insurance policy, his personal effects, and his law library" amounted to $6,815, while his liabilities totaled $37,024.10).

[26] *See* In the Matter of Proceedings for the Disbarment of A.J. Morganstern, Crim. No. 2477 (Cal. Sup. Ct.) (Transcript on Appeal,

III. MORGANSTERN'S DISBARMENT

On August 3, 1921, the Lawyers Institute of San Diego ("LISD"), one of the two forerunners of the present-day San Diego County Bar Association,[27] filed a five-count "accusation" against Morganstern demanding that he be permanently disbarred. In explaining the lawsuit to its readers, one newspaper wrote:

> Five accusations charging attorney A.J. Morganstern, prominent San Diego barrister, with "moral turpitude, dishonesty and corruption," were filed in the superior court here today by the Lawyers Institute, an organization of practicing attorneys, who seek his permanent disbarment in California courts.
>
> Morganstern is accused of appropriating funds from various clients, on the pretense that he was using them in legal appeals and other court actions.[28]

On September 6, 1921, the LISD filed an amended accusation.[29] Once again, it charged Morganstern with engaging in unethical behavior with respect to five of his clients: Dr. Lewis H. Gilman (conversion of client property and excessive costs); Sue A. McLennan and her husband Donald D. McLennan (conversion of client property); George E. Bishop (neglect and lack of candor); and Edna Merrill (lack of diligence and excessive costs). Of these charges, the two most serious involved Gilman and Bishop.

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filed June 5, 1922) (copy on file with the author) (quoting Morganstern as saying, *id.* at 179-80, "I have not wiped out my indebtedness by bankruptcy; I made a composition [*i.e.*, a settlement offer] by giving five[-]year notes in full, principal and interest, covering my obligations, which were accepted by all creditors except Mrs. McNabb.").

[27] *See* LELAND G. STANFORD, FOOTPRINTS OF JUSTICE . . . IN SAN DIEGO 120 (1960) (explaining that in 1922 the LISD combined with the San Diego Bar Association to form the Bar Association of San Diego, which in 1954 became the San Diego County Bar Association).

[28] *San Diego Lawyers Accuse Attorney of Dishonesty in Disbarment Action*, SANTA ANA DAILY EVENING REG. (CA), Aug. 3, 1921, at 1.

[29] *See* In the Matter of Proceedings for Disbarment of A.J. Morganstern, No. 35358 (Cal. Super. Ct.—Dep't No. 1—San Diego Cnty.) (Amended Accusation, filed Sept. 6, 1921) (copy on file with the author).

Morganstern had agreed to defend Gilman, who was charged with murder, and had advised Gilman and his wife Agnes that his fee, including costs, would be $6,000. To pay this amount, the Gilmans gave Morganstern seven bonds, having an aggregate face value of $7,000, and told Morganstern to sell them, take out his fees and costs, and return any excess. As matters turned out, the excess came to $690. Instead of remitting this amount, Morganstern requested an additional $2,000, which the Gilmans later claimed Morganstern said he needed to bribe the jury because it was the only way to save Gilman from being hung. After briefly balking at this sum, Mrs. Gilman paid Morganstern $1,800, which Morganstern proceeded to pocket. In the meantime, Gilman was found guilty and sentenced to life imprisonment at San Quentin.[30]

Morganstern similarly had agreed to represent Bishop in a civil case in which Bishop, together with several other parties, was being sued by George W. Stephenson. When the trial court ruled in Stephenson's favor, Bishop directed Morganstern to file an appeal. Morganstern advised Bishop that to do so, Morganstern needed $100 to pay the court reporter to prepare a transcript. Although Bishop promptly gave Morganstern a check for $100, Morganstern failed to pay the court reporter for two months, by which time Bishop's appeal had become time barred. To remedy the situation, Morganstern submitted an "excusable neglect" affidavit in which he falsely claimed that after receiving the check, he had become "very ill, and within a day or two thereafter suffered a nervous collapse necessitating his confinement in bed for several weeks."[31]

On September 14, 1921, Morganstern responded to the amended accusation by filing a motion to quash on the ground that the LISD lacked standing.[32] On September 16, 1921, Judge John P. Wood[33]

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[30] *See San Diego Attorney Faces Graft Charge*, HANFORD DAILY SENTINEL (CA), Dec. 15, 1921, at 3.

[31] Amended Accusation, *supra* note 29.

[32] *See* In the Matter of Proceedings for Disbarment of A.J. Morganstern, No. 35358 (Cal. Super. Ct.—Dep't No. 1—San Diego Cnty.) (Motion to Quash, filed Sept. 14, 1921) (copy on file with the author). Morganstern claimed the LISD lacked standing because neither its corporate charter, nor any law, authorized it "to bring an accusation for the disbarment of an attorney." *Id.* ¶ 1(b).

[33] Because of Morganstern's local prominence, it was agreed that an outside judge would hear the case and would sit without a jury. *See Disbarment Action to be Called Today*, SAN DIEGO UNION, Dec. 14, 1921, at 15. Subsequently, Judge John P. Wood, a Los Angeles County Superior Court judge since 1911, was appointed. *Id.* For a

orally denied Morganstern's motion and ordered him to file an answer within 15 days.[34] On October 3, 1921, Morganstern complied.[35] After repeating his earlier argument that the LISD lacked standing, Morganstern flatly denied all the charges without going into any details.

On December 14, 1921, Judge Wood began the trial. Over the course of nearly a week, a parade of witnesses, including Morganstern, testified. On December 20, 1921, Judge Wood, speaking from the bench, ruled that Morganstern was guilty as charged in the Gilman and Bishop matters:

> A.J. Morganstern, one of the most prominent members of the local bar, was found guilty today of moral turpitude, corruption, and dishonesty, and was ordered disbarred from further practice before the bar in this State. Judge J. Perry Wood of Los Angeles, who has been presiding at the trial, announced the sentence.
>
> Charges against Morganstern were brought by the San Diego Lawyers' Institute, and the prosecution was carried on by representatives of that body. Misuse of money entrusted to him by several clients was alleged by the Institute and during the trial the prosecution charged the defendant with perjury in his testimony. In passing sentence Judge Wood said that he had been obliged to disregard nearly all of Morganstern's testimony and referred to discrepancies that had been noted therein.

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profile of Wood (1879-1959), see *Judge John P. Wood Dies of Heart Attack*, L.A. MIRROR NEWS, Aug. 11, 1959, at 4 (pt. II) (explaining that Wood, originally from Baltimore, moved to Pasadena, California, in 1902 after earning a law degree at Yale University).

[34] *See* In the Matter of Proceedings for Disbarment of A.J. Morganstern, No. 35358 (Cal. Super. Ct.—Dep't No. 1—San Diego Cnty.) (Minutes of the Court, dated Sept. 16, 1921) (copy on file with the author).

[35] *See* In the Matter of Proceedings for Disbarment of A.J. Morganstern, No. 35358 (Cal. Super. Ct.—Dep't No. 1—San Diego Cnty.) (Answer to Amended Accusation, filed Oct. 3, 1921) (copy on file with the author).

> Morganstern, through his attorneys, gave formal notice of appeal from the judgment.[36]

Several months later, on March 2, 1922, Morganstern filed his notice of appeal with the California Supreme Court.[37] Incredibly, in July 1922, while waiting for this appeal to be heard, Morganstern was arrested for passing a worthless $50 check.[38] During this time newsman Clarence A. McGrew published his two-volume history of San Diego. In a long passage, McGrew, using words he surely came to regret, effusively praised Morganstern:

> As a strong and active member of the San Diego bar during a period of twelve years, Alfred J. Morganstern wields an influence that only men of unusual strength of character and power can exercise in a community of sixty thousand people. . . .
>
> Mr. Morganstern has won merited distinction by reason of the possession of brilliant legal gifts and on account of his conservative, self-assured, well-prepared, clean-cut and successful handling of the cases placed in his care. He holds membership in the Lawyers' Institute of San Diego, the San Diego County Bar Association [sic], the California Bar Association and the American Bar Association, and is held in high esteem by his fellow practitioners who recognize his respect for and observance of high professional ethics.[39]

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[36] *Forbid Attorney to Practice Law in State Courts*, L.A. DAILY TIMES, Dec. 21, 1921, at 11 (pt. II).

[37] *See* In the Matter of Proceedings for the Disbarment of A.J. Morganstern, Crim. No. 2477 (Cal. Sup. Ct.) (Notice of Appeal, filed Mar. 2, 1922) (copy on file with the author).

[38] *See Jail Morganstern on Check Charge*, EVENING TRIB. (San Diego), July 24, 1922, at 10. *See also Case Against A.J. Morganstern is Continued*, SAN PEDRO DAILY PILOT (CA), Aug. 23, 1922, at 1. Because there is no further public reporting about this case, it is not known how the charges were resolved.

[39] 2 CLARENCE ALAN MCGREW, CITY OF SAN DIEGO AND SAN DIEGO COUNTY: THE BIRTHPLACE OF CALIFORNIA 381 (1922). McGrew (1875-1963), originally from New Jersey, earned a bachelor's degree from Harvard University in 1897 and moved to California in 1906. In 1910, he became an editor at the *San Diego Union*, the city's main newspaper. *See Former Editor of SD Union is Taken by Death*, DAILY TIMES-ADVOC. (Escondido, CA), Feb. 19, 1963, at 2.

On February 1, 1923, the California Supreme Court transferred Morganstern's appeal to the Second District Court of Appeal ("DCA") in Los Angeles.[40] On April 17, 1923, it unanimously affirmed Judge Wood's ruling[41] and wrote, in an opinion authored by Associate Justice Frederick W. Houser[42]:

> It is insisted that the judgment is not in accordance with the evidence; but it is the rule that, where the evidence is sufficient, even though there be a conflict therein, the appellate court will not interfere with the judgment. That is a matter which is exclusively within the province of the trial court. [citations omitted] From an examination of the record herein, this court is convinced that the evidence adduced, though conflicting, was sufficient to support the judgment.[43]

IV. MORGANSTERN'S PETITION FOR REINSTATEMENT

On March 1, 1923, while waiting for the DCA to rule on his appeal, Morganstern applied for his first passport. On the form, he described himself as 5'7½" with a fair complexion, brown eyes, and graying brown hair.[44] Following his disbarment, Morganstern used his new passport to sail from New York to Europe.[45] While on the continent, Morganstern visited Berlin, London, and Paris and took

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[40] *See New Suits, Probate Filings, Etc.*, RECORDER (S.F.), Feb. 2, 1923, at 1, 8.

[41] *See supra* note 3. *See also Uphold Disbarring of A.J. Morganstern*, L.A. EVENING EXPRESS, Apr. 18, 1923, at 1.

[42] For a profile of Houser (1871-1942), who served on the California Supreme Court from 1937 to 1942, see *Frederick W. Houser*, CALIFORNIA SUPREME COURT HISTORICAL SOCIETY, *at* https://www.cschs.org/history/california-supreme-court-justices/frederick-w-houser/ (last visited Apr. 1, 2026) (under "In Memoriam"). As this source reports, Houser, originally from Iowa, moved to California in 1886, read law, was admitted to the bar in 1897, and then helped organize (and in 1898 graduated from) the Los Angeles Law School (now the University of Southern California).

[43] *Morganstern*, 215 P. at 725.

[44] *See Jacob Morganstern in the U.S., Passport Applications, 1795-1925*, ANCESTRY.COM, https://www.ancestry.com/discoveryui-content/view/600702211:1174 (due to a typographical error, the title of this webpage omits Morganstern's first name).

[45] *Id.* (giving Morganstern's travel plans).

it upon himself to find a solution to Germany's hyperinflation crisis.[46]

After trying his hand at various business ventures, all of which failed, Morganstern on October 2, 1926, filed a petition for reinstatement with the DCA.[47] In it, he pleaded for restoration of his license:

> [P]etitioner first entered a law office in his 14th year, and from the time of such entry to the date of his disbarment has been continuously engaged in law work. That the years of his practice in the State of California from the time of his admission to the Supreme Court thereof to the date of his disbarment are more than 24 years. Petitioner desires to be reinstated as a member of the bar of the State of California, and in this behalf represents that he is totally and entirely unfitted for any pursuit of a vocational nature other than the practice of the law.[48]

On November 15, 1926, the DCA referred Morganstern's petition to the State Board of Bar Examiners ("SBBE").[49]

Three weeks later, John E. Biby, one of the SBBE's three members, traveled to San Diego.[50] On December 3, 1926, in a hearing room

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[46] *See S.D. Lawyer Home from Germany*, EVENING TRIB. (San Diego), Nov. 12, 1923, at 13. *See also* Alfred J. Morganstern, *Trouble in Europe and the Remedy*, SAN DIEGO UNION, Dec. 16, 1923, at 11 (long op-ed explaining his proposed solution).

[47] *See* In the Matter of the Petition of Alfred J. Morganstern for Reinstatement, Civ. No. 5485 (Cal. Dist. Ct. App.) (Petition, filed Oct. 2, 1926) (copy on file with the author).

[48] *Id.* at 1.

[49] *See* In the Matter of the Application of Alfred J. Morganstern for Reinstatement as Attorney and Counselor at Law, Civ. 5485 (Cal. Dist. Ct. App.) (Order of Referral, filed Nov. 15, 1926) (copy on file with the author). Referring applications for readmission to the SBBE was standard procedure in California at this time. *See* H.G.B., Comment, *Attorneys: Procedure for Reinstatement of Disbarred Attorneys: Moral Qualifications Principal Work of Bar Examiners*, 13 CAL. L. REV. 407 (1925).

[50] Biby (1882-1962), originally from Illinois, was a 1910 graduate of the University of Southern California's law school. He joined the SBBE just a few months before being assigned to Morganstern's case. *See Cushing Resigns from Bar Quiz Board: John E. Biby of Los*

in the city's municipal building, Biby spent the day listening to Morganstern and 18 other witnesses (11 for Morganstern and seven for the Bar Association of San Diego, which opposed Morganstern's readmission).[51]

One of the witnesses was Bertha, who, after identifying herself as Morganstern's wife, was asked how she, Morganstern, and their 19-year-old son Jack were managing to get by without Morganstern's income. She replied: "I rent my house and we live from the proceeds."[52]

As expected, the most important witness was Morganstern, who for the first time finally came clean about his gambling addiction:

> DIRECT EXAMINTION BY MR. HILLYER[53]:
>
> Q: Can you give some idea as to your earnings in the [legal] profession?
>
> A: Oh, they varied; the high spot I think was in 1912; that year I think was a little over $73,000; other years ran as low as $25,000 and $30,000. . . .
>
> Q: Reference has been made in cross examination of some of these witnesses to your reputation here with regard to visiting the racetrack and gambling and issuing checks.
>
> A: All quite true. I know of nothing in the way of amusement that I am as fond of as a horse race. I know of nothing, that is I know of no man who has

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Angeles Named by Supreme Court as Successor, RECORDER (S.F.), May 20, 1926, at 1.

[51] *See Examiner Hears Attorney's Plea: A.J. Morganstern, Disbarred Five Years Ago, Asks Readmission to Bar*, SAN DIEGO UNION, Dec. 4, 1926, at 7.

[52] *See* 12/3/26 Transcript, *supra* note 11, at 101. Presumably this was the house in San Francisco in which Bertha had been living when she married Morganstern in 1902.

[53] Curtis Hillyer (1872-1951) was a San Francisco lawyer whom Morganstern had known for years. For a profile of Hillyer, see *Curtis Hillyer Services Set*, S.F. EXAMINER, June 5, 1951, at 16 (explaining that Hillyer, originally from Nevada, attended the Hastings College of the Law, was admitted to the California bar in 1893, and in his later years became a well-known author of legal texts).

had a greater obsession for gambling than I did; no matter what my earnings were, at the end of the year I was in debt. I cannot remember a single year that I did not owe some bank money at the end of the year.

Q: Has there been any change in your mental attitude since your disbarment in regard to these matters?

A: Considerable change. I want to say, in regard to issuing checks, I don't want it to be understood that I have ever issued checks for the purpose of defrauding anybody; I don't want it understood that I have in cold blood, except under the influence of the passion of gambling, ever written a check without funds in the bank to meet it; I don't know of any check I ever issued that was not paid.

Q: Has there been any change in your attitude toward the subject of gambling?

A: My attitude is this; this may be taken as a stipulation: From the day of my reinstatement, if reinstated, to the day of my death, I know of no inducement that could possibly cause me to indulge in the habit of gambling again. I want to say for the purpose of the record that there never was an irregularity in my life, never an unhappiness in my life that was not traceable directly to that source and I have fully learned the lesson.

Q: Since your disbarment, what has been your conduct in that regard?

A: Well before my return to San Diego, during all of the time in Europe I did nothing of that sort; while in New York, in common with other guests of the hotel, in parties, I went to the racetracks there I think perhaps a half dozen times.

Q: Did you gamble on those occasions?

A: No, with one exception; I made a five dollar wager in an international race between a horse that was brought here from France and some American horse and I won, I think $3.50 as the result of the wager.

> Since my return to San Diego the question of whether I had control of my disposition in that respect has confronted me seriously and I knew that I should be called upon to make either a promise or a statement as to what my condition of mind was as to whether I had control of that habit, and I have sat down and played cards in a very small way, possibly a dozen times, and I am able to say to you that the feeling, instead of being a pleasurable one was one of repulsion. I have determined by that sort of investigation that that which was a vicious habit is no longer a habit. I have determined that situation is controlled and I have nothing to fear in that respect. It used to be so that I would work all day in order to be sure to have money enough to play all night and my health broke down under it, of course. It is only fair to state that for some three years before this disbarment I was in a miserable state of health, on the verge of prostration constantly. I did break down at times; I don't think I was given very much decent consideration about that time.
>
> CROSS EXAMINATION BY MR. FRANCIS[54]:
>
> Q: To what, Mr. Morganstern, do you attribute the fact you state to be a fact, that gambling is now repulsive to you whereas you used to find pleasure in it?
>
> A: I mean I find no pleasure in it; I feel shame of doing it; it is a repellent feeling; it used to be a joy.
>
> Q: All your life it used to be a joy?
>
> A: No, I wouldn't put it that way; not all my life. It started early in life as a result of a great unhappiness, not of this character, and it became a habit almost without consciousness on my part that it was becoming a habit.

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[54] W. Wirt Francis (1878-1949) was the lead attorney for the Bar Association of San Diego. For a profile of Francis, see Bates, *supra* note 8, at 314 (indicating that Francis was born in Michigan, moved to California in 1885, read law, and was admitted to the bar in 1910).

Q: How do you account for the change in your mental attitude that would make that which was formerly a delight and passion now a repugnance?

A: I get the force of your question, Mr. Francis. I think that perhaps during the period of time I was in Europe I had lots of time to think, lots of time to take stock of myself, considerable time to make a survey of my life. I had worked all my life as a sort of cart horse; that is, there was work to do and I did it; I had no special ambition; I never had any desire to reach any given point; simply had the work to do and did it. My experience abroad instilled in my mind, the purpose of life that I had never thought of before, regardless of my ability to reason and to think; in other words I had gotten away from the atmosphere of the treadmill and had an opportunity to live in an atmosphere that from a cultural standpoint was on a very high plane. I think that is the way I would analyze it. I think it would be difficult for me to analyze it.

Q: You say that change in your mental attitude took place when you were in Europe?

A: Yes.

Q: Since then have you done any gambling, any considerable amount of gambling except to test yourself?

A: No, no considerable amount except as I related to you, and never involving anything except the very pettiest of stakes. I was not in a position to do anything else. I was testing myself because the attitude—I can best describe it by this story. I was on one occasion, and it was told of me around here with a good deal of gusto, I went to Tijuana[, Mexico,] many years ago and lost a great deal of money playing faro bank. I had a dollar or two left and sat down and played a game called pangingi [sic—should be panguingue] where the stakes were five cents and they tell me that I spent the remainder of the night playing that game after losing thousands of dollars. In other words it was the passion of playing, Mr. Francis, if you can get what I mean, but I sincerely

> and honestly think it has gone; I mean I have controlled it.
>
> Q: You say in the last three years you have not played except for very small stakes. I believe you made the remark that your financial condition prohibited anything else.
>
> A: Yes, within the past year; not the past few years.
>
> Q: Do you believe that you are able to withstand the temptation of playing for high stakes?
>
> A: I say to you on my solemn honor, there isn't anything that would induce me to play in case of my reinstatement for any stakes, no matter what. I have ahead of me certain things I have got to do. I owe a great deal of money, it has got to be paid and I cannot die without paying it. There is only one way to pay it off, that is to earn it and only one way I have of earning it and that is by practicing law. I have to do that in the next four or five years, that is all I think I have, because my life has been a very severe one, as you can well see, and if I can in the next four or five years be able to earn enough to pay my debts and leave my family with a little something, I will be content.[55]

On May 16, 1927, Biby and the other members of the SBBE (George D. McNoble and Arthur T. Tasheira) unanimously voted to deny Morganstern's petition[56] because: "Petitioner's conduct in San Diego . . . resulted in a loss of public confidence in him, and nothing has occurred since petitioner's disbarment to restore the public's confidence in him."[57]

Morganstern's petition now returned to the DCA. On August 15, 1927, it unanimously upheld the SBBE[58] after finding that Morganstern's rehabilitation was incomplete:

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[55] 12/3/26 Transcript, *supra* note 11, at 28-33.
[56] *See* In the Matter of the Application of Alfred J. Morganstern for Reinstatement as an Attorney and Counselor at Law, Civ. 5485 (Cal. Dist. Ct. App.) (State Board of Bar Examiners Findings of Fact, dated May 16, 1927) (copy on file with the author).
[57] *Id.* at 6.
[58] *See supra* note 4. *See also Lifting Ban on Lawyer Prevented: Morganstern Denied Plea for Reinstatement at Bar by Justice Works*,

> [Morganstern] testified [before the SBBE] that he has overcome his passion for gambling, and he pledged himself in the most solemn manner never to engage in the practice again. We are not under the slightest impulsion to discredit his asseverations in these respects. On the other hand, we yield to them full credit. As far as we may judge from the typewritten page, his attitude is marked by the highest degree of sincerity, his mind is colored by the healthful influence of a high resolve. He undoubtedly believes that his reform is permanent.
>
> If his rights alone were involved, we should not hesitate to order his readmission. We confess a feeling of deep sympathy for this mind which has emerged from turmoil into a sense of triumph. The promptings of charity forbid us wantonly to utter a word which may change this feeling to one of discouragement or despair. The public interest in the issue of this proceeding, however, is paramount to every consideration looking alone to the fate of petitioner.
>
> Under all the circumstances shown by the record, we cannot yet confide in a conclusion that petitioner's reform is complete and final, and it would be unfair to the public interest to order a readmission except upon a feeling, bordering upon conviction, that he has forever put under foot the temptations of the past.[59]

In 1929, Morganstern suffered a nervous breakdown from which he never recovered, and which apparently caused Bertha to leave him.[60] After lingering in this condition for seven years, Morganstern

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L.A. TIMES, Aug. 16, 1927, at 2 (pt. II). This headline refers to DCA Presiding Justice Lewis R. Works, the opinion's author. For a profile of Works (1869-1933), see *Saturday's Proceedings*, RECORDER (S.F.), Oct. 30, 1933, at 1, 8 (explaining that Works was born in Indiana, moved to California in 1887, read law, and was admitted to the bar in 1892).

[59] *Morganstern*, 215 P. at 92 (paragraphing slightly altered for improved readability).

[60] Although there is no evidence that the pair divorced, in her later years Bertha began using the last name "Morgan." *See*, *e.g.*, *Deaths—Funeral Announcements*, SAN DIEGO UNION, Oct. 19, 1944, at 7B (under "Morgan—Bertha E.").

died on November 26, 1936, at the age of 67. The next day, the San Diego *Evening Tribune* ran a long piece describing Morganstern's end:

> A broken heart, according to grieving friends, brought death yesterday to A.J. Morganstern, who 12 years ago, at the height of a brilliant law career, was disbarred from the profession he loved on charges believed in many quarters to be false.
>
> He died at the home of Mr. and Mrs. Marston Harding at Del Mar, where he had been an honored guest since a nervous breakdown in 1929. When, after a long fight to gain vindication, the noted attorney saw still another Thanksgiving day dawn without the victory he believed he deserved, he bowed to the inevitable and quitted the battle, his friends assert. . . .
>
> Morganstern, who inspired the deepest personal loyalty of his friends and the sharpest enmity among those he crossed during the course of his career, often had asserted his fight for restoration to the Bar association rolls was not inspired by the hope of resuming law practice. "If I had it coming, I'd take it," he is said to have told intimates. "But I know I didn't have it coming. . . ."
>
> There probably will be no funeral service preceding the cremation that he had expressed a wish for. . . . [His] daughters, Mrs. Harold Brayton and Mrs. Laura Kane, both of San Francisco, were notified yesterday, as was a son, A.J. Morganstern Jr., residing in New York.[61]

V. CONCLUSION

In 1995, the California Supreme Court relied on the DCA's decision not to readmit Morganstern in a case called *In re Menna*.[62] Menna developed a gambling addiction in 1979 after discovering Atlantic City's casinos. Following disbarment and imprisonment in New

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[61] *Morganstern Dies at Home of Friend*, EVENING TRIB. (San Diego), Nov. 27, 1936, at 6C. It appears that Morganstern was cremated, for no evidence of a grave has been found.

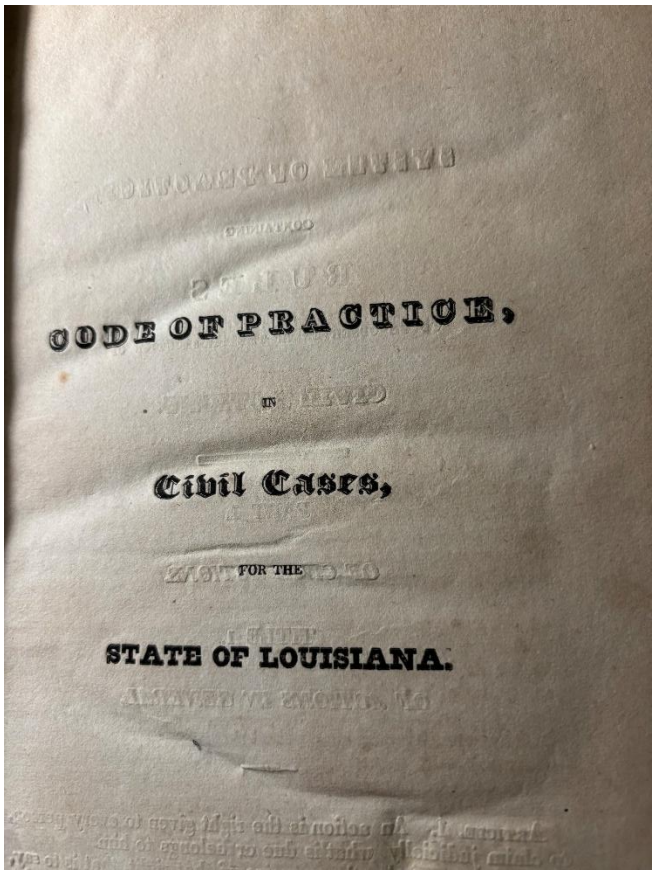
[62] 905 P.2d 944 (Cal. 1995).

Jersey, Menna moved to California in 1989 and in 1990 passed the bar exam. In refusing to admit him, the California Supreme Court explained that his rehabilitation was still a work in progress and cited Morganstern's 1927 case.[63] Thus, at least in this respect, Morganstern managed to set the bar high for future attorneys.

[63] *Id.* at 952.

A Code of Practice For Louisiana
The *Code of Civil Practice, In Civil Cases, for the State of Louisiana* 1825

Warren M. Billings*



Code of Practice title page. Courtesy of a Private Collector.

The *Code of Civil Practice, In Civil Cases for the State of Louisiana* was part of a scheme that amended the existing civil code. It arose in the controversies that animated the General Assembly during

the 1820s, but the course of its creation is not fully appreciated. Some of the politicians who devised it are familiar, but others are less so. Legislative procedures that governed the path to its adoption are even less well known. The following essay explores the making of the *Code of Civil Practice*. It discusses legislative procedures. It introduces the politicians and discusses the controversies that animated them. Then it suggests how those differences were composed. Finally, it describes the code itself and sets the 1825 *Code of Civil Practice* in its place in the history of Louisiana law and legal culture.

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In 1808 the territorial General Assembly published *A Digest of the Civil Laws Now in Force in the Territory of Orleans, with Alterations and Amendments Adapted to the Present System of Government* in English and French on facing pages. It compiled the known statutory, customary, or judge-made law into an orderly corpus of first principles and civilian precepts that were at the heart of the territory's private law. The enabling statute also abrogated "whatever in the ancient laws of this territory, or in the territorial statute, is contrary to the dispositions contained in the said digest, or irreconcilable with them."[1] Intended as a stopgap, the *Digest* would stand until the day the Assembly enacted a completed civil code but that day would never come.

Instead, lawyers, judges, and everyone else came to regard the *Digest* as a civil code, but there were no uniform rules of practice which was a perennial impediment. Imperfections in the English version also hindered litigation because the Constitution of 1812 mandated that all judicial and legislative proceedings were to be "promulgated, preserved and conducted in the language in which

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*Distinguished Professor of History, *Emeritus*, University of New Orleans and Bicentennial Historian of the Supreme Court of Louisiana. He gratefully acknowledges the assistance of Abigail Bean, Tara Cunningham, and Sara Pixon of the Law Library of Louisiana, Endrina Tay the Marie and Fiske Kimball Librarian at the Thomas Jefferson Library in Charlottesville, Va., James E. Duggan Director of the Library at the Tulane University School of Law, and the comments of E. Phelps Gay, Chairman of the Board of Directors of the Supreme Court of Louisiana Historical Society.

[1]Chapter XIX, An Act Providing for a digest of the Civil Laws now in force in the Territory of Orleans, *Acts Passed at the First Session of the Second Legislature of the Territory of Orleans* (New Orleans, 1808), 120.

the constitution of the United States is written."[2] Other shortcomings were sources of confusion and festering irritants that grew in the passing years. The Supreme Court heightened the confusion when it ruled in *Cottin v. Cottin*[3] that the *Digest* was merely an incomplete digest of existing laws. That decision had the effect of overruling the enabling statute which created the *Digest* and reviving ancient Spanish laws. The irritants came to a head after the Supreme Court declared that family matters fell within another constitutional stipulation that judicial proceedings must be conducted in English. At length, a rising drumbeat of grievances stirred the General Assembly to action.

In the 1820s, the General Assembly differed from its territorial antecedent. The Constitution of 1812 had imposed an American style bicameral representative legislature upon Louisiana. It resembled others elsewhere in the US in its form and distribution of its powers. Governors were elected every four years but were forbidden consecutive terms. Members of the House and Senate served two and four year terms respectively. Each chamber had its presiding officer, clerk, committees, sergeant at arms, and doorkeeper. They communicated with one another via written messages and special conferences, as did the governor, and they confirmed gubernatorial nominees. Bills initiated in either body, but money bills were the province of the House, although they could be amended in the Senate. They became statutes once they passed both bodies and the governor initialed them into law.[4]

Proceedings in the General Assembly were patterned on Thomas Jefferson's *Manual of Parliamentary Practice, for the Senate of the United States* (Washington, D.C., 1801, 1812)[5] but were tailored to

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[2]Art. 5, sec. 16, Constitution or Form of Government of the State of Louisiana, Cecil Morgan, ed. *The First Constitution of the State of Louisiana* (Baton Rouge, 1975), facsimile pp.23-24.
[3]5 Mart (o.s.) 93, 1817.
[4]Morgan, ed. *First Constitution*, facsimile pp.4-15.
[5]A third edition was issued in 1813 and printed in Lancaster, Pa. by William Dickson, but which of those editions circulated in the General Assembly is uncertain. However, Bernard de Marigny gifted the Assembly with a French translation. That edition was entitled *Manuel du droit parlementaire; ou, Précis des règles suivies dans le Parlement d'Angleterre et dans le Congrès des États-Unis, pour l'introduction, la discussion et la décision des affaires* (Paris,1814). It was the handiwork of an obscure minor French Diplomat called Louis André Pichon (1771–1854) who had connections with Thomas Jefferson. Only two copies have been located. One is in the Harvard University law library; the other belongs to a New

unique Louisiana conditions. For instance, the General Assembly elected the governor, and a senator presided over Senate since there was no lieutenant governor. The journals and orders of the day were published in English and French. They recorded votes and proceedings but not floor debates. Sometimes entries were incomplete whereas others were often misleading or inaccurate.

The General Assemblies that produced the *Code of Civil Practice* were small bodies that rarely approached fifty men in toto. Members were prominent planters, commercial men, and lawyers from across the state. More had resettled from elsewhere than were native, and those who were of Gallic origins outnumbered those of Anglo-American stocks. They were acquainted with one another either through business or legal dealings or through belonging to the Free Masons. Some were extraordinarily gifted, clever individuals, most were journeymen politicians, and a handful were merely dolts. They equated their interests as synonymous with those of the citizenry, and their place in the General Assembly allowed them to further those ends by fair means or foul. Whoever they were, these competitive men seldom saw eye to eye, and they made the shifting coalitions that contested the code's ultimate configuration.[6]

Jacques Villeré (1761–1830)[7] was Louisiana's first native born governor. Born in what is now Jefferson Parish, he was educated in France and commissioned as an artillery officer in Saint-

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Orleans collector. See Warren M. Billings, "Louis André Pichon's Manual of Parliamentary Practice," *De Novo, The Tri-Annual News Letter of the Law Library of Louisiana* (forthcoming).

[6]Identifying the members is a challenge, given the evidence. Nevertheless, a Baton Rouge local historian, the late Leroy Ellis Willie compiled a useful though incomplete list of sitting members of every General Assembly that met between 1804 and 1903, As best he could, Willie identified senators and representatives by name, residence, occupation, and political affiliation. He also mapped the location and evolution of senate and house constituencies, and he linked respective members to each of them. See Leroy Ellis Willie, *A Look At Louisiana's First Century, 1804–1903* (Baton Rouge, 1996). He did not fathom their coalitions in relation to making a code of practice. However, it is sometimes possible to identify some factions by combining his information with data gleaned from the assembly journals and other sources.

[7]Joseph G. Tregle, "Jacques Philippe Villeré, governor," *Dictionary of Louisiana Biography Online*; Joseph G. Tregle, *Louisiana in the Age of Jackson, A Clash of Cultures and Personalities* (Baton Rouge, 1999), 27, 82, 114.

Domingue. He returned to Louisiana after he inherited his family's estates and became one of the richest of his contemporaries. As a political figure he sought to bridge the heated ethnic and cultural differences that cursed the early years of statehood. Although that stance would cost him his re-election when Edward Livingston (1764–1836)[8] and Thomas Bolling Robertson[9] allied to defeat him, he initiated the effort to adopt a code of civil practice.

In a written address to a joint session of the outgoing General Assembly in January 1820, Villeré made the argument this way. "By the provisions of the statutes organizing our courts of justice," said he

> "each one of them [the courts] possesses the power to make its own rules of proceedings. Such a state of things cannot be but appear vicious to a reflecting mind, able to appreciate the advantages of a uniform system of legislation. For it is in fact absurd, that in the same state, the form of proceeding should vary in each district. It may be said besides that there is some measure a want of constitutionality in thus converting judges into legislators. Judges should only be expounders of the law, their function ought to be limited to the application of its rules; they should never enact them themselves.
> "Those reflections have induced me, Fellow-citizens, to recommend to your consideration the formation of a code of practice, embracing all the parts, all the details of practice in our courts.
> "Such a work is indispensable, if, as I am fully convinced, you wish to banish from your institution, whatever is arbitrary, and not in harmony with the grand principles of our social compact. If you desire that all your magistrates and citizens should be governed by fixed or general rules, and above all, if you

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[8]Marie Windell, "Edward Livingston, Attorney, Politician, U.S. Senator, Diplomat," *Dictionary of Louisiana Biography Online*.

[9]Thomas Bolling Robertson was a Virginian who always boasted of his ancestor Pocahontas. Educated at the College of William & Mary, he practiced law in Virginia until Pres. Thomas Jefferson named him secretary of the Territory of Orleans. He was the state's first congressman before he became governor. He resigned before his term expired and accepted a federal judgeship which he held until his death. See Joseph G. Tregle, "Thomas Bolling Robertson, Congressman, Governor, jurist," *Dictionary of Louisiana Biography Online.*

> intend that the law grants to each individual the power of personally asserting his rights, should cease to be a mere mockery."[10]

After hearing Villeré's address, Lafourche Parish senator Henry Thibodaux (1769–1847)[11] moved the appointment of a joint committee on the judiciary to propose a code of practice, civil code, criminal code, and code of commerce. Elijah Clark, Jr., [12] Nathan

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[10]Written address Jan. 5, 1820, *Journal of the Senate, During The Second Session of the Fourth Legislature of the State of Louisiana* (New Orleans, 1820), 6-7.

[11]Henry Thibodaux (1767–1847) was born to French Canadian parents who lived in Albany, New York. Orphaned at an early age, he lived with the Schuyler family who sent him to Scotland for his education. He left Scotland for Louisiana and eventually rose to prominence in the Lafourche Parish are. Like Jacques Villeré and Alexander Porter, he was an architect of the Constitution of 1812. A three-times state senator, he was elected in 1812. He was president of the senate and became governor after Thomas Bolling Robertson resigned unexpectedly. See joseph G. Tregle, "Henry Schulyer Thibodaux, Governor," *Dictionary of Louisiana Biography Online*.

[12]A North Carolinian, Elijah Clark Jr. (1769–1830) represented St. Tammany Parish. Educated at Yale College before he left his family in Georgia to study law in Washington, D.C. Thereafter he served in the Georgia legislature and resettled in Louisiana. Admitted to practice in 1813, he sat in the state House of Representatives for six years until he was elected to the Senate in 1820. See Find A Grave Data Base.

Meriam,[13] James Turner,[14] and H.H. Gurley[15] were appointed, but the General Assembly adjourned *sine die*, so the matter died.[16]

Nothing more was done about a code of practice until 1822.[17] That February, Representative Louis Moreau-Lislet (1766–1832)[18] introduced a resolution calling for appointment of a two man committee

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[13]Nathan Meriam (1780–1843) was born into a Massachusetts family. He turned up in Louisiana early in the territorial period. Settling in what became Iberville Parish he served variously as sheriff and district court judge. He was a militia colonel during the war of 1812 before his election to the state Senate and became its president. As a lawyer he often represented free women of color in debt recovery litigation. See Kimerly Welch, *Black Litigants in the Antebellum American South* (Chapel Hill, 2018). After his death he was interred in the family burial plot in Lexington, Mass. See Find A Grave Data Base; Clarence Edward Carter, ed., *The Territorial Papers of the United States*, (Washington, D.C.), IX (1803–1812), 749, 385, 984, 1060.

[14]James Turner (1782–1843) was Virginia born. His family lived in Kentucky before he settled in the area that became West Feliciana Parish. He admitted to practice in 1813, he was active in politics, and he sat in both the territorial and state General Assemblies. See Find A Grave Data Base.

[15]H.H. Gurley (1788–1833) was from New Haven Connecticut. He settled in Baton Rouge and was admitted to the state bar. He was a district court judge, a four-term member of the U.S. House of Representatives, and a member of the Whig Party. See Joseph G. Tregle and others, "Henry Hosford Gurley Congressman," *Dictionary of Louisiana Biography Online*; Find a Grave Data Base.

[16]*Journal of the Senate, Fourth Legislature*, Jan. 18, 1820, 15.

[17]However, a joint committee picked Edward Livingston to draft a criminal code. The procedure to his nomination is an insight into how such committees worked. Both houses convened in the house chamber. The roll was called, and forty-five members were present. A teller from each house was appointed, and Livingston, Louis Moreau-Lislet, and Abner L. Duncan were nominated. Balloting was secret, and when the tellers counted the votes no one received an absolute majority. On the second ballot, Livingston got 30 votes, Moreau-Lislet had 10, and Duncan received 5, and Livingston was duly elected. See *Senate Journal During the First Session of the Fifth Legislature of the State of Louisiana* (New Orleans, 1821), Feb 13, 1821, 61.

[18]Louis Moreau-Lislet was born in Sainte -Domingue and educated in law and languages in France. A minor judicial official in Saint-Domingue, he escaped the Haitian Revolution and fled to Cuba

who would draft revisions to the civil code. After some debate, Moreau-Lislet's resolution, which was amended to include a third committeeman, passed the House.[19] Several weeks later, the House and Senate met in a joint session and selected the committee who were instructed to prepare a system of the commercial laws, a penal code, a civil code, and a code of the practice to be observed before the courts. Edward Livingston, Pierre Derbigny (1769–1829),[20] and Louis Moreau-Lislet were elected though the outcome of the secret ballot was not to everyone's liking. Moreau-Lislet seemed a logical choice because he had drafted the *Digest of 1808*, but he belonged to a faction in the General Assembly that allied with Supreme Court Judge Alexander Porter. Porter (1785-1844)[21] who advocated Spanish civil law rather than the French version favored by Livingston. More importantly, he was Livingston's sworn enemy whom he regarded as thoroughly corrupt. Livingston and

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before he showed up in New Orleans and prospered as an attorney. Such was his erudition that some contemporaries regarded him as a walking library who knew more about civil law and codes than anyone else. His employment as the territory's official interpreter and translator affiliated him with every politician and judge in the territory and the state. See Jane B. Chaillot, "Louis Casimir Elizabeth Moreau-Lislet, Jurist Politician," *Dictionary of Louisiana Biography Online*.

[19] *Courrier de la Louisiane*, (New Orleans, 1822), p.1.

[20] Pierre Derbigny was born in France. Educated in French law, he removed to Saint-Domingue and then migrated to the royalist exile community near Philadelphia, Pa. where he perfected his English and learned American law. He travelled through the Backcountry before settling in New Orleans and establishing a law practice. He held a variety of posts in the territorial government, he was a translator, and he staunchly advocated for retaining French civil law practices. After statehood he sat on the state supreme court, was secretary of state, and was an unsuccessful candidate for governor before he won the office. He did not complete his term because he was killed in a carriage accident. See Judy F. Gentry, "Pierre August Bourguignon Derbigny, Jurist, Governor," *Dictionary of Louisiana Online.*

[21] Alexander Porter was an Irishman who emigrated to Tennessee after his father was hanged as a rebel against the British. He read law and settled in St. Mary Parish. He contributed to the Constitution of 1812 before he became an American citizen. He went on to become a legislator, a member of the state supreme court, a U.S. senator, and a founder of the Whig party. See Joseph G. Tregle, "Alexander Porter, Jurist, U.S. Senator, Planter," *Dictionary of Louisiana Biography Online*; Wendell Holmes Stephenson, *Alexander Porter: Whig Planter of Old Louisiana* (Baton Rouge, 1934).

Governor Robertson probably realized that they could not keep Moreau-Lislet off the committee, but they might minimize his influence by electing Derbigny. When the vote was taken Moreau-Lislet won 43 of 48 of the votes cast, Livingston came second with 25, and Derbigny beat out the other candidates by just two votes.[22]

Livingston, Moreau-Lislet, and Derbigny completed their task speedily, and in February 1823 they signed off on their preliminary report.[23] Instead of amending the existing code, it recommended a new a one-book code. It is indisputable that Livingston wrote the report because of its argument that the more nearly perfect Code Napoléon of 1804 should be the model for the new code. He purposely failed to name his colleagues though he did say one "gentleman has made the sketch of a Code of Procedure. In the division of the preparatory, labor, the draught of the Commercial Code was assigned to a third member of the commission, who has begun and made some progress in the work."[24] Presumably one "gentleman" was Moreau-Lislet and the "third member" was Derbigny. Moreau-Lislet's "sketch" is gone but he probably drew on his knowledge of codes, the rules of the territorial courts, and the Practice Act of 1805.[25] He would have fleshed out the sketch and shared it with Livingston and Derbigny. The ensuing discussion produced a text.

The General Assembly accepted the report and instructed Moreau-Lislet, Livingston, and Derbigny to prepare a whole draft.[26] It was adopted and printed in a large pamphlet entitled *Additions and Amendments to the Civil Code of the State of Louisiana, proposed in obedience to the resolution of the Legislature of the 14th of March, 1822*.[27]. It consisted of drafts for a commercial code, a "*Civil Code*"

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[22]*Journal During the Second Session of the Fifth Legislature of the State of Louisiana* (New Orleans, 1822), 61.
[23]*To the Honorable Senate and House of Representatives of the State of Louisiana in General Assembly Convened The Subscribers, Jurists, appointed for the Revision of the Civil Code, Respectfully report* (New Orleans, 1822).
[24]Ibid., 12.
[25]An Act Regulating the Practice of the Superior Court in Civil Causes, *Acts Passed at the First Session of the Legislative Council of the Territory of Orleans*, (New Orleans,), 210-61; Mark F. Fernandez, "The Rules of the Courts of the Territory of Orleans," *Louisiana History*, 38 (1997), 63-86.
[26]Resolution of the General Assembly, Mar. 22, 1823, *Acts Passed at the First Session of the Sixth Legislature of the State of Louisiana* (New Orleans, 1823), 88.
[27]An act directing the revision of the civil code, and the projected codes of commerce and of procedure to be printed, Mar. 26, 1823,

and a "*System of Practice, Containing Rules to be Observed in the Prosecution of Civil Actions*". The General Assembly took up the *Additions and Amendments* during its regular session that met from January to April 1824. The draft commercial code disappeared, and the "*Civil Code*" became the major focus of deliberations. Senators Isaac Thomas[28] and Daniel Clark and Representatives Henry Johnson,[29] Joshua Baker,[30] and Pierre Rost[31] were named to a conference committee to recommend how the "*System of Practice"* should be treated separate from the "*Civil Code*" It recommended

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Acts Passed at the First Session of the Sixth Legislature of the State of Louisiana (New Orleans, 1823), 68-70.

[28]Isaac Thomas (1784–1859) was a Tennessee lawyer who was a Democratic Republican congressman before he settled in Alexandria, La. He owned large plantations, numerous slaves, saw mills, steamboats among other enterprises. Entering politics he was elected to a single term as senator, and he was also an officer in the state militia. The Gold Rush lured him to California but after he failed to strike it rich he returned to Louisiana where he died in 1859. See Find A Grace Data Base.

[29]A Virginian Henry Johnson (1783–1864) settled in Louisiana during the territorial years. He became one of the writers of the Constitution of 1812 before he was elected to the US House the US Senate, and to the state House of Representatives, and he was a founder of the state Whig Party. See Marius M. Carriere, "Henry Johnson Attorney, Planter, Politician, Governor," *Dictionary of Louisiana Biography Online*.

[30]Joshua Baker (1799–1886), a Kentuckian, moved to Sr. Mary Parish, La. with his parents. He attended the US Military Academy at West Point, NY before reading law with Tapping Reeve in Litchfield, Conn. He was admitted to practice in Louisiana and became a Democratic politician who sat in both houses of the Louisiana General Assembly. A staunch unionist who opposed secession, he was military governor of the state until Henry Clay Warmouth replaced him. See Carl A. Brasseaux, "Joshua Baker, Military Governor of Louisiana," *Dictionary of Louisiana Biography Online*.

[31]Pierre Rost (1797–1868) emigrated to Mississippi where he read law with Jefferson Davis's brother. Moving to Louisiana he was admitted to the bar and practiced in Natchitoches. He sat in both houses of the General Assembly and was briefly on the Supreme Court. He was also a close friend of Louisiana's first chief justice, George Mathews whose eulogy he delivered in 1859. See Glenn R. Conrad, "Pierre Adolphe Rost, Attorney, Jurist, Planter," *Dictionary of Louisiana Biography Online*; Pierre A. Rost, "Eulogy Upon The Life and Character of George Eustis" (New Orleans, 1859).

that the Senate adopt amendments and send their changes to the House but "not to interrupt the progress of the civil code."[32]

Printed in English and French on facing pages the "*System of Practice*" contained draft articles that were divided into numerous chapters, subheadings, and subsections that were extensively annotated most likely by Moreau-Lislet. That conclusion is supportable, given the vast range of citations that ran from his and Henry Carleton's translation of *Las Siete Partidas*, the *Recopilación de Leyes de las Indias*, the *Curia Filipica* to Robert Joseph Pothier's *Traité des obligations selon les règles tant du for de la conscience que du for extèrieur* and Jean Domat's *Lois civiles dans leur ordre naturelle* to François-Xavier Martin's *A General Digest of the Acts of the Legislature of the Late Territory of Orleans and the State of Louisiana*, and other codes that he knew better than Derbigny or Livingston or anyone else. It is also likely because of Moreau-Lislet's evident hand in Senate consideration of the "*System of Practice*" without interrupting "the progress of the civil code."

The Senate Journals recorded his maneuvers. He advised the president about which senators should propose adopting or changing which articles, which committees should discuss those proposals, and when they should be voted on. Proposals went to the House for its concurrence. When disagreements arose, the were settled by conference committees that Moreau-Lislet recommended. Save for articles 126, 128, and 206, to which the House objected, ninety percent of the "*System of Practice*" was ratified by the March 24. What was the objection was not recorded in either journal, but both chambers turned to a conference committee, and within a day the difference was settled. There were other dissents and reconciliations that dragged on into April before things were tidied up and the "*System of Practice*" was enrolled in both houses. Then a clear text was printed, vetted once more, and enacted as the *Code of Practice, in Civil Cases, For the State of Louisiana*.[33]

The *Code of Practice* rolled off the press of Joseph Charlesde St. Romes (1791–1843).[34] Its design tells how an imaginary -Louisiana

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[32]*Journal of the House of Representatives During the Second Session of the Sixth Legislature of the State of Louisiana* (New Orleans, 1824), 68-69; 70; *Journal of the Senate of the Sixth Legislature of the State of Louisiana* (New Orleans, 1824), 45.

[33]"*System of Practice*," 43, 44, 57; *Journal of the Senate of the Sixth Legislature*, 2d sec., 16, 18, 22, 23, 24.

[34] Originally from Sainte Domingue, where St. Romes learned the printer's craft, –he was among the Dominguan refugees who migrated to the city in 1809. After he soldiered in the battle of New

reader in 1825 would have perceived one of those books when he beheld it and thumbed through it for the first time. Its title was shorter and more indicative of the contents than the "*System of Practice*." Its size was handy and readable. Quarter-bound boards encased the text block that was set in English and French "in a neat manner and on fine paper."[35] Looking inside, he would have noticed free leaves that preceded the title page, contents, indices, and free back leaves. He would have smelled a musty odor that permeated books of the time. If ran his fingers across the pages, he would have felt the raised impressions of the words that filled 400 pages with wide margins where he could add his own notes but he would have seen none of Moreau-Lislet's annotations. He might have eyed how the use of type differed according to its size and placement on the page, and he might also have caught typesetting mistakes or other flaws that he may or may not have chosen to correct.[36] Leafing through the pages the reader would have seen that they contained 1161 articles that laid out precise, logically arranged rules of procedure. He would have noted that Articles 1 through 12 constituted a part styled "of Civil Actions." Likewise, he would also have observed that all of the remaining articles com-

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Orleans, he ran a printery in Chartres Street that he probably bought before he succeeded James Morgan Bradford as the state printer. His first imprint was issued in 1817. It was followed by a steady output that continued until he resigned to print the Civil Code of 1825. Afterwards, he was appointed public printer on several occasions, but he mainly published a weekly newspaper until he sold it just months before he died. He was buried in St. Louis Cemetery No. 2 with military honors. See Florence M. Jumonville, *Bibliography of New Orleans Imprints 1764–1864* (Baton Rouge, 1989), 76 and *passim*; Find A Grave Digital Archive; Death Certificate, Orleans Parish Archives; New Orleans *Daily Picayune*, April 23, 1843, p.2; Ibid., August 23, 1843, p.2; Paul F. Lachance, "The 1809 Immigration of Sainte-Domingue Refugees to New Orleans: Reception, Integration, Impact," *Louisiana History: The Journal of the Louisiana Historical Association*, 29 (1988),109-41.

[35]An act to provide for the printing and promulgation of the amendments made to the civil code of the state of Louisiana, April 12, 1824, *Acts Passed at the Second Session of the Sixth Legislature of the State of Louisiana* (New Orleans, 1824), 172-78, esp. 178.

[36]This description derives from a copy that belongs to a private collector. It is unmarked and rebound in period-style quarter calf over marbled boards with a red lettering piece that says "Louisiana Code of Practice" in gold letters.

prised a second part that described rules that governed the prosecution of civil actions.[37] And he would have appreciated that now he owned a clear road map for litigating in the courts.

Other readers were less appreciative. Perhaps the most vocal critics of the new codes was Judge Seth Lewis.[38] He stiffly believed in the superiority of Anglo-American law and practice, and his intense dislike of French law put him at odds with Edward Livingston. His distaste for both was vented in his *Strictures on Dr. Livingston's System of Penal Laws Prepared for the State of Louisiana* (New Orleans, 1825), and his autobiography that not only belittled Livingston but argued that the 1805 Practice Act and its amendments had been sufficient for decades so there was no reason to abandon them. Yet even he adapted for he remained on the bench until he left in 1837.[39]

Prior to the Civil War, the *Code of Practice* won acceptance as Lewis and others adjusted to it and it became commonplace. Fire, usage, supreme court rulings, and legislation led to new editions in 1839, 1853, and 1857.[40] The consequences of the war forced adjustments to its outcome, and in the fall of 1868 Governor Henry Clay War-

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[37]*Code of Practice,* 1-43; 44-401.

[38]Seth Lewis (1764–1848) was of humble stock from Massachusetts. He apprenticed as a shoemaker before he moved to Tennessee. He read law with Andrew Jackson and sat in the Tennessee legislature. For a time he was a territorial judge in Mississippi. Then he migrated to Louisiana and settled in Opelousas where he was politically active before his elevation to the district bench. See Marshall Scot Legan, "Seth Lewis, Jurist," *Dictionary of Louisiana Biography Online.* The death date in the *DLB* is inaccurate.

[39]For an explanation of Lewis's regard for Livingston, see also *Autobiographical Memoir of the Hon. Seth Lewis* (New Orleans, 1847), 3-32; Grant Lyons, "Narrow Failure, Wider Triumph: The Response to Edward Livingston's System of Criminal Law in Louisiana and Europe" (M. A. thesis, University of New Orleans, 1973).

[40]Warren M. Billings, "Printing the Civil Code of 1825 A Bibliographic Essay," forthcoming.

mouth and the General Assembly agreed to a joint resolution calling for a new edition.[41] Albert Voorhies[42] a former supreme court justice and legal author was chosen. Voorhies was an unreconstructed Confederate, but he accepted the task and complied with the realities of Reconstruction Louisiana because he needed money. The General Assembly wanted him because of his vast knowledge of civil practice. His edition was published in 1871 as *The Code of Practice of the State of Louisiana: With the Statutory Amendments, From 1825 to 1870 Inclusive; and References to the Decisions of the Supreme Court of Louisiana to the Twenty-Second Volume of Annual Reports With an Exhaustive Index to Articles*.[43] It was the last of the nineteenth-century editions.

The *Code of Practice, in Civil Cases, For the State of Louisiana* ranks with the early law books that fashioned Louisiana's distinctive mixed jurisdiction, and it is noteworthy for that reason alone. But it was also reviewed and sold in the North and abroad both as a model and as a guide for anyone with business before the state's civil courts. In the postbellum decades that use was dwindled because Louisiana declined into an economic backwater. Nevertheless, the *Code of Civil Practice* became the ancestor of the modern Louisiana Code of Civil Procedure.[44]

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[41] An Act to Provide for the Revision of the Statutes of the State of a General Nature; A Joint Resolution Instructing and Requiring the Committee Appointed to Revise the Statutes of the State of a General Nature to Revise the Civil Code and Code of Practice; *Acts Passed by the General Assembly of the State of Louisiana, at the First Session of the First Legislature* (New Orleans, 1868), 39-40; 237.

[42]Warren M. Billings, "Albert Voorhies Jurist, Politician, and Author, *Unbound A Review of Legal History & Rare Books*, 14 (2023), 39-63, esp. 53-54.

[43]Voorhies updated it twice during the 1880s.

[44]See *The American Jurist and Legal Magazine*, new ser., vol. 2 (1838-39), 459-60; advertisements by Thomas, Cowperthwait &Co, in the *National Gazette* and Little & Brown, Law Book Sellers, *Boston Semi-weekly Advertiser*.

The Original M&A Deal: Regulation in Medieval Royal Marriage and Multinational Corporations

Mary Drue Hall*

I. Introduction

"It is a truth universally acknowledged, that a single man in possession of a good fortune, must be in want of a wife."[1] Centuries before Jane Austen wrote about the socio-political intricacies of upper-class English marriage, nobles and royals looked to the hierarchies of other regions and states to source partners equipped to establish strong dynastic ties and bolster their own economic and political interests.[2] These marriages, governed by religious law and local custom, served another purpose beyond political and military power consolidation: the contract law governing the marriages also served as an impetus for the development of modern legal formalism. The papacy's regulation of medieval royal marriage through dispensations and dissolutions provided an early example of utilizing legal formalism to control socio-political influence– a pattern recreated today in state regulation of multinational corporations (MNCs). The pope was to medieval royal marriage as the Department of Justice Antitrust Division is to mergers and acquisitions.

Although the sphere of royal medieval marriage law may appear insulated and esoteric, its role and value are reflected in the modern corporate context, specifically in the international expansion

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* J.D., University of North Carolina at Chapel Hill, 2024. Ms. Hall dedicates this article to her father and to her grandfather, who inspired her love of history. She extends sincere thanks to Professor Charles Donahue, who encouraged her to separate the wheat from the chaff.

[1] Jane Austen, PRIDE AND PREJUDICE, 1, (First Vintage Classics Edition), Random House, New York (2007). (Available in the 'Preview' of Google Books)

[2] Carole Rawcliffe, *The Politics of Marriage in Later Medieval England: William, Lord Botreaux, and the Hungerfords*, in 51 HUNTINGTON LIBRARY QUART., 162/163 (Summer, 1988).

and mergers of MNCs.[3] This paper seeks to identify and explore the parallel niches occupied by medieval royal marriages historically and MNCs contemporaneously.

This article explores the parallel niches of medieval royal marriages and the mergers and acquisitions of modern MNCs. I begin by juxtaposing the roles of the modern and medieval state and contrasting the regulatory powers of the medieval church and modern state. While the papacy exerted influence and control over medieval royal marriage in a similar fashion to the modern state's regulation of multinational corporations, the medieval papacy is not precisely analogous to the modern state. For the remainder of the paper, I build on a fundamental assumption of the medieval church as a quasi-state.

Next, the paper examines the similarities in the development of papal marital regulation and the antitrust movement and their uses of formalistic mechanisms in achieving legal control. Just as the rise in legal formalism in canon law mirrored the increasing power of medieval monarchs, the nineteenth-century advancement of American antitrust policy and legislation developed as a reaction to the precursory expansion of modern industry and incorporation. Both strategies relied on the development of increasingly detailed legal policies to continue to assert power and control. Alternatively, and somewhat less cynically, the papacy and modern governments sought and continue seeking to preserve fundamental ideas of fairness and rectitude. Furthermore, both regulatory systems relied on manufacturing artificial legal distinctions between private and public law, and both systems harness popular conceptions or morality to buttress their formalistic structures.

The last section of the paper identifies specific examples of formalism in the regulation of medieval royal marriage and MNCs, including papal limitations on consanguinity and consent and *per se* violations of antitrust law such as horizontal monopolies and the prohibition of price fixing. Before the advent of the common law, medieval marriages embodied the same basic elements of contracts taught in first-year law courses and which underly the corporate

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[3] In this paper, I use 'medieval' and 'Middle Ages' interchangeably, although there is significant scholarly debate amongst academics far more knowledgeable than I on the different meanings of terminology. By 'medieval' or 'Middle Ages', I refer to the period between roughly 500 CE and 1500 CE, after the fall of the Western Roman Empire and before the emergence of the Renaissance. In Italy, the period begins and ends slightly earlier, and in England, the period begins and ends slightly later.

contracts of today. The element of consent, perhaps surprisingly when contrasted with the popular conception of medieval female repression and control, became a central requirement of the church's definition of a lawful and legally binding marriage.[4] Additionally, parties offered consideration in the form of consummation and/or financial contributions.[5]

Although inflexible in theory, these formalistic rules can and have been systematically relaxed through papal dispensations and annulments and the judicial narrowing of plaintiffs' abilities to recover in antitrust cases such as the *linkLine* decision.[6] Despite the importance of formalism in the development of regulation of medieval royal marriage and multinational corporations, in practice, both the papacy and the courts have adopted a more realist approach to enforcement.

States exercise power over MNCs by regulating their size and scope through legal frameworks. Similarly, the church used canon law to insert itself into the power webs of medieval politics. In both situations, the regulating entity utilizes moralism to bolster support for its controlling parameters. While a medieval royal marriage and a corporate contract are certainly distinct, comparing the two illuminates the patterns of how transnational power is regulated over time.

A Note on Gender and Economic Power

Beyond the formalistic similarities between medieval royal marriages and multinational corporations, systematic disparities and social structures both underly and influence the formation, performance, and dissolution of these contracts across time. This paper would be remiss to not acknowledge the position of political and economic power in both subjects: medieval nobility and MNCs. Just as a MNC wields an upper hand in its ability to compel a relatively weaker company or government to enter into business, a wealthier kingdom or a kingdom with a larger military would hold more power in negotiating a marriage or selecting a consort.[7]

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[4] *See infra* Section III

[5] *Id.*

[6] *See generally,* Pac. Bell Tel. Co. v. linkLine Commc'ns, Inc., 555 U.S. 438 (2009)

[7] For example, marriage negotiations might physically take place in the stronger or wealthier nation. It is impossible to write a paper on the political power of MNCs without acknowledging the devastating effects of colonialism and imperialism that paved the way for

Examining medieval marriage without incorporating a gendered lens also omits important ideas and patterns about the socio-legal roles of women and men. Although the women mentioned in this paper may have had less explicit political or military power than their husbands, they retained their agency and often exerted great influence over international policy.

Rather than being chess pieces on a board, traded across squares to accumulate land and wealth for the player, royal women purposefully presented themselves and their ideas to the court and government to further their own interests. Joan-Lluis Palos argues that cultural transference is inherently gendered, and because royal women, as wives, were expected to move from their homelands to join their husbands at court, women were often the vehicle of cultural transfer.[8] However, how they presented and integrated their home cultures in their new lives was a politically calculated balancing act, seeking to accommodate the interests of their families back home and to further the interests of their husbands and new nations.[9]

This paper examines royal marriages precisely because of the power possessed by royal parties. Theoretically, the same canon laws applied to royal marriages as to the marriages of the lower classes. In practice, of course, nobles and royals were far better

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modern corporations. For further reading, I highly recommend Patricia Mohammed, The Trans-Atlantic Slave Trade: European Slaving Corporations, the Papacy and the Issue of Reparations, 26 WILLAMETTE J. INT'L L. & DISP. RESOL. 173 (2019), and Philip Stern, The English East India Company and the Modern Corporation: Legacies, Lessons, and Limitations, 39 SEATTLE U. L. REV. 423 (2016).

[8] EARLY MODERN DYNASTIC MARRIAGES AND CULTURAL TRANSFER, Joan-Lluis Palos, Magdalena S. Sanchez, eds. 5 (Ashgate Publishing, 2016) Part of TRANSCULTURALISMS 1400-1700 SERIES, Mihoko Suzuki, Ann Rosalind Jones, Jyotsna Singh, eds. [Hereinafter Early Modern Dynastic Marriage]

[9] See for example, Maria Theresa of Spain's decision to wear a farthingale, (*Id.* at 50). Though Maria Theresa and France's Louis XIV were early modern monarchs, Maria Theresa's role in the transference and intermeshing of Spanish Bourbon culture in France serves as an illustrative example of similar dynamics taking place in the Middle Ages.

situated to obtain dispensations and draw up complex legal contracts.[10] They were also, perhaps, more uniquely situated to be regulated by the papacy in the same way that national trade commissions and financial regulatory services may be more likely to investigate and regulate the mergers of large corporations than those of local businesses. This is not to say that the people of the working class did not engage in marriage litigation or also influence the formation of modern contract law.[11] Richard Helmholz provides a detailed and comprehensive analysis of the intricacies of medieval marriage law in his work *Marriage Litigation in Medieval England.*[12]

II. Royal Marriage and the Foundation of Legal Formalism

In a paper on the formation of private law, Charles Donahue argues against the popular comparison of the medieval church to statehood by pointing to the church's lack of exclusive authority and jurisdiction.[13] While the church, like other entities in the Middle Ages, began exploring avenues of soft power in the early second millennium, the medieval church was also limited in its ability to enforce judgements and the categories of cases eligible for ecclesiastical review. Donahue is correct that in this sense, the papacy did not typify the role of the state. Rather, the papacy operated as a quasi-state with limited jurisdiction of justiciability but significant international economic and political power.

Regulating the marriages of monarchs gave popes an avenue of political power and control. In response to the growing power of kings and queens as European nations consolidated land and wealth into centralized royal holdings,[14] the papacy tightened its grip on power

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[10] D.L. d'Avray, PAPACY, MONARCHY, AND MARRIAGES 860-1600, Cambridge U. Press, 6, (2015). [Hereinfter d'Avray]

[11] *See also,* Michael Sheehan, *Theory and Practice: Marriage of the Unfree and the Poor in Medieval Society*, in MARRIAGE, FAMILY, AND LAW IN MEDIEVAL EUROPE: COLLECTED STUDIES, Michael Sheehan and James K. Farge, eds., U. of Toronto Press, (1996).

[12] Richard Helmholz, MARRIAGE LITIGATION IN MEDIEVAL ENGLAND, Cambridge U. Press, (1974).

[13] *See* Charles Donahue, Private Law Without the State and During its Formation, 56 Am. J. Comp. L. 541, 5450-51 (2008).

[14] Between the tenth and twelfth centuries, the European nations we know today began to take shape out of the patchwork of tribes and local noble holdings. In England, Aethelstan is called the first 'King of the English' for his reign in the tenth century, and the Norman invasion of 1066 (establishing the modern British monarchy) was partially undertaken to reform the erring Anglo-Saxon church.

by developing a system of legal formalism by which all European Christians were obligated to obey. Assertions of papal power are well-documented in other medieval controversies such as investiture[15] and the benefit of the clergy,[16] but most popes were reluctant to intervene in affairs of secular government.[17] Nonetheless, by regulating the marriages of monarchs through the formation of formalized policies on consanguinity, consent, consideration, dispensations, and dissolutions, the papacy exerted real influence on medieval statecraft.[18]

The medieval church embodied a form of 'natural' formalism: every question of law had a preexisting answer discoverable by close attention to canonical texts or internal reflection on the will of God.[19] The Fourth Lateran Council and changes in marital prerequisites, discussed later in this paper, are examples of natural formalism in canon law– God's will did not change over time or shift in reaction to changing public sentiment; rather, previous incantations of law had failed to identify the correct interpretation of the divine.[20]

By all accounts, medieval monarchs put great stock in conforming to the legal frameworks set out by the papacy. D.L. D'Avray follows Henry III's years-long quest to demonstrate his marriage to Eleanor of Provence was legitimate despite the fact that no one ever contested otherwise.[21]

Phillip II became the first King of France in the twelfth century, and as in the reigns of his father (Louis VII, first husband of Eleanor of Aquitaine) and descendants, continued to expand monarchial power over the regional dukes and nobility. The Holy Roman Empire was pieced together throughout the second half of the first millennia with Otto the Great unifying many of the German kingdoms and principalities. *See also* Charles Donahue, *Private Law Without the State and During its Formation*, 56 AM. J. COMP. L. 541, 546, (2008).

[15] *See* Christopher Brooke, *Europe in the Central Middle Ages: 962-1154*, 3d ed., 340 (Routledge: 2014).

[16] *See* C.R. Cheney, *The Punishment of Felonous Clerks*, 51 ENGLISH HIST. REV., 215 (1936).

[17] *See* Christopher Brooke, *Europe in the Central Middle Ages: 962-1154*, 3d ed., 343 (Routledge: 2014).

[18] Can there be such a thing as the medieval state? Historians continue to debate. For the purposes of this paper, there can.

[19] *See* Brian Leiter, *Legal Formalism and Legal Realism: What is the Issue?* 16 LEGAL THEORY, 111, 115 (2010).

[20] See *infra* section III.

[21] D.L. D'Avray, Authentication of Marital Status: A Thirteenth Century English Royal Annulment Process and Late Medieval

The royal marriages of the Middle Ages came about under a unique intersection of private and public law. The distinction between public and private law was not so marked during the Middle Ages, although the line even now arguably remains somewhat blurry.[22] Distinguishing between public and private law is a lesson in formalistic line drawing and not the subject of this paper, although both the antitrust advocates of the late nineteenth century and the medieval church relied on this artificial separation to gain access to legal control. Marriage, however, is prominently featured in early legal scholarship, whereas other forms of private law are not.[23] Of particular importance to religious and legal scholars alike was the necessary components to marriage formation; these debates over the minutia of verb tense would come to define academic debate.[24] Similarly, the advent of antitrust regulation included heavy reliance on legal formalism.

The *Sherman Act* itself outlawed "every contract . . .in restraint of trade," clearly imposing a set obligation without room for contextual allowances.[25] Early antitrust cases relied only on common law precedents without "explicit consideration of competitive consequences."[26] Just as formalism in canon law reached its golden period in the twelfth century as a reaction to the growing powers of monarchies and the medieval state, trustbusters developed legislation and policy as a counterweight to the rapid expansion of corporate power in the nineteenth and early twentieth centuries.

III. Jurisdictional Limitations: Dispensations and Antitrust Law

The regulation of national expansion through medieval royal marriages and corporate expansion of MNCs through mergers and acquisitions share roots in both moralism and legal rationalism. In

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Cases from the Papal Penitentiary, 120 ENGLISH HISTORICAL REVIEW, 987, 995 (Sept. 2005).

[22] *See* Charles Donahue, Private Law Without the State and During its Formation, 56 Am. J. Comp. L. 541, 548 (2008).

[23] *Id.* at 549.

[24] *See infra* section III.

[25] Barak Orbach, *The Durability of Formalism in Antitrust*, 100 IOWA L. REV. 2197, 2200, (2015) (citing *Sherman Act,* 15 U.S.C. § 1 (2012).

[26] William Page, *Legal Realism and the Shaping of Modern Antitrust*, 44 EMORY L. J., 1, 16 (1995).

England, medieval marriage for all classes was governed exclusively by canon law until the seventeenth century,[27] and the 1753 *Lord Hardwicke's Act* was the first statute to require a formal marriage ceremony.[28] Prior to the uptick in explicit regulation of marriage by the state during the early modern period, the formation of marriage fell under ecclesiastical jurisdiction, and the papacy wielded political influence through signaling approval or disapproval of royal marriages.

In the Middle Ages, a marriage could be made by the parties declaring their intent to be married in the present tense (*verba de praesenti*), or by declaring their future intent to be married and consummating the commitment (*verba de futuro*).[29] In order for the marriage to be valid, however, both parties had to have the capacity and freedom to contract a marriage. One limitation to a party's freedom and capacity was the degree of familial relationship between the parties—known as consanguinity. We have similar laws against degrees of incest today, and prohibitions against familial endogamy applied as far back as the mid-sixth century.[30] Until the eighth century, the degree of relationship was calculated by counting up to the most recent common relative and down to the prospective spouse (commonly called the 'Roman' style of calculation), and marriage was banned between two parties within the fourth degree.[31] In the early ninth century, however, the church expanded the degrees of forbidden relationship to seven and changed the method of calculation to count directly up to the most common relative (the 'Germanic' method).[32] The Fourth Lateran Council shifted the limits on consanguinity back to the fourth degree in 1215, but kept the calculation method.[33]

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[27] See Colin Brooks, 93 THE ENGLISH HIST. REV., 31 (Jan, 1982). The *Births, Marriages, and Burials Duty Act* during the reign of William III and Mary II implemented a tax on marriages, births, burials, and unmarried and childless people, marking one of the first times in English history that the State began regulating marriage separately from the Church.

[28] Rebecca Probert, *The Judicial Interpretation of Lord Hardwicke's Act 1753*, 23 J. LEGAL HIST. No. 2, 129 (2002).

[29] Frances and Joseph Gies, MARRIAGE AND FAMILY IN THE MIDDLE AGES, 139 (1987).

[30] Stephanie Coontz, MARRIAGE, A HISTORY, 98, (2005).

[31] *Supra* note 29 at 84.

[32] *Id.* at 87.

[33] *Supra* note 30 at 100.

While most non-noble citizens were unable to trace their family tree far enough back to ensure they met the consanguinity requirements, the nobility and monarchy were at an informational advantage.[34] Because the limitations were so broad and the class of spousal candidates so narrow, royals often found themselves in marriage negotiations with third, second, or even first cousins.[35]

Morality and Formalism

Royal would-be spouses were often granted exceptions to consanguinity rules in the form of dispensations. In 1298, Pope Boniface VIII granted a dispensation for the marriage of Isabella of France to Edward II of England, despite their relation within the fourth degree of consanguinity, "to reinforce, strengthen, and maintain that peace we have wanted, commended, and command that a conjugal bond be secured and come about".[36] On the same day, the Pope granted an additional dispensation for the marriage of Edward's father, Edward I, to Margaret of France, Isabella's aunt.

Consanguinity violations could also be weaponized by parties seeking annulments much in the way a party of a contract might point to a flaw in the original agreement to prevent its later enforcement. In 1152, King Louis VII and Eleanor of Aquitaine procured a divorce based on their familial relation, even though the connection was well-known and unenforced at the time of their wedding.[37] Although consanguinity laws were promulgated by the church as guides for living a virtuous and God-fearing life, their enforcement also gave the church practical political and economic power.

Similarly, regulation of MNCs today stems both from society's conceptions of justice and fairness as well as economic theory and a desire of government to carve out power over business interests.

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[34] *Supra* note 29 at 130, noting that the earliest surviving noble genealogies are from Flanders in the mid-tenth century.
[35] Mary I of England (1516-1558) and Philip II of Spain (1527-1598) were first cousins once removed. He called her "Tia Mary" before they got married! Mary's mother Catherine of Aragon (1485-1536) was the sister of Phillip's grandmother, Joanna of Castile (1479-1555). For an earlier example, Phillipa of Lancaster, Queen of Portugal (1360-1415), married the illegitimate half-brother of her stepmother, Constance of Castile (1354-1394).
[36] D'Avray at 271. D'Avray notes that this marriage would go on to become one of the "most disastrous marriages in English history".
[37] *Supra* note 30 at 100.

When Congress passed the *Sherman Act* in 1890, America was riding out the waves of consequences of the industrial age, including the emergence of corporations and fortunes of unprecedented size.[38] Facially, the *Sherman Act* may appear to be motivated primarily by market interests concerned about rising prices and decreasing quality, but modern antitrust law emerged within the context of the American Progressive Era, which championed defeating the corruptive forces of monopolies and urban poverty. The Progressive movement was full of emotive calls for justice and equality, framing moralistic demands as impetus for functional regulation. Although the *Sherman Act* applies to U.S. companies and U.S.-based subsidiaries, other trade organizations and national governments in global markets similarly limit monopoly formation, constraining MNCs to size restrictions across the globe.[39]

Today, antitrust law still references dichotomies of good and wicked. In *Verizon Commc'ns Inc. v. Law Offices of Curtis V. Trinko,* Justice Scalia paints collusion as the "supreme evil of antitrust", reminiscent of the spiritual characterization of consanguinity within marriage as a sin.

Maurice Stucke argues that human perception of morality shifts over time, and that conduct once thought to be acceptable may become transition to becoming an immoral crime.[40] Debates over which degrees of relation violated consanguinity also shifted over time, waxing and waning both in response to cultural evolution and the changing political position of the papacy. The *Sherman Act* itself does not specify whether violations should be prosecuted civilly or criminally, allowing a fair amount of discretion to the Department

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[38] The Antitrust Laws, FED. TRADE COMM., FTC.gov, https://www.ftc.gov/advice-guidance/competition-guidance/guide-antitrust-laws/antitrust-laws (last visited April 19 2023).

[39] *See* Anu Bradford, *Antitrust Law in Global Markets,* in RESEARCH HANDBOOK ON THE ECONOMICS OF ANTITRUST LAW, 283, Einer Elhauge, ed., (2012). Available at: https://scholarship.law.columbia.edu/faculty_scholarship/1976. *But see* the E.U. and U.S. reaching opposite conclusions on Google's Android software. While the U.S. found that the software complied with federal antitrust restrictions, the E.U. charged Google with antitrust violations. Fiona Morton, "How Do You Enforce Antitrust Law in a Global Marketplace?", *Yale Insights*, YALE.EDU, (June 16, 2016).

[40] Maurice E. Stucke, MORALITY AND ANTITRUST, 2006 Colum. Bus. L. Rev. 443 (2006).

of Justice in deciding when to regulate competition, even though the *Act* formally prohibits anticompetitive practices of any kind.[41]

The decision of the Department of Justice (DOJ) to investigate certain mergers and acquisitions meeting specific criteria can be explained by examining the measure of benefit—either socio-moral or market-based—to the government and consumers. Public choice theory reduces monopoly regulation to "the pursuit of profit through politics", which explains the DOJ's minimum standards for investigation of mergers.[42] The DOJ does not investigate local or minor mergers (those valued at less than $100 million) because their capacity to affect a market is less, and the market to which they have the capacity to effect is limited.[43]

In the Middle Ages, while consanguinity laws in form applied equally across social strata, nobility were often the only parties relying on papal dispensations and annulments for marital validity.[44] D'Avray refers to this phenomenon as 'substantivism within formalism' and notes that despite rigid requirements, certain violations were ignored, especially for the elite.[45] Although nobles were able to erase their sin through dispensations, the papacy's regulation of marriage was almost entirely limited in scope to nobility. Commoners could certainly obtain dispensations if they so wished, but the pope's interest in regulating marriage stemmed from the church's interest in retaining geopolitical and economic power. In

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[41] *Id.*

[42] Shubha Ghosh, DECODING AND RECODING NATURAL MONOPOLY, DEREGULATION, AND INTELLECTUAL PROPERTY, 2008 U. Ill. L. Rev. 1125 (2008).

[43] "How Mergers are Reviewed", *Merger Review*, FED. TRADE COMM'N., https://www.ftc.gov/news-events/topics/competition-enforcement/merger-review (last visited April 20, 2023).

[44] Constance B. Bouchard, *Consanguinity and Noble Marriages in the Tenth and Eleventh Centuries*, 56 SPECULUM, 268, 272, (Apr., 1981), The University of Chicago Press on behalf of the Medieval Academy of America, https://www.jstor.org/stable/2846935; *See also* Stephanie Coontz, MARRIAGE, A HISTORY, 98-99, (2005). ("[the church] spent little time investigating the marriages of common folk. . . .the church seldom inquired into the degree of familial connection unless it was engaged in a power struggle with one of the families involved")

[45] D'Avray at 4. ("Rigorous formality was combined with flexibility in a curious system which has few modern parallels"); see also D'Avray at 95. ("After a decade or so, the Lateran IV rules must have become well-known in royal courts, but kings could consciously choose to disregard them.")

order to stay relevant and maintain a check on the power of kings, the church relied on enforcing rules against the rich and powerful, much in the way modern governments use antitrust law to restrict the power of business interests.

IV. Elements of a Contract: Formalistic Examples in Medieval Marriage Law and Antitrust Regulation

Beyond the similarities in formation and method of regulation, medieval royal marriages embodied and engendered bedrock principles of the same contract law that MNCs use today. Similar conceptions of consent, fitness, and consideration governed royal marriage contracts as control any valid contract. Although the contracts used in MNC mergers are unimaginably long and complex, they must contain, at their core, these key principles in order to be valid.

D'Avray argues that indissolubility of royal marriage was protected by the development of legal formalism, even where substantive rationality may have "justified exceptions to formal man-made rules."[46] Just as exceptions to canon law were made through dispensations, modern law operates with a series of substantive exceptions, usually within doctrines such as unconscionability. The retention of exceptions to contract enforcement based in doctrines involving benefits to public welfare are direct descendants and parallels of the exceptions granted by popes "when necessity makes it urgent and rational cause demands it" in medieval marriage law.[47]

Consent

Perhaps somewhat surprisingly, consent was an early requirement of a valid marriage under canon law.[48] Roman law required mutual consent from both the bride and groom, and the church gradually incorporated the same standard.[49] The eighth century *Penitential of Theodore* counsels: "A girl of seventeen has the power of her own

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[46] *Id.* at 6, 30.
[47] *Id.* at 271, translating a dispensation from Pope Boniface VII for the marriage between the future Edward II of England and Isabelle, daughter of Philip IV of France, July 1, 1298.
[48] D'Avray at 189. (citing D'Avray, MEDIEVAL MARRIAGE: SYMBOLISM AND SOCIETY, 124-7, 184 (Oxford: 2005).
[49] Frances and Joseph Gies, MARRIAGE AND FAMILY IN THE MIDDLE AGES, 54 (1987).

body. . . . After that age, a father may not bestow his daughter in marriage against her will."[50]

Although formal legal rules may have protected the right of potential spouses to refuse acquiescence in marriage, the same socio-economic power structures of gender and class colored how laws played out in practice then as affect the application of law today. Noble women were reliant on familial approval to maintain a livelihood, and undercurrents of patriarchal and political power infiltrated individual decisions at every level.

Today, social constructs of race and gender, as well as economic inequalities, result in unbalanced power dynamics in negotiations and bargaining. Although legally, every race and class of person is entitled to the same right to contract freely, white men end up overrepresented in positions of commercial power.[51]

Just as both parties had to consent before a marriage could be performed, before a merger and acquisition deal can be go through, the majority of a company's outstanding shares must approve the deal. Even though the contract itself may have been negotiated by agents and lawyers, the 'meeting of the minds' required to form a valid contract must occur between the parties themselves.

Consideration

Throughout the medieval period and into the early modern period, many legal debates centered on whether a marriage freely entered and properly solemnized was nonetheless invalid due to a failure of the parties to offer sufficient consideration, most frequently in the form of consummation.

The most famous example is Henry VIII's divorce of Catherine of Aragon.[52] At its most simple, Henry's lawyers' argument boiled

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[50] *Id.,* citing J.T. McNeill and H. M. Gamer, MEDIEVAL HANDBOOKS OF PENANCE, 85, (New York: 1938).

[51] Christine Carter, *These Two Black Female CEOs Are Also Working Moms. That Didn't Stop Them From Rising To The Top*, FORBES, (Nov. 14, 2022) (only four Black women have ever been the CEO of a Fortune 500 company) https://www.forbes.com/sites/christinecarter/2022/11/14/these-two-black-female-ceos-are-also-working-moms-that-didnt-stop-them-from-rising-to-the-top/?sh=51974c2020ef.

[52] Married in 1509, Henry and Catherine's marriage comes at the very end of what can realistically be considered part of the Middle

down to the fact that because Catherine had consummated her union with Henry's brother Arthur, the marriage between Arthur and Catherine was valid, and Henry's subsequent marriage to his brother's wife was invalid. Catherine argued that she and Arthur never consummated their union, and so technically, they were never married, leaving her free to marry Henry seven years after Arthur's death.

Today, we most often think of contractual consideration in terms of money, although surrendering a right granted by law is also valid consideration. When an MNC merges with or acquires another entity, they may offer cash or stocks as consideration, but there are also 'softer' negotiating tactics to sweeten a deal, such as promises to retain leadership staff.

One of the main practices for forming a marriage in medieval Europe was to announce intent with 'words of the future' (I will take you as my wife) and solidify the contract with physical consummation.[53] Gratian's *Decretum,* which promoted the 'words of the future' model of marriage formation, was instrumental in creating the 'technical discipline' of canon law which was to lay the groundwork for the development of legal formalism within the *ius commune*.[54]

Royal marriages were sealed with more than consummation; marriage contracts also included financial consideration in the form of gold, land, and titles through dowries and dowers. A bride's family would offer the groom a gift in the form of a dowry, which was inheritable by her husband or any heirs.[55] In contrast, a dower was a transfer of property directly from the husband to his wife, an evolution of the Germanic '*Morgengabe'* (morning gift) practice of Anglo-Saxon England before the Norman conquest, although the practice fell into disuse by the High Middle Ages.[56] A dowry could double the size of a man's holding, as in the case of Eleanor of Aquitaine and Louis VII of France, or include future opportunities of a husband to capitalize on the holdings of his wife's family.[57] In all cases, the consideration was made in the promise of a future gift pursuant to the marriage. Just as in contract law today, consideration could not be fulfilled by a past act.

Ages, but because of the popularity of Tudor history and fame of Henry's many marriages, this case is a useful illustration.

[53] See *Section III.*

[54] D'Avray at 28.

[55] Frances and Joseph Gies, MARRIAGE AND FAMILY IN THE MIDDLE AGES, 128 (1987).

[56] *Id.*

[57] Stephanie Coontz, MARRIAGE, A HISTORY, 101, (2005).

Comparatively, we treat modern marriage as something entirely distinct from other legally binding contractual relationships. Courts today have "by-passed the consideration requirement entirely" in premarital contracts and "the agreement to marry or the act of marrying is often treated as sufficient consideration."[58] Westerners view the ability to freely choose one's spouse as an extension of the fundamental freedom to marry.

Per Se Antitrust Violations

In the 1970s, the Supreme Court continued its reliance on formalism in antitrust jurisprudence by delineating between horizontal and vertical restraints and "prescribing a *per se* legality" for vertical restraints while horizontal restraints were prohibited.[59] The economic reality, however, is that many joint ventures and businesses employ vertical restraints which may produce competitive or anticompetitive consequences, or some combination thereof.[60] Any anticompetitive results should be contrary to the purpose and in violation of the *Sherman Act*, yet in *Continental TV v. GTE Sylvania*, the Court, found that the *per se* violations of respondents violated the *Sherman Act* only where the transgression was unreasonable or inefficient.[61]

In *Pacific Telephone Co. v. linkLine Communications*, the Court announced that price squeezing practices are "practically *per se* legal,"[62] once again using formalism to ignore future contexts and circumstances.[63] *linkLine* was a unanimous decision; differences in the ideologies of individual justices did not persuade them to deviate from a formalist approach to antitrust law.[64] Alternatively, by

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[58] Uniform Premarital and Marital Agreements Act, NT'L. CONF. COMMS. ON UNIFORM STATE LAWS, §6 *Comment,* (2012).
[59] Barak Orbach, *The Durability of Formalism in Antitrust*, 100 IOWA L. REV. 2197, 2214 (2015).
[60] *Id.*
[61] *See generally*, Cont'l T.V. v. GTE Sylvania, 433 U.S. 36. (1977). *Sylvania* marked a win for realists as the court began looking to competitive effects in its antitrust cases, although, as in *Sylvania*, they often resorted to mechanistic line drawing to do so.
[62] Pac. Bell Tel. Co. v. linkLine Commc'ns, Inc., 555 U.S. 438 (2009).
[63] Barak Orbach, *The Durability of Formalism in Antitrust*, 100 IOWA L. REV. 2197, 2203 (2015).
[64] Pac. Bell Tel. Co. v. linkLine Commc'ns, Inc., 555 U.S. 438 (2009).

adopting a reasonableness standard, the *linkLine* Court used a realist approach to allow future discretion. However, the Court enacting new categories of exceptions within existing categories does nothing but dig antitrust jurisprudence into a deeper hole of formalistic language and mechanism even as justices continue to invoke realist arguments and reasonings in their decisions.

Inconsistency in jurisprudence is nothing new; as this paper has shown, it goes as far back as the Middle Ages and probably continues into antiquity. Although both the papacy and the state attempted to develop formal systems of standards and regulations controlling the jointure of powerful entities, both systems eventually came to consider external context in their decision making, even despite the strong moral connotations of the systems' development.

V. Conclusion

Before there was AT&T and WarnerMedia, there was Henry II and Eleanor of Aquitaine. Together, their holdings encompassed all of modern-day England and a large portion of France. The most influential contracts of the Middle Ages were not corporate deals, but rather royal marriage contracts bringing about wealth, peace, and cultural diffusion through trade and custom.

The parallel does not fit perfectly– notably, the cultural transfer of MNCs reaches a much broader audience and perhaps deeper cultural significance than the more limited scope of royal consorts. Additionally, while governments regulate MNCs using finely tuned statutes and legal frameworks, governments also possess a 'hard power' over individuals that the papacy did not, forcing the historical church to rely on the 'soft powers' of moral influence and canon law in regulating the formation and dissolution of royal marriage contracts. Excommunication and prison time are notably distinct.

Despite these limitations, however, comparing the consolidations of power in medieval royal marriages and those of MNCs reveals patterns of international regulatory structures on two ends of a cause-and-effect chain.

Whereas modern courts and perceptions of marriage and marriage contracts have shifted away from viewing marriage in the standard

contractual sense,[65] comparing medieval royal marriages to corporate contracts is perhaps more comfortable because the popular imagination easily envisions these marriages as based not on mutual love or desire but rather on the perceived financial benefit of the parties, their families, and communities.

Reducing a marriage to a contract may offend modern romantic sensibilities, but looking to the performance and regulation of medieval royal marriages and their influence on modern contract law shows that where power is consolidated, the state, (or in the Middle Ages, the quasi-state entity of the church), will create moral, formalistic boundaries to harness control. Furthermore, that MNCs and royal medieval marriages are both potential vehicles of cultural change demonstrates one of many aspects of their significance and provides an example of why governments and state-like entities sought and continue to seek to regulate their power.

Since the Middle Ages, the locus of economic and cultural power has shifted from noble individuals to corporate conglomerates, resulting in a desire of modern governments to regulate businesses themselves over the individual rights of the individuals controlling them. The entities themselves are the key to the power and what must be regulated, just as the marriage of royals itself was the target of papal regulation in the Middle Ages.

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[65] See, e.g., American Legal Institute, *Principles of the Law of Family Dissolution: Analysis and Recommendations* §7.04(3)(a)-(c), §7.05, (2002). (Creating a rebuttable presumption of informed consent in premarital contracts, imposing on the court an obligation of a review of substantive fairness at the time of enforcement).

How I Accidentally Became a Brandeis Scholar and Came to Edit a 2025 Anthology of "New" Brandeis Writings

Peter Scott Campbell*

In April 2025, Carolina Academic Press published a book I edited titled *Democracy and Social Justice*, which is a collection of speeches and articles written by Louis D, Brandeis that have never been published in book form before. In fact, some of the pieces are so rare, they had never been published before. Since the compilation of the book was the result of years of rooting about libraries and archives, I thought a brief accounting of path might be of interest to fellow archivists and rare book librarians.

I was hired to be the computer services librarian at the University of Louisville Law Library in 1994. On my first day, the director told me that he had heard of this thing called the World Wide Web and that he wanted to create a web page for the library. That was easy enough to do: I created a page for our hours, one for our staff directory and another page that listed our policies. The library holds an extensive collection of Louis D. Brandeis' papers, and the University had previously published a 104 page guide to the collection. Anxious to add more heft to our library's web presence, I decided to scan that book and post it in its entirety. This turned out to be both a good and a bad idea.

It was good in that the page turned out to be really popular. Back in those innocent days, when people believed that there would be a finite number of web pages and Yahoo tried to index every one of them, some organization started giving awards to web pages they considered to be among the top 5% of all web pages. They gave their award to our Brandeis page, which gave me both a nice feather for my cap and a cool logo to paste upon the pages. The bad part was that since I had done that, all my co-workers became convinced that I was now an expert on Brandeis (I really wasn't) and they began to refer all reference questions about the collection to me.

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I received all kinds of questions, but shortly after surviving the Y2K crisis, I started to get the same question over and over again. Ralph Nader was running for president that year and in his speeches, he kept repeating what he claimed was a quote from Brandeis: "We can have a democratic society or we can have the concentration of great wealth in the hands of a few. We cannot have both." This quote was repeated constantly in the press and as a result, I was inundated with requests from patrons wanting to know where it came from. Unfortunately, I didn't know. I was so embarrassed by this fact that I decided to read every word that Brandeis wrote just so I could find it.

I did not realize when I started that project that it would take me over 20 years to complete it. (If, in fact, it really is completed. It seems like I am continually finding new items.) My search for his writings included not only going through all his published books and Supreme Court opinions, but also deep dives into our collection of papers, as well as visits to various libraries, archives and historical societies throughout the country. And while I never did find the source of that quote,[1] I did amass a large collection of writings by Brandeis that had not been seen by the public for decades, and in many cases not at all.

The first net gain of all this research was *The Quotable Brandeis* that Carolina Academic Press published in 2017. After that, I took a look at the materials I had collected, as well as a few I had found after that book came out, and realized that I had enough material for a whole new anthology of Brandeis' works. And so, *Democracy and Social Justice* was born.

There are 21pieces in the book. I won't describe all of them, but I will talk about a few representative pieces and how I came across them.

Brandeis was a big opponent of trusts and monopolies, and while interest in that topic has never gone away, there has lately been a resurgence in Brandeis' views on how to get rid of them. Five of the essays in the book discuss Brandeis' view that government control of competition would prevent the creation of trusts. Two of these essays were originally published in *La Follette's Weekly*, a magazine published by Wisconsin progressive Senator Robert La Follette, who was a close friend of Brandeis. Brandeis published a number of articles in *La Follette's Weekly* but surprisingly few of

[1] Anyone who is curious about my conclusions can read them in Democracy v. Concentrated Wealth, 16 GREEN BAG 251 (2013).

them were kept in his papers. I had to make interloan requests for both of these articles.

On November 1, 1912, Brandeis made a speech to the Economic Club of New York titled "The Regulation of Competition versus the Regulation of Monopoly." It was published in its entirety in the Economic Club's 1913 Yearbook which is now only available in a few libraries. Part of the speech was republished in Brandeis' book *The Curse of Bigness*, but I reprinted it in *Democracy and Social Justice* – the first time the entire speech has been in print in over 100 years. Interestingly, Lina Khan, who was the chair of the FTC and is sometimes referred to as a "neo-Brandeisian," recently gave a speech to the economic Club where she quoted this speech.

Brandeis published an anti-trust speech called "Efficiency and the Trusts" in the January 22, 1913, issue of *Fuel Magazine*, which I reprinted in the book. But I also found a transcript of a completely different speech with the same title in his papers with the same title that has never been published, so I reprinted that speech as well.

"Brandeis on Big Textile Strike at Lawrence and Industrial Democracy" is a good example of the lengths I had to reach in order to find these materials. It was originally published on the front page of the March 17, 1912, issue of the Hearst newspaper *The Boston American*. I stumbled upon it on a microfilm reel while I was looking for something else in the main branch of the Boston Public Library. Old newspapers contain a wealth of wonderful information but finding it is really hard. While major newspapers like the *New York Times* have been indexed and digitized, many other newspapers have only been microfilmed—and sometimes not even that—without an index. Plus, some newspapers put out multiple editions every day. I have a cite to a Brandeis quote that was supposedly published on a particular day in the *Boston American*, but I read the entire paper twice and could not find it. Either the citation was wrong or the edition the quote appeared in was not filmed.

Democracy and Social Justice starts with a March 28, 1915, speech that Brandeis gave to the Harvard Law Society called "Practicing Law." I found a typescript for the speech among his papers. The only problem was that I could find no reference to the speech in any of the bibliographies about Brandeis. I finally found a reference Brandeis made in a letter to his brother that verified it, so I was able to present its "premiere" publication. Similarly, I found the transcripts for a 1915 speech in favor of suffrage and a 1908 speech about railroad monopolies in our collection that have never been published. The latter speech is significant because it provides

a rare occasion of Brandeis making a couple jokes, something he rarely did in public.

But the most significant find occurred while I was doing research in the archives at Brandeis University. I had seen a reference to a "memoir" that was supposedly there. I had never heard of it and suspected it would not amount to much, but I felt I had to see it anyway. This was one of those instances that researchers dream about. It was in fact, a 29-page memoir that Brandeis dictated to his secretary, as part of his public relations drive after Woodrow Wilson nominated him to the Supreme Court. I had read most the books about Brandeis and I knew that this had not been cited in any of them. (This was confirmed to me by Melvin Urofsky who said that if he had seen it, he would have included information from it in his biography.) I was so excited that my hands were shaking as I read it.

The document was kind of a mess. The first page was missing. Brandeis's dictation got a little fragmentary near the end. Plus, there was some editing done in pencil in parts of the document. I figured out later that the parts with the edits had been repurposed for a *Boston American* article about Brandeis' boyhood that was published on June 4, 1916. But at least 80% of the memoir revealed all new information. He talked about his boyhood in Louisville when his father was one of the richest men in town. He talked about his schooling in Europe and how he decided to enroll in Harvard Law School. And he talked about he was taken up by the elite of Boston society when he first started practicing law and how those very same people turned on him when he started his public service work – an anger that resurfaced when members of the Boston bar publicly opposed his nomination to the Supreme Court. All in all, it was a powerful document.

After some polishing, I was able to get the memoir published in a journal,[2] but I have reprinted it in *Democracy and Social Justice* so that it, and the 20 other pieces there will be more widely available to the public.

And I am still looking for that lost *Boston American* article.

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[2] Peter Scott Campbell, Notes for a Lost Memoir of Louis D. Brandeis, 43 JOURNAL OF SUPREME COURT HISTORY 27 (2018).

Robert E. Rains on Lady Audley's Secret Crimes @DickinsonLaw

Robert E. Rains*

Lady Audley's Secret Crimes
INTRODUCTION

Lady Audley's Secret, a Victorian "sensation novel," was published in England in 1862 and made its author, M. E. (Mary Elizabeth) Braddon, a wealthy woman. Although Braddon continued prolific for decades to follow, it was *Lady Audley's Secret* that remained her most successful work. It has been filmed many times, including a silent movie starring that great vamp, Theda Bara.[1] And quite appropriate it was for a great vamp to play Lady Audley who was, in fact, more of a vamp than a lady, this being a rather extreme understatement.

Publish or perish being what it is, there have been many critical analyses of *Lady A's Secret*, from multiple perspectives: feminist,[2]

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* Professor Emeritus at Penn State Dickinson Law. He wishes to thank Dickinson College Professor Sarah Kersh for assigning this epic in her class on "Monsters and Madness," a class in which he was far and away the most mature (i.e., oldest) student. This article was previously published at *Hedgehogs and Foxes* on December 7, 2022 at https://hedgehogsandfoxes.org/index.php/2022/12/07/robert-e-rains-on-lady-audleys-secret-crimes/.

[1] That film is, sadly, lost to posterity.

[2] Elizabeth Langland, *Enclosure Acts: Framing Women's Bodies in Braddon's Lady Audley's Secret,* in BEYOND SENSATION: Mary Elizabeth Braddon in Context, 3-16 (Marlene Tromp, et al. eds. State U of New York P, 2000).

gender roles,[3] mental health,[4] homo-erotic,[5] consumerism,[6] etc. But a thorough search of the literature[7] has revealed to this author no prior legal analysis of our heroine's many high crimes and misdemeanors. This humble little essay is an initial attempt to fill that scholarly lacuna.

THE PLOT

The convoluted plot of *Lady A's Secret*, played out over 350 or 500 or more pages depending on which edition you are lugging around, is quite complex; and I will spare the reader unnecessary detail, ignoring many characters along the way. We are first introduced to Lucy Graham, a young, twenty-something, governess, who "was blessed with that magic power of fascination, by which a woman can charm with a word or intoxicate with a smile." Lucy becomes Lady Audley by marrying the widowed baronet Sir Michael Audley, then age 55. Sir Michael has a daughter, Alicia Audley, by his first marriage, who is not much younger than her new stepmother, Lady Audley, and trusts Lady A not at all. Sir Michael also has a nephew, Sir Robert Audley, who is described as a singularly lazy barrister who is not much interested in the practice of law.[8]

Meanwhile, on board the good ship *Argus*, George Talboys is returning to England from Australia after a long absence. He explains to a shipmate that he left his wife, Helen, and their young son, Georgey, three-and-a-half years ago to search for gold because he was unable to support his family back home. For better or worse, he took off in the middle of the night, leaving Helen and little Georgey to the not-so-tender mercies of Helen's father, Captain Maldon, who has the unfortunate habit of pawning other people's possessions. But George Talboy's luck has changed, he recently

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[3] E.g. Herbert G. Klein, *Strong Women and Feeble Men: Upsetting Gender Stereotypes in Mary Elizabeth Braddon's Lady Audley's Secret. Atenea* 28.1 (2008): 161-74.

[4] E.g. Pamela K. Gilbert, *Madness and Opposition: Generic Opposition in Mary Elizabeth Braddon's Lady Audley's Secret, Essays in Literature* 23.2 (1996): 218-33.

[5] E.g. Richard Nemesvari, *Robert Audley's Secret: Male Homosocial Desire and "Going Straight" in Lady Audley's Secret,* Ed. Calvin Thomas. U of Illinois P, 2000. 109-121.

[6] E.g. Katherine Montwieler, *Marketing Sensation: Lady Audley's Secret and Consumer Culture,* in BEYOND SENSATION: Mary Elizabeth Braddon in Context, 43-61 (Marlene Tromp, et al. eds. State U of New York P, 2000).

[7] Okay, I checked on WestLaw and Lexis.

[8] The horror!

found a "monster" gold nugget and became the richest man in Australia. He wrote to Helen the night before setting sail for home to tell her he is returning and where to contact him in London. (A somewhat desultory correspondent, he hadn't written her in the preceding three-and-a-half years.)

Sir Robert and George were school chums at Eton. They reunite in London. George is eagerly awaiting word from his beloved Helen, but rather than a "come hither, all is forgiven" letter from her, George finds an obituary in the *Times* stating that Helen Talboys has died and is buried in Ventnor, Isle of Wight. He rushes there and visits her grave. Despondent, he decides to leave Georgey in Capt. Maldon's tender care, providing money for his education, and making Sir Robert Georgey's trustee/guardian. For reasons unclear, Sir Robert and George then take off for a trip to Russia. Before leaving, Sir Robert writes to his cousin Alicia Audley to inform her of his plans, and she replies that he should bring his friend George to Audley Court "if he is very agreeable."

THE PLOT THICKENS

A year later, we find George living with Sir Robert at his flat in Figtree Court, London. Sir Robert writes to Alicia (who is secretly in love with him) that he and George want to run down to Audley Court for a week's shooting. But Alicia writes back that Lady A "has taken it into her silly head that she is too ill to entertain visitors." So, instead of going to Audley Court itself, Sir Robert and George take accommodations at the Sun Inn in the village of Audley. Lady A keeps avoiding George on one flimsy excuse after another. The reader might begin to suspect that she has her reasons. One evening at dusk, Alicia lets Sir Robert and George into Lady A's chambers at Audley Court via a secret passage. There, George sees an unfinished portrait of Lady A with "something of the aspect of a beautiful fiend." George is stunned, dumbstruck. "He sat before it for a quarter of an hour without uttering a word." We know not why.

When Lady A returns home, she finds a glove that George had left behind in her chambers and realizes that Sir Robert and George have been there. She is frightened and upset. The next day, she tells Sir Michael that these men had the audacity to enter her private precincts and look at her unfinished picture. Sir Michael says he will go to the Sun Inn and invite them to dinner, presumably with the intention of remonstrating with them. That fateful September day, Sir Robert and George go fishing. Then, Sir Robert takes a nap, and, when he awakens, George is gone. Sir Robert returns to the Sun Inn where the landlord tells him that Sir Michael

had been there and invited him and George down to dinner at the Court. Sir Robert heads to Audley Court expecting to find George there. A servant at the Court tells Sir Robert that George was there at 2 o'clock, but not since. After dinner, Sir Robert notices purple marks on Lady A's wrist which look as if she had been grasped a shade too roughly. Lady A's explanation of the marks lacks a certain degree of verisimilitude.

This might perhaps be an opportune time to mention that we learned way back in Chapter I that the grounds of Audley Court feature a lime-tree walk, shaded from observation by over-arching trees, at the end of which, hidden away, is an old, abandoned, stagnant well. Could there possibly be a better, more convenient, spot for the disposal of unwanted guests?

THE SEARCH

Sir Robert now sets off on a multi-chapter search to learn what has happened to George. I will spare you, dear reader, from all the details spread out over this three-volume Victorian epic. Suffice it to say that Sir Robert slowly (he is rather slow) finds clew (clue) after clew suggesting that Lady A is none other than the supposedly late Helen Talboys. Rather unwisely, Sir Robert keeps Lady A abreast of his findings and tells her exactly where he is holding the mounting evidence. Oddly enough, the pieces of evidence keep disappearing. Lady A realizes that the heat is on. In a desperate effort to avoid exposure, Lady A tells Sir Michael that unfortunately Sir Robert has lost his mind and needs to be whisked off to a sanitorium.

Meanwhile, not only is Sir Robert hot on Lady A's trail, but so is another character, Luke Marks, husband of Phoebe Marks. Lady A's maid and confidante. Luke has some information that he is holding over Lady A. Luke's information is sufficiently to Lady A's detriment as to compel her to give Luke money to buy his own pub, the Castle Inn. Phoebe informs Lady A that Sir Robert is now staying at the Castle Inn. Lady A fears that Sir Robert will wring Lady A's secret from Luke. A woman of direct action, Lady A sneaks off to the Castle Inn that night, double locks from the outside the door to the room where she has been told Robert is sleeping, and leaves a lit candle near some highly combustible material nearby. A fire ensues, and the Inn is no more.

But things don't work out for Lady A this time. Sir Robert appears at Audley Court the next day, singed but still alive. He informs Lady A that he had switched rooms before she came to the Inn, that he knows she set the fire, that he got everyone out alive, but that Luke

Marks was very much burnt and lies in a precarious state. Sir Robert says he will now tell his uncle, Sir Michael, all he knows.

Realizing that she is undone, Lady A admits to Sir Robert that she killed George Talboys, but not (according to her) "treacherously and foully." She tells Sir Robert to summon Sir Michael; she is ready to reveal all. Well, not quite all; she's just not that kind of girl.

Lady A tells Sir Michael the story of her unusual childhood (of which, more later), acknowledges that she married George Talboys and had a child by him, that she deserted her child, applied to be a governess under a feigned name, and, under that name, married Sir Michael. A month after her wedding to Sir Michael, she read that a certain Mr. Talboys, a fortunate gold-seeker, was returning to England from Australia. She reasoned that, "Unless he could be induced to believe that I was dead, he would never cease in his search for me." So, she arranged for an advertisement of her death to be placed in the *Times* and for a recently deceased young woman to be buried in a grave under her name.

A man of honor, Sir Michael says he wants to hear no more. He entrusts Sir Robert with the duty of providing for the safety and comfort of this lady who he thought was his wife. He leaves the room without looking back.

Despite the fact that Lady A tried to burn him to death, Sir Robert carries out Sir Michael's wishes in a gentlemanly fashion. He arranges for a Dr. Mosgrave to examine Lady A. Based on her physiology (rather than her alleged crime spree), Dr. Mosgrave diagnoses that she is a woman not to be trusted at large; she is dangerous. Dr. Mosgrave arranges for Lady A to be received in a *maison de santé* (sanitorium) in Belgium run by a friend of his. Sir Robert deposits her there under the name of Madam Taylor. And there she–Helen née Maldon, a/k/a Helen Talboys, a/k/a Lucy Graham, a/k/a Lady Audley, a/k/a Madam Taylor—shall remain. But her evil deeds will bear yet more fruit.

The severely burned Luke Marks summons Sir Robert to his deathbed. "I cannot die," says he, "with a secret on my mind." He reveals that last September he had found close against the mouth of the dry well on the Audley estate "a gentleman as was wet through to the skin, and was covered with mud and slush, and green slime and black muck, from the crown of his head to the sole of his foot, and had his arm broke, and his shoulder swelled up awful." Luke brought the gentleman home, cleaned him up, and gave him brandy. The next morning, Luke took the gentleman to a surgeon who set his broken arm. At the surgeon's, the gentleman wrote two

notes, using his other arm, before departing on a train. Luke now hands both these notes to Sir Robert.

In the first note, intended for Sir Robert, the gentleman explains that something awful has happened to him which will drive him from England a broken-hearted man and says that Sir Robert should forget him. It is signed "G.T." In the second note, addressed to Helen, he asks God to pity and forgive her and says that henceforth he shall be "that which you wished me to be today." He is leaving England never to return.

Luke was supposed to deliver these notes personally to Sir Robert and Lady A. But Sir Robert had already left, and Luke did not know how to find him. Before Luke could deliver Lady A her note, he ran into Phoebe who revealed that she had observed Lady A walking with a strange gentleman in the lime-walk toward the old well and saw what Lady A did. Lady A knows that Phoebe knows, so Phoebe now has Lady A in her power. Since both Phoebe and Lady A believe that the gentleman is dead, Luke decided to hold onto the gentleman's letter. If Lady A had "acted liberal" by Luke and given him all the money he wanted, he would have told her everything. But she didn't, so he didn't. Having thus unburdened himself, Luke expires, the last of Lady A's victims.

LADY A'S CRIMES

Before addressing the specifics of Lady A's crimes, we must digress to try to ascertain the general timeframe of her nefarious doings, and here there is some confusion. We know that the novel was published in 1862. At one point, we are informed that Lucy Graham became a governess in May 1856 and married Sir Michael in June 1857. Later we find out that only one month after the wedding, she learned that George is returning from Australia. But confusingly, when describing the ongoing enmity between Alicia and Lady A, the narrator likens it to the ongoing American Civil War (1861-1865). And the final chapter takes place in the summer of 1861. In any event, we can be relatively confident that the action takes place in the middle of the nineteenth century.

Let us now consider what criminal charges a crusading prosecutor might have levelled against Lady A. First, rather central to the plot, would be the charge of bigamy. We know that Lady A married husband number two without having first unloaded husband number one. Whilst some might argue by way of mitigation that she did subsequently attempt to rid herself of husband number one, her method is surely subject to censure and, in any event, was unsuccessful.

In an 1843 case with a plotline worthy of M. E. Braddon herself, *Regina* v. *Brawn and Webb*, the Huntingdon Assize (Crown Side) considered the situation in which Jane Brawn, while still married to Thomas Brawn, married Thomas Webb, who happened to be the widower of Jane's sister. Both defendants were found guilty of the felony of bigamy and additionally Webb was found guilty of the felony of counselling Brawn to commit bigamy. Remarkably, although the statute called for the defendants to be liable for transport (presumably to Australia) for seven years or imprisonment with or without hard labour for two years, they were each sentenced to a mere two months' imprisonment.[9] Perhaps the learned court did not consider bigamy to be much of a felony or simply felt that love conquers all.

Lady A assumed a new identity, but was her marriage under an assumed name a crime? Under English common law, as I was taught in law school lo those many decades ago, one could take a new name as long as one used it continuously and for no fraudulent purpose. Can we say, based on the facts at our disposal, that Helen Talboys became Lucy Graham with an intent to commit an improper act? It is true, of course, that she then married Sir Michael under her assumed name. But in the almost contemporaneous case *Regina v. John Smith* in 1886, Willes, J. instructed a jury that if a man signed a notice for the purpose of procuring a marriage under his assumed name rather than his birth name that was not a crime. "If a man had a name which displeased him, there was nothing in law to prevent his changing it to any other name he liked better, provided he could get the public to adopt and use the name he preferred."[10]

We must assume that Sir Michael believed Lucy Graham to be a maiden lady. But was her name change critical to Sir Michael's belief? Had she remained Helen Talboys, would Sir Michael have had any reason to believe her married? And, while we are on the subject of fraud, did Helen/Lucy ever actually tell Sir Michael or any civil or religious authority that she was nubile? We do not know. Was it her fault if Sir Michael jumped to an unfounded conclusion? Can one commit fraud by omission rather than commission?

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[9] Regina v. Jane Brawn and Thomas Webb (1843) 1 Carrington and Kirwan 144, 174 E.R. 751.

[10] Regina v. John Smith, (1866) 4 Foster and Finlason 1099, 176 E.R. 923.

Is Lady A technically guilty of personation, the crime of assuming another person's identity for a wrongful purpose? Surely Helen Talboys was able to obtain the status and wealth of becoming Lady A through the act of impersonating an unmarried woman. But the case law generally held that to be guilty of personation the defendant must have assumed the identity of a real person;[11] and we have no reason to believe that a Lucy Graham existed before Helen Talboys created her. By either luck or design, Helen did not take the name of the actual young lady currently moldering in the grave under the headstone of Helen Talboys.[12] So it appears that Lady A would have dodged the personation bullet.

Then there's arson. The evidence is overwhelming that Lady A purposely left a lit candle in the Castle Inn in such a way as to ensure the ensuing conflagration which destroyed that edifice. Even Lady A's usually loyal maid, Phoebe, could see that the fire was no accident.

Working our way up the list, there are at least two possible counts of attempted murder: George Talboys and Sir Robert Audley.[13] In both cases, Lady A believed she had succeeded but in fact had failed in her evil plans. Again, the evidence of her guilt of these crimes is overwhelming.

And, what of the unintended death of Luke Marks, ironically the only victim Lady A manages to kill? Whilst Lady A was surely not a fan of Mr. Marks, who was after all blackmailing her, we have no reason to believe that she intended his untimely demise. How should this offense be graded? Manslaughter or murder?

Happily for this author, a learned article in the *Stanford Law Review* traces the evolution of the felony murder rule in England.[14] During the mid-nineteenth century, the commentators and the courts did not always see eye-to-eye on the exact contours of felony

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[11] See, e.g., Regina v. Pringle (1840) 9 Carrington and Payne 408, 173 E.R. 889.

[12] The dubious honor of being buried as Helen Talboys belonged to poor consumptive Matilda Plowson, age four-and-twenty.

[13] There is also a suggestion that Lady A may have administered poison to Sir Michael, but the reader never gets to real goods on this one, and, in any event, two counts of attempted murder ought be enough.

[14] Guyora Binder, *The Origins of American Felony Murder Rules*, 57 Stanford L. Rev. 59 (2004).

murder. But one 1862 case, *R. v. Horsey*,[15] seems almost directly on point. In that case, the accused set fire to a barn, unaware of a tramp sleeping inside who was burned to death. Justice Bramwell charged the jury that, "where a prisoner, in the course of committing a felony, causes the death of a human being, that was murder even though he did not intend it." And, surely, Mr. Horsey, who did not intend to kill anyone, was less culpable than our Lady A who did intend to kill Sir Robert, but missed her target, killing Luke Marks instead.

LADY A'S DEFENSES: PART ONE–EXTRADITION

But there is more to be considered here. Lady A has been spirited away to Belgium where she is residing under an assumed name. What was the state of extradition, if any, between England and Belgium in those days of yore? At least one character, Dr. Mosgrave, apparently believes that in Belgium Lady A will be "out of the reach of justice." We realize, of course, that he is a medical doctor, not a lawyer, but Sir Robert the barrister does not contradict him on this point. And surely, if a doctor and lawyer agree on something, it must be true.

DEFENSE PART TWO: LADY AUDLEY'S SECRET

An additional consideration could have potentially saved Lady A's lovely neck from the gallows if she were to have been extradited. You, dear reader, might well suppose that Lady A's secret entailed such indiscretions as actually being Helen Talboys rather than Lucy Graham, faking her own death, entering into a bigamous marriage, shoving husband number one down a well, engaging in arson in an attempt to murder Sir Robert and actually fatally injuring her blackmailer, Luke. But, no, none of these little peccadillos constitutes the SECRET, at least not in Lady A's eyes. Her secret, confessed to Robert and Sir Michael, is that she is "a MAD WOMAN." Her mother went mad and was institutionalized. Now, Lady A deems herself to be mad, as well. "My intellect is a little way upon the wrong side of that narrow boundary-line between sanity and insanity."

Of course, her claims of madness may well be in the nature of self-serving declarations. Lady A is nothing if not clever. Had she researched the M'Naghten Rule[16] which was fairly well established in

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[15] Regina v. Horsey (1862) 3 Foster and Finlason 287, 176 E.R. 129.

[16] M'Naghten's Case, HL, (1843) X Clark & Finnelly 200, 8 E.R. 718.

England by the time of her misdeeds? Under the Rule, all defendants are presumed to be sane unless they can prove that at the time of committing the criminal act their state of mind caused them to either (1) not know what they were doing when they committed the act, or (2) not know that it was wrong. Given the prodigious amounts of conniving demonstrated by Lady A and her attempts to avoid discovery, it is doubtful that she would have prevailed on a M'Naghten defense.[17]

ALL'S WELL THAT ENDS WELL

E. Braddon's three-volume epic comes to a close with a happy ending for most of the main characters, with the dual exceptions of Luke Marks, deceased,[18] and Lady A, who, as Madame Taylor, has conveniently died in the Belgium sanitorium, apparently in 1859 or 1860, after a long illness.[19] Sir Robert is married to George's beautiful sister Clara who looks quite a lot like George. Together Sir Robert and Clara are raising Master George (Georgey) Talboys and a toddling baby of their own production. George Talboys, who never went back to Australia but was staying in New York, has returned and been reunited with friends and family (except, of course, Helen). Alicia Audley is planning to marry an old suitor whom she had previously rejected and will get a new title. Sir Michael will not return to Audley Court but is otherwise recovered from his shock and disappointment.

Lady A's demise tidily resolves potential legal issues for both George Talboys and Sir Michael. George, after all, legally married Helen Maldon, the future Lady Audley. Surely, her subsequent bigamous marriage to Sir Michael did not automatically vitiate the bonds of matrimony between herself and George. It is probable, under all the circumstances, that George might not wish to remain married to a woman who shoved him down an old, abandoned well

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[17] Also unavailable to Lady A would have been the common law "year and a day" rule (abolished by Parliament in 1966), which required the death of the victim to occur within a year and a day of the act in order to constitute murder. Lord Coke wrote that an essential ingredient of the crime of murder was that "the party wounded, or hurt, etc., die of the wound, or hurt, etc., within a year and a day after the same." Coke's Institutes (1809) Part I11 p 47. Whilst we are not provided the exact time period between Lady A's arson and Luke's demise, it appears to have been fairly short.

[18] Shed not a tear over Luke, a wife-beater as well as blackmailer.

[19] Since Matilda Plowson was buried as Helen Talboys (see supra, note 12), may we now expect Helen Talboys to be buried as Madam Taylor? Why not?

and left him for dead. And, if she were in fact insane in the civil, not criminal, sense, might George not be legally tied to her indefinitely, not unlike poor Mr. Rochester in *Jane Eyre* who keeps his insane wife locked in the attic? Under Section XXVII of the Matrimonial Causes Act 1857, a husband could bring a petition for dissolution of marriage on the ground that his wife, has since the celebration thereof, been guilty of adultery. But here there are two problems. First, has Lady A in fact committed adultery? We are never told whether Lady A's supposed marriage to Sir Michael was ever consummated. Second, if she is insane, can she be sued at all?

And what is Sir Michael's matrimonial status? A widower, he entrered in good faith into a second marriage with Lady A. To all the world, he is a married man. The Matrimonial Causes Act 1857 removed jurisdiction over matrimonial matters from the Ecclesiastic Court and vested it Her Majesty's Courts. No doubt a prudent solicitor would have advised Sir Michael to clarify his matrimonial status by obtaining a decree of nullity per Section XXVII thereof. But might he have found himself in the same position as Mr. Rochester, unable to sue a crazy woman?

Fortunately, these potential legal difficulties for Sir Michael and George were all removed by Lady A's demise. M. E. Braddon makes no apology for this happy ending. "I can safely subscribe to that which a mighty king and a great philosopher declared, when he said, that neither the experience of his youth nor of his age had ever shown him 'the righteous forsaken, nor his seed begging their bread.'"[20]

POSTSCRIPT

Perhaps the happiest aspect of the happy ending, dear reader, is that Sir Robert, after all his sleuthing and amassing of evidence against Lady A, has rekindled his love for the law and become a rising star in the legal profession, specializing in—you guessed it—breach of promise.

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[20] Quoting King David in Psalm 37:25. Near the end of the Victorian Era, Oscar Wilde had Miss Prism repeat this theme in describing her own famously lost three-volume novel in Act Two of *The Importance of Being Earnest*, explaining, "The good ended happily, and the bad unhappily. That is what Fiction means."

African-American Judges of the Allegheny County Court of Common Pleas (1950-2026)

Joel Fishman*

Eighteen African-American judges (nine men and nine women) have sat or are sitting on the Court of Common Pleas of Allegheny County, Fifth Judicial District, Pennsylvania. The first judge began in 1950 (Brown), eight still sit on the court (Bridges, Green-Hawkins, Henry-Taylor, Howsie, Sizemore, Watson, Woodruff), while three succeeded to appellate positions but are all retired now (Allen, Baldwin, Smith-Ribner). Kim Berkeley Clark is the first African-American President Judge of the Court of Common Pleas and recently retired in December 2023. The following biographies are drawn mostly from Joel Fishman, *Judges of Allegheny County, Fifth Judicial District, Pennsylvania (1788-2024)* (3d. ed. 2026 forthcoming) and updated through a variety of sources.

NAME	**DATES OF SERVICE**
Allen, Cheryl Lynn	July 20, 1990-December 27, 2007
Baldwin, Cynthia A.	January 1, 1990-Feb. 16, 2006
Brown, Homer S.	January 3, 1950-May 18, 1956; January 1, 1957-August 31, 1975
Bridges, Sinquinta R.	January 5, 2026-January 7, 2036
Clark, Kim Berkeley	March 17, 1999-Dec. 31, 2023
Green-Hawkins, Amanda	January 5, 2026-January 7, 2036
Harper, Thomas A.	January 3, 1972-June 27, 1983
Henry-Taylor, Nicola	January 3, 2022-January 5, 2032
Howsie, Elliot	May 7, 2019-January 5, 2032
Johnson, Livingstone M.	January 2, 1973-Dec. 27, 1987
Little, Walter	January 6, 1986-January 31, 2006
Sizemore, Tiffany	January 3, 2022-January 5, 2032
Smith, Henry, Jr.	January 5, 1970-February 6, 1987
Smith-Ribner, Doris A.	December 20, 1984-Jan. 5, 1986
Watson, J. Warren	January 3, 1966-Feb. 20, 1993
Watson, Wrenna	January 3, 2022-January 5, 2032
Williams, Joseph K., III	November 10, 2008-January 2030
Woodruff, Dwayne D.	January 2, 2006-January 2026

* Ph.D., M.L.S., Law Library Faculty Fellow, Duquesne University Thomas R. Kline School of Law.

Cheryl Lynn Allen

Cheryl Lynn Allen (1947-) sat as the second African-American woman judge on the court from July 20, 1990 to December 27, 2007, when she was elevated to the Pennsylvania Superior Court (January 2008-September 4, 2015). She graduated from the University of Pittsburgh School of Law (J.D., 1975). Among her former positions were Attorney in the Neighborhood Legal Services (1975-76), Assistant Solicitor in the Allegheny County Law Department (1977-90), General Counsel of the Wilkinsburg Chapter of the NAACP (1979-87), and in private practice (1980-90). She has won numerous awards including Outstanding Young Women in America (1980, 1982, 1983), University of Pittsburgh Alumni of the Year (1999), National Association of Negro Business & Professional Women Sojourner Truth Award (2000), CASA Volunteer Recognition Award (2004), Women of Standard Award, Second Chance Inc. (2004), Juvenile Court Judges Commission Award (2004), Three Rivers Youth Nellie Leadership Award (2006), Tribute to Women Award, Greater Pittsburgh, YWCA (2006), The Legal Intelligencer & Pennsylvania Law Weekly Women of the Year (2008), and New Pittsburgh Courier's Women of Excellence Award (2008), Geneva College Serving Leader Award (2015). Among her memberships are Founding Member, Women Without Walls; Juvenile Court Judges Commission; Pittsburgh Leadership Foundation; Hosanna House; Cornerstone Television.

Cynthia A. Baldwin

Cynthia A. Baldwin (1945) sat as the first African-American woman judge on the court from January 8, 1990 to February 16, 2006, when Governor Edward Rendell raised her to the Pennsylvania Supreme Court as its third woman and second African-American justice (February 16, 2006-December 31, 2007). Baldwin graduated from Duquesne University School of Law (J.D., 1980) Among her former positions were Staff Attorney, Neighborhood Legal Services (1980-81), Deputy Attorney-General, Commonwealth of Pennsylvania (1983-86), private practice (1987-89), and Adjunct Professor, Duquesne University School of Law (1989-2001). Following her stint on the Supreme Court, she became a partner in Duane Morris (2008) and then General Counsel and Vice President, Penn State University (2008-2012). Since January 1, 2022, she is the President of the Board of Directors of the Fulbright Association. Among Baldwin's other positions included a Fulbright Scholar teaching in Zimbabwe, Chair of the Board of Trustees of Penn State University (2004-07), Duquesne University Board of Directors (1996-2005), and Chair, Board of Directors of the Fulbright Association (2022).

Among her honors and awards were Pittsburgh Woman of the Year in Law and Government (1998); Pittsburgher of the Century, African-American, Pittsburgh Magazine (1999); Woman of Spirit, Carlow College (2004); Athena Award, Allegheny Conference on Community Development (2007); and Anne X. Alpern Award, PBA Commission on Women in the Profession Committee (2008).

Simquita R. Bridges

Bridges was born on January 11, 1965, in Clarksville, TN. Governor Joshua Shapiro appointed Bridges, judge of the Allegheny County Court of Common Pleas on January 15, 2025 and was confirmed by the Senate on February 4, 2025. She won election to a full ten-year term in November 2025, to serve from January 5, 2026-January 2036. Bridges graduated from Austin Peay State University (B.A., Business, 1987), University of Central Missouri (M.B.A., 1990), and Thomas R. Kline School of Law of Duquesne University, J.D., 1996. She served as a Law Clerk, Justice Cynthia Baldwin, (June 1996-September 1998); Deputy District Attorney, Allegheny County District Attorney's Office (September 1998-November 2014); Assistant Chief Deputy Attorney General (November 2014-January 2025); Adjunct Professor, Austin Peay State University. Among her honors and awards are Champion Enterprises, Pittsburgh and Allegheny County Top Public Servant Award, February 2014; New Pittsburgh Courier, Women of Excellence Award, December 2019;Pennsylvania State Police, Certificate of Appreciation, March 2024; Onyx Woman Network, Oxyx Woman Leadership Award, May 2024. Her Memberships include Allegheny County Bar Association; Pennsylvania Supreme Court, Criminal Rules Committee (2013-14); Pennsylvania District Attorney Association; Board Member and Secretary, Urban League of Greater Pittsburgh; Board Member, Boys and Girls Club of Western Pennsylvania, (2020-23); Delta Sigma Theta Sorority; Urban League of Greater Pittsburgh, 2020-present; Jack & Jill of America—Pittsburgh Chapter (2011-20).

Homer S. Brown

Homer S. Brown (1897-1977) was the first African-American to serve as a judge in Allegheny County. Before the consolidation of the county courts under the Constitution of 1968, he first sat on the County Court (January 3, 1950-May 18, 1956) and then was elected to the Court of Common Pleas in November 1956 and sat from January 1957 to August 31, 1975. He graduated from the

University of Pittsburgh School of Law (LL.B., 1923) and held honorary degrees from four additional universities. He was the founder and served as first president (1924-48) of the Pittsburgh chapter of the NAACP. He sat in the House of Representatives of the Pennsylvania General Assembly (1935-50) and authored the Pennsylvania Fair Employment Practices Act. He was also a member of the National Commission for U.N.E.S.C.O., and first African-American to be appointed to the Pittsburgh Board of Education.

Kim Berkeley Clark

Kim Berkeley Clark (1956-) has sat on the court since April 7, 1999 to her retirement on December 31, 2023. She has served twice as Administrative Judge of the Family Division (2005-08 and 2013-15) and was the first African-American woman President Judge of the Court of Common Pleas (December 24, 2019-December 22, 2023). She graduated from Duquesne University School of Law (J.D., 1983). Her previous position was Deputy Assistant Attorney, Allegheny County (1983-99). She was the first African-American woman President of the Allegheny County Bar Association (2006-07); member of the Board of Governors, (1996-2003 and 2019-2023); Pennsylvania Supreme Court Juvenile Procedural Rules Committee; the Pennsylvania Interbranch Commission on Racial, Gender, and Ethnic Fairness; the Pennsylvania Commission on Crime and Delinquency—Juvenile Justice and Delinquency Prevention Committee; the Pennsylvania State Children's Roundtable; the American Bar Association Juvenile Justice Standards Task Force; past member of the Pennsylvania Supreme Court Domestic Relations Procedural ules Committee; former member of the American Inns of Court, Pittsburgh Chapter, where she has served as secretary; the National Council of Juvenile and Family Court Judges (former member of the Board of Trustees); Allegheny County Criminal Justice Policy Board; Homer S. Brown Law Association; Women's Bar Association; Chairperson of the Pennsylvania Juvenile Court Judges' Commission (2015-2022), President of the Pennsylvania Legal Aid Network (March 2020 until September 2022); President of the Pennsylvania Conference of State Trial Judges(July 2015-July 2016); Governor Wolfe's Juvenile Justice Task Force; Pennsylvania Governor's Commission on Children and Families,; Beverly Jewel Wallace Lovelace Children's Program Advisory Board, Children's Hospital Ethics Committee and the Children's Waiting Room Advisory Board; Attorney General's Medical Legal Advisory Board on Child Abuse and on the Allegheny County Child Death Review Team; Chairperson of the Allegheny County Jail Oversight Board; Lydia's Place Advisory Board; Greater Pittsburgh Literacy Council Advisory Board; Womanspace East; the

Steering Committee for the Pittsburgh Project's Leaving Footprints Campaign and the Advisory Committee of the Pittsburgh Urban League's Urban Youth Empowerment Program; former board member of Pittsburgh Pastoral Institute; the Urban League of Pittsburgh; Church of the Holy Cross, where she is a member of the choir, accompanist and has served as interim organist and choir director; vice-chancellor of the Episcopal Diocese of Pittsburgh; Delta Sigma Theta Sorority; the Pittsburgh Chapter of the Links, Inc.; and the Girlfriends.

Honors and awards include Humanitarian Award from the McKeesport Black Caucus, 1999; "Champion of Grace Award" from Graceworks Ministries (December 2001); "Outstanding Judge Award for 2001-2002", presented by the University of Pittsburgh Black Law Students Association; "A Mosaic of Public Service" Award of Excellence in Law from the Pittsburgh Alumnae Chapter of Delta Sigma Theta Sorority, Inc. (2003); Children First Prevention Award from Family Resources (2004); Lydia's Place Volunteer Award (2005); Vision Outreach Ministries Stop the Violence Humanitarian Award (20050; Duquesne Light/WQED Multimedia African American Leadership Award for Excellence in Education (2007); Children's Hospital/UPMC Champion of Hope and Healing Award (2007); Award for collaboration from the Pennsylvania Statewide Adoption Network (on behalf of the Allegheny County Family Division) (2007); first African American woman to be elected as president of the Allegheny County Bar Association 2006-2007; *New Pittsburgh Courier* 50 Women of Influence (2006 and 2008); "Wings" Award from the Urban League of Greater Pittsburgh Charter School (2008); Dr. Lottie P. Edwards Community Service Award from the Mt. Ararat Community Activity Center (2009); Woman of Distinction Award from the St. Mark AME Church (2009); Wesley Spectrum Services Black History and Diversity Hero of the Year Award (2011); William H. Moore Award for Excellence from N.O.B.L.E. (2011); Three Rivers Adoption Council Friend of Adoption Award (2011); The Drum Major of Justice Award, Homer S. Brown Division of the Allegheny County Bar Association (2012); Woman of Distinction in Law, Girl Scouts of Western Pa. (2012); the Judge Homer S. Brown Award, Pittsburgh NAACP (2012); Phillip Werner Amram Award, Allegheny County Bar Association (2012); Friend of Children Award, Macedonia F.A.C.E. (2012); Achievement Award for Community Advocacy, Iota Phi Foundation of Omega Psi Phi Fraternity Inc. (2012); Pittsburgh Circle of Courage Award in Law, BCC Ministries (2012); Athena Award (2012); Susan B. Anthony Award, Women's Bar Association of Western PA (2013); Chairman's Award, Small Seeds, Inc. (2014); Woman of Legacy, PNC Legacy Project (2015); the William H. Rehnquist Award for Judicial Excellence (2017); Ronald H. Brown Leadership Award, Urban League of

Greater Pittsburgh (2018); Gwen's Girls See the Best in Me Equity Award (2019); Woman of Spirit, Carlow University (2020); Bayard Rustin Award, A. Philip Randolph Institute (2022); Living History Award, Bethlehem Baptist Church (2022); Community Leadership Award, Sisters Saving Ourselves Now (2022); Lifetime Achievement Award, Nabhi Christian Ministries (2022); Judge Fred P. Anthony Award, Pennsylvania Juvenile Court Judges' Commission (2022); Carol Los Mansmann Award, Allegheny County Bar Association (2024); Governor Josh Shapiro named Clark as a Distinguished Daughter of Pennsylvania (2024).

Amanda Green-Hawkins

Amanda Green-Hawkins (1971) was elected a Judge of the Allegheny Court of Common Pleas in November 2025 to serve from January 5, 2026 to January 7, 2036. Green-Hawkins graduated from Duke University, A.B. (1993) and from Northeastern University School of Law, J.D. (2001). She served as a Judicial Intern, Judge Joseph A. Greenaway, U.S. District Court, District of New Jersey (September-November 1999); Law Clerk to Judge Lawrence M. Lawson, Superior Court of New Jersey (September 2001-August 2002); Law Clerk, Levy, Ratner & Behroozi (December 2000-February 2001); Law Clerk, International Union of Electronic, Electrical, Salaried, Machine and Furniture Works (March-August 2000); Mediator, Superior Court of New Jersey, Special Civil Part, Freehold, N.J. (September 2001-August 2002); Assistant General Counsel, United Steelworkers, Pittsburgh (September 2002-December 2010); Assistant General Counsel and Director, Civil and Human Rights Department, January 2011-January 2026); Adjunct Professor, University of Pittsburgh School of Law, (Spring Terms 2022, 2023, 2024); pro bono representation before Department of Public Welfare Bureau of Hearings and Appeals, and Commonwealth Court; Member, Allegheny County Council, (March 2008-2015); Member, Board for the Port Authority of Allegheny County (July 2011-December 2015); City of Pittsburgh's Community Taks Force on Police Reform (June-October 2020); Elector, Pennsylvania Electoral College, 2012 Presidential Election.; Independent Counsel, Pure Romance (March-September 2017).

Memberships: Allegheny County Bar Association (includes Homer S. Brown Division and Women in the Law Division); AFL-CIO Union Lawyer Alliance, ULA Minority Caucus; Pittsburgh Black Lawyers Alliance; Board Member, Venture Outdoors; Advisory Committee Member, New Voices Pittsburgh; Trustee, Women's Law Project; Board Member, Pittsburgh Zoo; Member, Urban League of Pitts-

burgh; Member, NAACP—Pittsburgh Chapter; Member, Democratic National Committee (includes Member of DNC Rules and Bylaws Committee and Member and Credentials Committee); Board Member, Pittsburgh United; Member, Parent Teacher Association; Board Member, Women for the Future of Pittsburgh; Member, Jubilee Kitchen; Board Member, Keystone Progress; PA Stat Chair, Organizing Together (2020); Steering Committee Member, PA Democratic Party Lawyers; Member, Keep Our Republic, PA Advisory Council.

Among her awards are Community College of Allegheny County, Vanguard Diversity Award; Pittsburgh Progressive Woman Award; New Voices, Voice of Justice Award; Women and Girls Foundation, Art of Justice Honoree; Allegheny County Democratic Committee, Catherine Baker Knoll Award; New Pittsburgh Courier, Fab 40; Citation from Hon. Jack Wagner, Auditor General; Citations from the PA House of Representatives; Special Recognition from Senator Jane Orie; Proclamation from Pittsburgh City Council.

Thomas A. Harper

Thomas A. Harper (1923-June 27, 1983) sat as a judge on the court from January 3, 1972 until his death in office on June 27, 1983. He graduated from Howard University School of Law (LL.B., 1954). He was the first African-American assistant public defender in Pennsylvania. He previously served in private practice as a named partner in two law firms before obtaining his appointment as judge. Among his awards were Outstanding Service in Government Award, Guardians of Greater Pittsburgh (1973) and Award of Recognition, Community Release Agency (1976). Among his memberships were the first African-American elected to the Braddock School Board (1961-68), Tri-Boros Chapter, NAACP, and Community Action Pittsburgh (1971-74). He also sits on the Allegheny County Jail Oversight Board and Macedonia FACE Board and is an Adjunct Professor at Duquesne University Law School.

Nicola Henry-Taylor

Nicola Henry-Taylor was elected in November 2021 and her term of office is from January 2022 to January 2032. She graduated from Slippery Rock University of Pennsylvania (B.A., 1993) and from Duquesne University School of Law (J.D. 1996). She was an intern for Judge Justin Johnson of the Pennsylvania Superior Court and Judge Bernard Markovitz of the U.S. Bankruptcy Court (1995) before serving as a law clerk for Charles R. Alexander of the Court of

Common Pleas of Clarion County (1996-97) and Judge Tom Doerr of Court of Common Pleas of Butler County (1999-2000). Henry-Taylor then became an Assistant District Attorney in the District Attorney's Office of Allegheny County for six years (2001-2007) before joining K & L Gates (2007-2010), and then starting her own firm until her election as judge. She has also served as Diversity Director for Duquesne University School of Law, a Commissioner on the Allegheny County Human Relations Commission, and ACBA Ad hoc Committee to Examine Police Use of Force and Court Rules for Bail, Probation, and Incarceration, member of the Pennsylvania Supreme Court Interbranch Commission for Gender Racial and Ethnic Fairness, Pittsburgh Legal Diversity and Inclusion Coalition Recruitment Committee. She received the 2026 Drum Major for Justice Award from the Homer S. Brown Division of the Allegheny County Bar Association.

Elliot Howsie

Governor Tom Wolfe appointed Howsie on March 29, 2019 and was confirmed by the Senate on May 7, 2019 and won full-term election in November 2021 to sit until January 3032. He graduated from Indiana University of Pennsylvania (B.A., 1990; M.A., 1993) and Duquesne University School of Law (J.D., 1998). He was a residential counselor at Whale's Tale (1993-1996) an then Supervisor, Family Therapy Program, Alternate Program Associates (1993-1998). He was a law clerk for Judge Justin M. Johnston on the Pennsylvania Superior Court (1998-99). He then served as an Assistant District Attorney in the Allegheny County District Attorney's Office (2002-2005), followed by a solo practitioner (2005-2012), before being appointed by Richard Fitzgerald as the first African-American Chief Public Defender of Allegheny County (March 19, 2012) until his appointment as a judge. He recently received Sylvester Pace Humanitarian Award, Iota Phi Foundation (2021). His memberships include Allegheny County Bar Association, Allegheny County Jail Oversight Board (Dec. 2010-April 2012) and President (2022-2023).

Livingstone M. Johnson

Livingstone M. Johnson (December 27, 1927-February 24, 2023) sat as a judge on the court from 1973 to December 27, 1997, when he took senior status from 1997 to 2012. He graduated from the University of Michigan School Law School (J.D., 1957). He was an Assistant Solicitor, Allegheny County (1962-73). Among his honors and awards Distinguished Flying Cross, Commendation Medal, Air

Medal, and 3 Oak Leaf Clusters for his Air Force service in World War II; Susan B. Anthony Award, Women's Bar Association (1995); and Philip Werner Amram Award, Allegheny County Bar Association (2007). Among his memberships he was on the Board of Governors, Allegheny County Bar Association (1969-74); Board of Trustees, NAACP (1962-68); life member of the Urban League; and Pennsylvania Joint Commission on Crime.

Walter R. Little

Walter R. Little (October 1, 1943-June 5, 2006), sat as a judge on the court from January 6, 1986 to his resignation on January 31, 2006, when he took senior status until his death in office on June 5, 2006. He graduated from the University of Pittsburgh School of Law (J.D., 1973). He was a Deputy Attorney General for the Commonwealth (1973-76), a trial attorney in the Allegheny County District Attorney's Office (1976), and a District Magistrate of the City of Pittsburgh (1979-85). He was a member of the Pittsburgh chapter, NAACP; Guardians of Greater Pittsburgh, Inc.; and board member, Sickle Cell Society, Inc.

Tiffany Sizemore

Tiffany Sizemore was elected in November 2021 and her term of office is from January 2022 to January 2032. She graduated from Antioch College, B.A., 2000 and Howard University School of Law, J.D., *cum laude*, 2004. She served as a Staff and then Supervising Attorney, Public Defender Service for the District of Columbia (2004-12), Deputy Director of the Juvenile Division, Office of the Public Defender, Allegheny County (2013-15), and Assistant Professor for Clinical Skills, Duquesne University School of Law (2015-22). She is a member of the Allegheny County Bar Association, Juvenile Defender Association of Pennsylvania, and National Juvenile Defender Center. Among her awards are the National Juvenile Defender Center Award (2019) and Vision Towards Peace "Passion Meets the Road" Forerunner Award (2019). Her memberships include Board Member, National Council of Juvenile and Family Court Judges; Trustee, Winchester Thurston School; Board Member, Neighborhood Legal Services Association; Vice President, Board of Directors, Juvenile Defender Association of Pennsylvania; Member, Pennsylvania Juvenile Justice Task Force; National Advisory Board Member, National Juvenile Defender Center, 2017-19 (and Co-Director of the Northeast Regional Center); Member, Pennsylvania Juvenile Court Procedural Rules Committee, 2013-20;

Board President, The Givner Project; member Board of Autism Connection of Pennsylvania.

Henry R. Smith, Jr.

Henry R. Smith, Jr. (February 6, 1917-July 26, 1995) sat as a judge on the court from January 7, 1980 to February 6, 1987, when he assumed senior status until his death in office on July 26, 1995. He graduated from Duquesne University School of Law (J.D., 1949). He was an Assistant District Attorney, Allegheny County (1951-52), Assistant General Counsel, City of Pittsburgh Housing Authority (1951-53), and Director, Office of Economic Opportunity, Allegheny County (1964-69). Among his awards were one of 100 Outstanding Young Men by Time Magazine and Pittsburgh Chamber of Commerce (1953), Top Hat Award, Pittsburgh Courier (1981), Pittsburgh Courier Civil Rights Award (1962), Pennsylvania NAACP Human Rights Award (1969), and Distinguished Alumnus Award, Penn State University (1983). Included in his professional activities were memberships on the Pennsylvania Criminal Procedure Rules Committee, Pennsylvania Advisory Committee on Probation, Judicial Inquiry and Review Board, Pennsylvania Joint State Council on the Criminal Justice System, Pennsylvania Advisory Committee to the U.S. Commission on Civil Rights, Judicial Inquiry Review Board. Among his memberships were the Pennsylvania and National NAACP; Pittsburgh YMCA; Grubstake, Inc; Greater Pittsburgh Civic League; Pennsylvania and Allegheny County Bar Associations, Pennsylvania State Trial Judges Association, American Judicature Society, Homer S. Brown Association, the Pennsylvania Advisory Board on Probation, Board of Visitors, School of Social Work, University of Pittsburgh; member of the Board of Trustees of Duquesne University, Carnegie Mellon University, Indiana University of Pennsylvania, and Point Park College, ACLU, and founder of the Criminal Justice Volunteers, Inc.

Doris A. Smith-Ribner

Doris A. Smith-Ribner (1945-) sat as a judge on the court from December 20, 1984 to January 5, 1986 and then elected as the first African-American woman judge to sit on the Pennsylvania Commonwealth Court (January 4, 1998-June 10, 2009). Smith graduated from the University of Pittsburgh School of Law (J.D., 1972). She was in private practice until 1986 and also held positions as Commissioner, Pennsylvania State Human Commission (1974-80), member of the Pennsylvania Supreme Court Disciplinary Board (1981-84), and Solicitor, County Controller of Allegheny

County (1980-84). Among her awards were Businesswoman of the Year, Business & Professional Women's Club (1985); Distinguished Alumni Award, University of Pittsburgh School of Law, and Commencement Speaker, University of Pittsburgh School of Law (May 26, 2007). Among her memberships were a member of the Board of Visitors, University of Pittsburgh School of Law (1996-99); member of the President's Advisory Commission on Educational Excellence (2014); member of the Pennsylvania Interbranch Commission for Gender, Racial, and Ethnic Fairness; Pennsylvania Justice Reinvestment Work Group; and Life Member, National Council of Negro Women.

J. Warren Watson

J. Warren Watson (1923-) sat as a judge on the court from January 3, 1966 to February 20, 1993, and then took senior status until December 2003. He graduated from Duquesne University School of Law (LL.B., 1953). He was a member of the Pennsylvania Bureau of Workmen's Compensation (1956-62), an Assistant Solicitor, City of Pittsburgh (1962-66), and in private practice (1954-66). He was the first African-American recipient of Man of the Year award by the Disabled American Veterans (1969). Among his other positions were as a board member of the Judicial Inquiry and Review Board; Community Action Pittsburgh;, member of the board of directors of Centre Avenue Y.M.C.A.; and legal counsel, American Federation of Musicians.

Wrenna Watson

Wrenna Watson was elected in November 2021 and her term of office is from January 2022 to January 2032. She is the daughter of Judge J. Warren Watson (1966-93), the second father-daughter judgeships in the county. She graduated from Howard University and Duquesne University School of Law. She was a probation officer for several years; Hearing Officer, Orphans' Court, 1999-2001 and then District Magistrate in the Pittsburgh Magistrate Court. She later served as chair of the City Planning Commission of Pittsburgh.

Joseph K. Williams, III

Joseph K. Williams, III (1952-), was first appointed to the court by Governor Ed Rendell and then won election in November 2009 and retention election in November 2019. He has sat on the court from

November 10, 2008 to his retirement in December 2024. He graduated from Duquesne University School of Law (J.D., 1985). With a Master's degree in clinical psychology, he served as a psychological consultant (1977-85) and was in private practice (1985-2008). He received the Homer S. Brown Outstanding Attorney Award (2000). He was President of the Homer S. Brown Law Association (2001); Drum Major Justice Award, Homer S. Brown Division, Allegheny County Bar Association (2025); member of the Pittsburgh History and Landmarks Foundation; Board of the NAACP; and Secretary of the Allegheny County and City of Pittsburgh Sports and Exhibition Authority (2001-04); Chair, Allegheny County Jail Oversight Board.

Dwayne D. Woodruff

Dwayne Woodruff (1957-) has sat on the court from mid-December 2005 to the present (term expires in January 2026). He graduated from Duquesne University School of Law (J.D., 1988). Woodruff played professional football as a defense back for the Pittsburgh Steelers (1979-90). He became a judge in late December 2005 to present. He ran unsuccessfully for a seat on the Pennsylvania Supreme Court in 2015 and 2017. He also served as a Personnel Specialist at Humana, Inc. (1980-84); attorney at Meyer, Darragh Buckler Bebenek & Eck (1989-97), Vice President of Capital Asset Research Corp. (1997-2005) and in private practice during the same period (1997-2005). Included in his professional activities are memberships in the American, Pennsylvania, and Allegheny County Bar Associations; Homer S. Brown Law Association; Pennsylvania House of Delegates; Judiciary Committee 1998, 1999, Allegheny County Bar Association; Lifetime Member, NAACP; Chair, Pittsburgh "Do the Write Thing Challenge"; Elder, Allegheny Center Alliance Church; Sigma Pi Phi Fraternity; Chair, Shared Accountability for Education, 2010-; Pennsylvania Interbranch Commission on Juvenile Justice; Chair, Allegheny County Interbranch Commission on Juvenile Justice; Board, National Campaign to Stop Violence (Washington, DC); Past Board Chair, Urban League of Greater Pittsburgh, American Cancer Society, Duquesne University Law Challenge for NEED (Negro Educational Emergency Drive) Program; Past Board Member: Urban Impact Foundation, American Red Cross; LaRoche College, Ronald McDonald Children Charities, Pittsburgh History and Landmarks Foundation, United Way Points of Light, Champions Association, Inner City Youth Tennis Program and the Board of Governors at Duquesne University Law School.

Among his honors were the MVP, Pittsburgh Steelers (1982); Team Captain, Pittsburgh Steelers (1987-90); Arthur J. Rooney Chief Award (1988); Ed Block Courage Award (1987); Community Service Award, Multiple Sclerosis Society (1989); Man of the Year Award, Pittsburgh YMCA (1990); Man of the Year Award, Champions Association (1990); University of Louisville Athletic Hall of Fame (1992); Volunteer of the Year Award, American Cancer Society (1993); Distinguished American Award of the National College Football Foundation, Kentucky Chapter (1993); namesake, Dwayne Woodruff Celebrity Golf Classic (1994-2005); Dr. Martin Luther King Outstanding Citizen Award, Hand in Hand, Inc. (1996); University of Louisville #10 Jersey Honored (2000); University of Louisville Alumni Fellow Award (2003); Kentucky Pro Football Hall of Fame Award (2005); Duquesne Law Alumni Outstanding Achievement Award (2006); Pittsburgh Courier Man of Excellence Award (2008); Life's Work Career Achievement Award (2010); Omega Psi Phi Fraternity Humanitarian Award (2011); Kentucky Governors Cup Award (2012); UPMC Center for Inclusion Community Champion Award (2012); Small Seed Development Chairman Award (2012); Pittsburgh NAACP Homer S. Brown Impact Award (2012); Kentucky Athletic Hall of Fame (2013); Pittsburgh Circle of Courage Award (2014); Judicial Outstanding Leadership Award, Pennsylvania Juvenile Court System (2015); Drum Major for Justice Award, Homer S. Brown Division, ACBA, (2020); Dr. John E. Murray Jr. Meritorious Service Award, Duquesne University Thomas R. Kline School of Law (2025).

BOOK REVIEW

Ryan Vacca & Ann Bartow eds., *The Jurisprudential Legacy of Justice Ruth Bader Ginsburg*. New York: New York University Press, 2023. x, 355 pp. Online ISBN: 9781479817894. Print ISBN: 9781479817856.

In 2023, I reviewed *Representative Opinions of Justice Ruth Bader Ginsburg*, a collection of the Justice's opinions. After *Unbound* published the review, I received an inquiry from Professor Ryan Vacca of the University of New Hampshire School of Law about whether I'd be interested in reviewing an RBG book he had recently co-edited with Ann Bartow. After a few logistical delays, I'm happy to share my thoughts on Professors Vacca and Bartow's book.

The Jurisprudential Legacy of Justice Ruth Bader Ginsburg is a very different creature from *Representative Opinions*, which reprinted key RBG opinions with short accompanying essays. *Jurisprudential Legacy* is 20 thoroughly researched and footnoted chapters, each written by a different author or authors and focused on a particular legal area on which Justice Ginsburg left her mark. The variety is marked – everything from Justice Ginsburg's well-known gender jurisprudence to environmental law. The book finishes with a chapter on "Teaching the Life and Law of RBG" and a conclusion that brings together the chapters' common themes.

Even without reading the conclusion, the recurring themes are clear: Justice Ginsburg was methodical and pragmatic; she liked predictability, uniformity, and judicial restraint; and she had faith in incrementalism, federalism, and the separation of powers, although she became more disillusioned as her term on the Supreme Court progressed. The book paints a picture of a careful jurist with a strong belief in fairness, whose personal experiences sometimes colored her approach to the law. The authors praise Justice Ginsburg for her many fine qualities, but they also are unafraid to point out the shortcomings of her jurisprudence.

While a cover-to-cover read has its advantages, this is a dense book. The chapters are largely readable and average only 10-12 pages of text, but they are written for a legal audience. Indeed, the chapter on teaching RGB's life and jurisprudence suggests anyone

interested in teaching such a course could use *The Jurisprudential Legacy of Justice Ruth Bader Ginsburg* as the textbook! I assume such a course also would assign a biography of some sort, as the authors often assume that the reader knows Justice Ginsburg's legal and personal background, particularly her advocacy for gender equality.

That said, this book is a good starting point for anyone researching particular areas of Justice Ginsburg's jurisprudence. The chapters are heavily footnoted, and the authors include a 15-page list of "Additional Resources on Justice Ginsburg and Her Jurisprudence," which includes materials both by and about the Justice. The index is solid, but I would have liked more information about the contributing authors (almost all of whom are academics), as I ended up doing internet searches on many of them to learn more about their backgrounds and specializations.

Although many RBG titles are available (as the 15-page bibliography indicates), this book functions as a good retrospective of Justice Ginsburg's jurisprudence and a solid jumping-off point for more in-depth research into specific subject areas.

The Jurisprudential Legacy of Justice Ruth Bader Ginsburg is available in print and electronically through Oxford Academic and JSTOR.

--Julie E. Randolph
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