

the  
LEGAL HISTORIAN



*Historia Omnium Legum*

AMERICAN SOCIETY FOR LEGAL HISTORY

MCMCLVIII



*the*  
**LEGAL HISTORIAN**

*"Nam quis nescit, primam esse  
historiae legem, Ne quid falsi  
dicere audeat?"*

—Cic. *de Or.* II, 62

*NUMBER 1*

*1958*

*Published Annually for*

THE AMERICAN SOCIETY FOR LEGAL HISTORY

*by*

THE BOBBS-MERRILL COMPANY, INC.

MCMLVIII

Supreme Court of the United States  
Washington 25, D. C.

CHAMBERS OF  
JUSTICE HAROLD H. BURTON

May 26, 1958

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THE AMERICAN SOCIETY FOR LEGAL HISTORY

My dear Professor Forkosch:

It gives me pleasure to endorse the purpose and progress of the American Society for Legal History. It supplies a needed emphasis.

To read any statute or decision without reference to its legal history is to read it out of context. It is like a fish out of water.

Yours sincerely,

*Harold H. Burton*

Professor Morris D. Forkosch  
Brooklyn Law School  
375 Pearl Street  
Brooklyn 1, New York

# THE AMERICAN SOCIETY FOR LEGAL HISTORY

(ORGANIZED, 1956)

## TEMPLE UNIVERSITY SCHOOL OF LAW

1715 North Broad Street

Philadelphia 22, Pa.

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## *A Short History of Our Society*

THE American Society for Legal History (ASLH) was born in December of 1956 at the meeting of the American Association of Law Schools held in Chicago. At that time officers and members of the Board of Directors were elected, and the Society's incorporation was voted.

But the history of our Society antedates its formal inception.<sup>1</sup> Its ideological roots can be found in the Selden Society of England and in the Stair Society of Scotland. In this country, a legal-history society was organized in 1933, but its life span was short. At the December, 1933, meeting of the AALS a group of scholars formed the American Legal History Society, which continued as an organization through 1937, although sessions as round-table discussions of the AALS were held for some years thereafter.<sup>2</sup> A paucity of funds prevented the publication of more than one volume of legal history—*The Journal of the Courts of Common Right and Chancery of East New Jersey, 1683 to 1702*. This volume appeared in 1937 and was edited by Preston W. Edsall.

Despite this background of limited success, the desire still existed for a society devoted to legal history. This sentiment fructified at the annual AALS meeting in Chicago on December 28, 1955, when a group of more than fifty, under the chairmanship of Professor Erwin C. Surrency of Temple University School of Law, determined to organize as The American Society for Legal History. This Society was not to be limited to American legal history (the old society's title so determined its scope), but was to encourage the study of all phases of legal history, e.g., American, English, Roman, ecclesiastical, or primitive. It is the only organization in this country devoted to such a purpose.

A steering committee was elected to draft organizational plans to be submitted to the group in the following year<sup>3</sup> and, because of the difficulties of communication, a subcommittee was set up.<sup>4</sup> The formal aspects of incorporation absorbed most of the committee's time and work, with New York's incorporation eventually occurring in 1958; but, fortunately, more substantial gains were made in this period.

Through the work of Professor Surrency, Dean Benjamin F. Boyer of Temple University School of Law, and the Provost of Temple University,

Dr. Millard E. Gladfelter, the groundwork had been laid for Temple University to inaugurate a journal of legal history. Announcement of the forthcoming publication was made in the summer of 1956, and an invitation was extended to the nascent society to designate the new journal as its official organ. The first issue of *The American Journal of Legal History* appeared in February, 1957, under the joint sponsorship of The American Society for Legal History and Temple University, with Professor Surrency as its editor. By arrangement with Temple University, all members of the ASLH receive the *Journal* quarterly, part of the ASLH membership dues being used to defray the cost of the *Journal*.

The steering committee reported its progress at the inaugural meeting of the new American Society for Legal History, which met on December 28, 1956, in Chicago, immediately following the Round Table on Legal History of the Association of American Law Schools. At that meeting, the efforts of the steering committee were approved, the new *Journal* was adopted as the official publication of the Society, and the officers and directors of the Society were elected. Professor Surrency was elected president; Professor Brendon F. Brown of Loyola University, vice-president; Professor Earl Murphy of Temple University, secretary; and Professor John C. Payne of University of Alabama, treasurer. Elected as directors were Hon. Earl Warren, Professor Francis S. Philbrick, Professor Willard Hurst, Professor Julius Goebel, Hon. Arthur Vanderbilt, Dean Alison Reppy, Professor William Jeffrey, Jr., Professor Bryan Bolich, and Professor Stefan A. Riesenfeld.

At the 1957 annual meeting of the Society, the Nominating Committee recommended that the officers continue for another term, through 1958, which recommendation was adopted by the Society.

Although *The American Journal of Legal History* is separate and apart from the ASLH, the Society and the *Journal* are interrelated: the Society is represented on the *Journal's* Advisory and Editorial Boards and the *Journal* is the official publication of the Society. The quarterly subscription rate of the *Journal* is \$7.50, but members of the Society receive it without charge. One of the aims of the Society is to support and strengthen the *Journal*.<sup>5</sup>

The first year of the Society's activities was devoted primarily to organization, committees being formed for Membership, Publications, By-Laws, the Annual Convention, and the Preservation of Legal Records. The work of each of these Committees is self-explanatory, except that of the last one. The Program of the ASLH included in this pamphlet shows the importance of this phase of our efforts: from its inception our Society has encouraged an interest in preserving court and legal records of all kinds.

The Society's second annual meeting was held in San Francisco, on

December 28, 1957; all officers and Board members were re-elected and a replacement was elected for one deceased director. In the short space of two years, the Society and its members have made, and are continuing to make, significant contributions to the field of legal history. Evidence of these contributions can be found in the pages that follow, and in the Bibliography and Registry. Since the "history" of the ASLH is a living one, it can only be recorded as time unfolds.

<sup>1</sup> The following references are the sources from which this history was compiled: Surrency, "A Proposed Society for Legal History," 9 Jl. Leg. Ed. 78 (1956), and "The American Society for Legal History," 105 Pitts. Leg. Jl. 3 (Dec. 14, 1957); Payne, "The American Society for Legal History," 19 Ala. Lwyr. 86 (1958), and 32 Fla. Bar Jl. 78 (1958); Murphy, "The American Society for Legal History," 1 Jl. Leg. Hist. 170 (1957).

<sup>2</sup> See, e.g., Murphy, "Legal History as a Course," 10 Jl. Leg. Ed. 79 (1957), a paper delivered at the 1956 round table.

<sup>3</sup> This committee consisted of Professors William Tucker Dean (Cornell), chairman, Julius Goebel (Columbia), William Jeffrey (Yale), John C. Payne (Alabama), Earl F. Murphy (Harpur College), and Erwin C. Surrency (Temple).

<sup>4</sup> This consisted of Messrs. Dean, Murphy, and Surrency.

<sup>5</sup> Besides so receiving the *Journal* without charge, members may avail themselves of substantial discounts in purchasing books in the field of legal history. Professor John C. Payne, Alabama School of Law, University, Ala., may be contacted for available titles and prices.



## President's Letter

IT is a notable event in the history of this Society that it is now publishing under its own imprint *THE LEGAL HISTORIAN*. This publication is made possible through the courtesy of the Bobbs-Merrill Company, who is publishing and distributing this pamphlet as a service to the legal profession, for which the Society is grateful. The material in *THE HISTORIAN* was collected and edited by the Publication Committee. The Society may be proud of the progress made possible by the splendid work of this Committee.

From time to time, in the past two years, your president has written letters to the members of the Society explaining its program and keeping them informed of the progress made. The purpose of *THE LEGAL HISTORIAN* is to contain the record of progress of the Society to date, to list its members, and to publish an occasional article when space is available. *THE LEGAL HISTORIAN* will become a useful reference service for those interested in this field.

One of our pressing problems is to let others know of our existence. It has been pointed out in the past that each member should seek additional members by calling attention to the existence of the Society to members of the bar and ask their support. Personal contacts have been responsible in obtaining a great many of our present memberships. I am sure if more members of the bar were aware of the existence of this Society, more of them would write as Ned O. Heinisch wrote:

"I'm just a working lawyer who loves books and has been a 'history buff' most of his days. My writings are confined to professional efforts which disappear into court files and occasionally are instrumental (I hope) in providing some guidance for the judicial efforts appearing in the reported cases in which I have served of counsel. The Society has my moral and what little financial support I can muster, but it will have to look elsewhere for scholarly attainments."

My past letters have called attention to the existence in every court house of a source of historical materials unsurpassed in richness for historical details; namely, court records. No better source for understanding the problems of past generations and how they attempted to settle these problems exists. Among these records lies the story of the state court exercising jurisdiction which is now within

the domain of the federal courts, such as bankruptcy, admiralty, and similar problems. The records of courts established to exercise special jurisdiction and whose existence has been forgotten, likewise, will be found. Records of courts established in the western areas of this country under the Spanish and later, the Mexican, must exist in court houses in this area. But, to the legal historian, these records have little meaning until they are carefully catalogued as to their contents, period covered, and the type of notations included. Some court minutes, for example, are very complete with abstracts from the pleadings and with more information than this descriptive term usually indicates. This information should be passed on to the Committee on Preservation of Legal Records which will act as a central clearing house. Every member should consider it his duty to take a trip to his court house and explore what records are available, for such a trip is a rewarding experience. The Committee on Preservation of Legal Records has rendered a progress report in this issue of *THE LEGAL HISTORIAN* and we look for future activity of this splendid committee. The next step would be for the American Society for Legal History to seek funds for the publication of those records which would contribute significantly to the legal history of the United States. The day will come when the Society will have funds to accomplish this program.

Each member of the Society should encourage the establishment of Committees on Legal History in their Local and State Bar Associations. Such committees should adopt as their programs preservation of biographical materials of local judges, the cataloguing and describing of court records and their preservation, and encourage some one of their members to write the history of the courts in their locality or state. Such committees will do much to help preserve the legal history of this country.

No learned society is possible without some program of publication. This Society is now publishing in cooperation with Temple University School of Law, the *AMERICAN JOURNAL OF LEGAL HISTORY* which each member receives. And now the Society has published *THE LEGAL HISTORIAN*. The future should see the appearance of monographs in legal history and publications of court records, all under the imprint of the Society.

I would be remiss if I did not take this opportunity of thanking everyone for their splendid cooperation given to me during my tenure of office as President. The Chairman of the Committees have been active and cooperative. The Society is especially indebted to Judge Sherrill Halbert who made the first address to our organization. It has been a pleasure to act as President and I look forward to further work with the Society.

ERWIN SURRENCY, *President*

Philadelphia, Pa.



## Program of the Society

THE American Society for Legal History was founded three years ago (1) to promote the study of legal history in the United States, (2) to encourage the preservation of American legal records, and (3) to bring together at annual meetings persons interested in the history of law to discuss problems and ideas of mutual interest. The Society has an active program in each of these areas, and members participate either individually or through service on the five Committees established for this purpose:

Committee on Membership,  
Committee on Publications,  
Committee on By-Laws,  
Committee on Preservation of Legal Records,  
Committee on Annual Convention.

Members are invited to volunteer their services on any of the above Committees. The work of these Committees during the past year is summarized elsewhere in this pamphlet.

### TO PROMOTE THE STUDY OF LEGAL HISTORY . . .

Our friends in the Selden Society of England are dedicated "To encourage the Study and Advance of Knowledge of the History of English Law." The program of our Society is much broader than this and is not limited to investigations into the history of any particular legal system; we seek to promote the study in the United States of the history of all laws, including English Law, Roman Law, Canon Law, as well as American Law.

The importance of legal history has received increasingly greater recognition within the last few years in the United States. Members of the bar, as well as teachers of law and history, are becoming aware that here is a gap which should be bridged. Accordingly, there is now a committee on legal history in the American Bar Association, a round table on legal history in the Association of American Law Schools, courses on legal history in American law schools, and work in legal history being done in many places under many sponsors. But this is not enough, not nearly enough. The need for some central place to coordinate this activity, some group that views this of primary importance, for whom this is the most significant work that can be done, led to the formation of our Society.

To many people, legal history is the study of the development and the acceptance of technical rules of law by the courts and legislative bodies, but the administration of justice and the development of legal institutions such as juries, sheriffs, and the courts are all a segment of

the same study. Constitutional history (the study of the development of our constitutional safeguards in which the legal profession has played such an important part) is a significant portion of this large field of the study and is the one which has received the greatest amount of attention from scholars. The evolution of the law is an exciting story and one which will have an appeal to all members of the legal profession and to students of the history of the culture of civilization.

As we view it, legal history embraces a study of legal institutions such as courts, juries, and law enforcement officials; the development of legal doctrines, and the contributions of lawyers and judges to the growth of the law. Of these three areas, the development of the legal doctrines has received the least attention from writers, except when included as an incidental part of some other legal writing. It is one of the purposes of this Society to encourage the study of the history of our legal doctrines and how these doctrines have reached their present status of development.

### TO ENCOURAGE PRESERVATION OF LEGAL RECORDS . . .

One of the main purposes of our Society is to preserve American legal records, and this involves not only the location and making available for publication of court records and legal documents which have been lost, forgotten, etc., or which are known to exist but which are in need of preservation through publication or otherwise, but also the very important task of the encouragement and education of our public officials to be more interested in the preservation of old court records and in the care of the other records under their jurisdiction.

The two-fold publication program of the Society is designed to aid in the preservation of American legal records. First, the Society supports *The American Journal of Legal History*, a quarterly forum for scholarly articles on the history of law which also prints the texts of significant documents pertaining to legal history. It is one of the purposes of the *Journal* to help preserve our court records and the correspondence of lawyers and judges on legal matters, before they are lost through the natural destruction of time. Members of the Society are invited to submit suggestions for documents for publication in the *Journal*, and if possible, to prepare these records for such publication. Second, as soon as some extremely valuable records or documents are found, the Society will seek funds for their publication and will institute a program, similar to that of the Selden Society of England, of publishing court records. A history of the law in this country will be impossible until such source material is located, published, and evaluated.



## TO BRING TOGETHER PERSONS INTERESTED IN LEGAL HISTORY . . .

Annual meetings of the Society are held in conjunction with the December meetings of the Association of American Law Schools for the purpose of bringing together persons interested in the history of law to discuss problems and ideas of mutual interest. Members of the Society participate in the planning of the programs for the annual meetings. Early in the year, the President of the Society in a letter to the membership asks for comments and suggestions concerning the type of program that the members would like to have at the forthcoming annual meeting. The Committee on the Annual Convention then organizes the program on the basis of these suggestions and comments.

## THE PROGRAM OF THE SOCIETY ALSO INCLUDES . . .

An important part of the program during the past year has been an effort to publicize the Society and its activities in order to recruit new members. Accordingly, a number of articles about the work of the Society have been published in law reviews and legal journals, a full list of which will be found in the notes to the section on the history of the Society.

The Society has arranged with certain lawbook publishers to supply members with current books on legal history at reduced rates; in the past, this has included *The Maitland Reader* from Oceana Publications, and Plucknett's *A Concise History of the Common Law* from Little, Brown, and Company. Additional books will be available to members of the Society under this plan in the future.

The Society has adopted as its official publication *The American Journal of Legal History*, a quarterly forum for scholarly articles on the history of law, which seeks to combine the professional approach of the American historian and the technical knowledge of the American lawyer. This journal, regardless of its title, is not limited to the publication of articles on the history of American law; instead, it encourages publication of results of research in the history of all legal systems. Its purpose is to foster the study of the history of the law and its relations to other aspects of the nation's culture.

The Society also publishes *The Legal Historian*, an annual journal devoted to the administrative affairs of the Society.

The work of the Society—to encourage greater research, to provide facilities for additional publication, to open up untouched areas of study, to encourage exchange between scholars through meetings—and its publications, we offer in partial satisfaction of that debt which Lord Bacon<sup>1</sup> said every man owes to his profession.

<sup>1</sup> *Maxims of the Law*, "Preface" (1630).

## REPORT OF THE COMMITTEE ON THE PRESERVATION OF LEGAL RECORDS

The Committee on the Preservation of Legal Records has worked throughout the year; inquiries have been made concerning the nature and scope of the W.P.A. projects in this field, and a survey is under way of manuscript sources, case files and recorders' books which might have been preserved in law libraries. The Committee plans to study the state laws dealing with records and archives, and to determine the extent of basic material in the hands of historical societies.

Mr. Teschner is presently investigating the holdings of the Chicago Bar Association and the libraries of the schools of law in the Chicago area. Mr. Joseph W. McKnight, Professor of Law at Southern Methodist University, has done extensive work with the Texas records, including those of the Republic of Texas and its Mexican predecessors. Mr. Ralph F. Fuchs, Professor of Law at the University of Indiana, has undertaken to review the matter of records in Indiana. Many of the law librarians have agreed to confer with faculty members who have done work in the field of legal history—such as Mr. Miles O. Price of Columbia, who will probably unearth a wealth of material after a conference with Mr. Julius Goebel.

Mr. Hobart Coffey of the University of Michigan has provided a catalog of their law archives; it is the first complete record of its kind received by the Committee. Others are expected in due time and will be reported by the Committee.

MR. WILLIAM H. MCBRATNEY, *Chairman*

## REPORT OF THE COMMITTEE ON PUBLICATIONS

The report of the Committee on Publications is, literally, in the hands of our members. This "report" is the product of the devoted teamwork of all our members, none of whom can be singled out for more praise than any other. And this is as it should be.

It will be noted that several experiments are included in *THE LEGAL HISTORIAN*, e.g., the registry, the listing of societies. The comments of our members will be appreciated, as well as suggestions for the future *HISTORIANS*. And this brings up the fact that The Bobbs-Merrill Company, Inc., has very kindly assumed the financial burdens attendant upon publication and distribution. Their aid is greatly appreciated, for without their cooperation our publication would not be as sumptuous as it is.

Two final remarks: first, members are urged to complete their questionnaires for the next annual issue, and get them in on time, else they again be listed only by name and address; secondly, the Publications Committee could well use the assistance of a few other members, so that a "share-the-work" result will lighten all our burdens.

PROF. MORRIS D. FORKOSCH, *Chairman*



# Members of the Society

(Additional members listed on page 60)

## ALPHABETICAL LIST WITH BIOGRAPHICAL MATTER\*

### \* KEY TO ABBREVIATIONS:

b. = born    assns. = associations    mil. = military service  
awds. = awards    res. = research (plus place where conducted)  
pub. = publications

ALFORD, NEILL HERBERT, JR., The Law Sch., Univ. of Va., Charlottesville, Va.; Univ. of Va., prof.; b. 1919; assns.: A.B.A., Va. Bar Assn., Amer. Soc. Intl. L., Selden Soc.; mil. 1941-46; res.: The development of English legal policy concerning philanthropic giving (U. of Wisc., U. of Va.); Trusts by operation of law (U. of Va.); pub.: *Cases and Materials on Decedents Estates and Trusts* (with John Ritchie and Richard Efland) (1954).

ALLEN, FRANCIS ALFRED, The Law Sch., Univ. of Chicago, Chicago 37, Ill.; Univ. of Chicago, prof.; b. 1919; assns.: Chicago Bar Assn.; mil. 1942-45.

ALLEN, R. E., 1557 W. Beverly Blvd., Los Angeles 26, Cal.; attorney; b. 1890, Solomon, Kans.; assns.: A.B.A., Los Angeles Bar Assn., Lawyers Club of Los Angeles.

ANDERSON, DONALD R., Barlow, Goodale & Adams, 53 State St., Boston, Mass.; atty.; b. 1927, Chicago, Ill.; assns.: A.B.A., Boston Bar Assn., Selden Soc.; mil. 1945-47.

ANSPACH, MARSHALL REID, 120 W. 4th St., Williamsport, Pa.; atty.; b. 1895, Milton, Northumberland County, Pa.; assns.: Lycoming Law Assn., Pa. Bar Assn., A.B.A., Selden Soc., Am. Bibliographical Soc., Muncy Hist. Soc., Pa. Folklore Soc., Evangelical and Reformed Ch. Hist. Soc.; mil. W.W.I.; pub.: "Historical Sketches of the Bench and Bar of Lycoming County, Pa.," *Lycoming Reporter* (1958); "An Account of the Muncy Abolition Riot of 1842," *Now and*

*Then*, VII (1942), 29-37; "The Sunbury Case: A Study in Absentee Landlordism," *Northumberland County Hist. Soc. Proceedings*, v. 19, 105-118.

ARRINGTON, JO DRAKE, Hewes Bldg., Gulfport, Miss.

BACHELDER, WILLIAM K., Sidley, Austin, Burgess & Smith, 11 S. La Salle St., Chicago 3, Ill.; atty.; b. 1924, Indianapolis, Ind.; assns.: A.B.A., Ind. Bar Assn., Ind. Hist. Soc., Chicago Bar Assn., Ill. Bar Assn.; awds.: Order of the Coif; mil. 1942-46.

BALMER, GEORGE B., 518 Washington St., Reading, Pa.; atty.; b. 1902, Reading, Pa.; assns.: Berks County Bar Assn., Pa. Bar Assn., A.B.A., Selden Soc.

BARRY, FRANK J., Wright, Goddard & Barry, 262 N. Meyer Ave., Tucson, Ariz.; atty.; b. 1913, Nogales, Ariz.; assns.: A.B.A., Am. Jud. Soc., Pima County Bar Assn.; mil. 1942-45.

BATTERSON, JACK L., 701 Missouri Ave., Columbia, Mo.; Univ. of Mo., hist. instr.; b. 1930, Portsmouth, Ohio; assns.: Am. Hist. Assn., Miss. Valley Hist. Assn., So. Hist. Assn.; mil. 1952-54.

BIEL, JOHN G., 301 Star Bldg., Terre Haute, Ind.; atty., lect.; b. 1906, Terre Haute, Ind.; assns.: A.B.A., Am. Jud. Soc., Ind. Bar Assn., Terre Haute Bar Assn., Am. Soc. for State & Local Hist., Miss. Valley Hist. Assn., Vigo County Hist. Soc., Ind. Hist. Soc., Ill. Hist. Soc., Ky. Hist. Soc., Ohio Hist. Soc., Wis. Hist. Soc., Mich. Hist. Soc., The Greater St. Louis Archaeol. Soc.,

Ill. Archaeol. Soc. Hist. Assn., Am. Hist. Assn., Medieval Academy of Am., Am. Manuscript Soc.; awds.: County Hist., Vigo County, Ind.; Dir. & Chmn. Museum Comm., Vigo County Hist. Soc.

BLACK, THOMPSON, JR., 1641 Courtney Ave., Los Angeles 46, Cal.; Los Angeles State College, assoc. prof. of govt., chmn.; b. 1909, Berwick-upon-Tweed, Eng.; assns.: Am. Soc. of Internat. Law, So. Cal. Pol. Sci. Soc.; awds.: Purple Heart, Navy Unit Commendation Ribbon; mil. 1929-47; res.: "Contributions of Canon Law to modern legal procedure" (UCLA).

BLUME, WILLIAM WIRT, Univ. of Mich. Law Sch., Ann Arbor, Mich.; Univ. of Mich., prof.; b. 1893, Huntington, W. Va.; assns.: A.B.A., Mich. Bar Assn.; mil. 1917-18; res.: Historical Introduction to Anglo-American Law (Univ. of Mich., Law Sch.); Criminal Law on the Frontier (Univ. of Mich., Law Sch.); Probate Courts in the Territories of the U.S.: 1787-1837 (Univ. of Mich., Law Sch.); pub.: *Transactions of the Supreme Ct. of the Territory of Mich., 1805-1836* (1935-40); *Unreported Opinions of the Supreme Ct. of Mich.* (1945); "First Charge to the Grand Jury in the Dist. Ct. of Michilimackinac," *Mich. St. Bar Journal* (1935) 14:344-353; "Development of Criminal Law and Criminal Procedure in Modern Japan," *Judge Advocate Journal* (1944) 1:19-26; "Circuit Courts and the Nisi Prius System: The Making of an Appellate Court," *Mich. L. Rev.* (1940) 38:289-338; "Origin and Development of the Directed Verdict," *Mich. L. Rev.* (1950) 48:555-590; "Civil Procedure on the American Frontier," *Mich. L. Rev.* (1957) 56:161-224.

BOLICH, W. BRYAN, Duke Univ. Law Sch., Durham N. Car.; Duke Univ., prof.; b. 1896, Salisbury, N. Car.; assns.: N. Car. State Bar, Durham C. Bar, Duke Univ. Law Sch. Alumni Assn., Am. Rhodes Scholars, Order of Coif, Phi Beta Kappa, Duke Univ. Nat. Council; mil., 1918-19; res.: Records of the N. Car. General Court, 1693-1767 (Duke Univ. Law Sch.); The Estate for Years—Some Historical Aspects (Duke Univ. Law Sch.); pub.: *Cases and Materials on Introduction to Procedure* (1934); *Introduction to Future Interests* (1948); "Aspects of the Common Law Relating to Water Usages," *Proc. Third So. Mun. and Indust. Waste Conf.* (1954), 270-278; "Some Common Problems Incident to Drafting Dispositive Provisions of Donative Instruments," *N. Car. L. Rev.* (1956) 35:17-30.

BOYER, BENJAMIN FRANKLIN, Temple Univ. Sch. of Law, 1715 N. Broad St., Philadelphia 22, Pa.; Temple Univ. Sch. of Law, dean and prof. of law; b. 1904; assns.: A.B.A., Mo. Bar, Pa. St. Bar, Philadelphia Bar, Kansas City Bar, Lawyers Assn. of Kansas City, Am. Law Instit., Am. Jud. Soc.; mil. 1941-45; awds.: Phi Beta Kappa; pub.: "Promissory Estoppel: Principle from Precedents," *50 Mich. L. Rev.* 639, 873 (1952); "Preceptors and the Law Practice Clerkship in Pennsylvania," *134 Legal Intelligencer* 1 (1956).

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The questionnaires revealed that our members have wide interests in law, as evidenced by their publications in fields not directly related to legal history. The *Index of Legal Periodicals and Books in Print, An Author-Title-Series Index to the Publishers' Trade List Annual, 1958*, therefore, should be consulted for a full list of publications by any member.

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### ANCIENT LAW

A Review of Recent Publications of Ancient Charters. Joseph Webb McKnight. Southern Methodist University.

Hippodamus on the Best Form of Government and Law. John C. Hogan. Santa Monica, California.

### BIOGRAPHY

Biographical Study of Mr. Justice John A. Campbell. Thad Holt, Jr. Birmingham, Alabama.

Supreme Court Justice Joseph Story. John C. Hogan and Mortimer Schwartz. Santa Monica, California and Norman, Oklahoma.

The Legal and Constitutional Career of Richard Olney, Railroad Attorney, and Both Attorney General and Secretary of State under Grover Cleveland. Paul L. Murphy. University of Minnesota, Newberry Library in Chicago, and Library of Congress.

The Resignation of Mr. Justice Campbell. Thad Holt, Jr. Birmingham, Alabama.



## CANON LAW

Contributions of Canon Law to Modern Legal Procedure. Thompson Black, Jr. Los Angeles State College.

## COMMON LAW

Glossary of Terms Supplementary to Those in Maitland's *Manorial Rolls*. Joseph Webb McKnight. Southern Methodist University.  
Historical Introduction to Anglo-American Law. William Wirt Blume. University of Michigan, Law School.

The Contributions of Post-Roman Italian Jurists to the Formation of the Common Law. Sabato John Insalata. Chicago, Illinois.

The Scope of Appellate Procedure Relating to the Review of Facts Determined by the Jury in Early English Common Law. James R. Bryant. Chicago, Illinois.

Outline of Anglo-American Legal History. Stefan-Albrecht Riesenfeld. University of California, Berkeley.

## CONSTITUTIONAL LAW

Relation of Lincoln and Taney (Dred Scott Decision—Ex parte Merryman). Sherrill Halbert. Terra Bella, California.

Text in Constitutional Law. Morris D. Forkosch. Brooklyn, N.Y.

## CORPORATIONS

Bartolus on Associations—A New Look at Corporations Through the *Opera Omnia*. Joanna Mathiasen. Columbia University.

Hospitals, Beguin[e]ages, and Corporations—An Investigation of Some Aspects of Medieval Hospital Administration Based on a Collection of Statutes. Joanna Mathiasen. Columbia University.

## COURT RECORDS

A Bibliography of Published American Court Records to 1800. William Jeffrey, Jr. University of Cincinnati College of Law.

Introduction to Prince Georges County, Md. County Court Records, 1696-1702. Joseph H. Smith. New York.

Introduction to the *Pyncheon Court Record* (1638-39 to 1702), Constituting the Record Kept of Courts on Lower Jurisdictional Levels in the Vicinity of Springfield, Mass. Joseph H. Smith. New York and New England.

Records of the North Carolina General Court, 1693-1767. W. Bryan Bolich. Duke University Law School.

## CRIMINAL LAW

Criminal Law on the Frontier. William Wirt Blume. University of Michigan, Law School.

## ESTATES AND TAXATION

Last Will and Testament of Supreme Court Justice Oliver Ellsworth. Thompson Black, Jr. and E. Schnitzer. Los Angeles State College and Santa Monica, California.

Probate Courts in the Territories of the United States: 1787-1837. William Wirt Blume. University of Michigan, Law School.

The Estate for Years—Some Historical Aspects. W. Bryan Bolich. Duke University School of Law.

## FAMILY LAW

Legal Devices to Protect and Promote the Stability of Marriages. Max Rheinstein. University of Chicago.

## GOVERNMENT

The Historical Bases of Nonpartisan Local Government in California. Leon Thomas David. Los Angeles.

## JUDGMENTS

Evolution of the Enforcement of Judgments. Stefan-Albrecht Riesenfeld. University of California, Berkeley.

## JURISPRUDENCE

Law and Processes of Social Change. Willard Hurst. University of Wisconsin.

Text on Jurisprudence. Brendan Francis Brown. Law School of Loyola University of the South.

The Spanish Legacy to Texas Law. Joseph Webb McKnight. Southern Methodist University.

## MILITARY AND MARITIME LAW

Laws of Naval Warfare in Transition. Frank J. Flynn. Naval War College, Newport.

The Legal Structure of the Militia System, and Its Importance in the American Revolution. Leon Thomas David. Los Angeles.

The History of the Development of the Admiralty Jurisdiction in the Federal Courts. Erwin C. Surrency. Temple University School of Law.

## NATURAL LAW

Natural Law Reader. Brendan Francis Brown. Law School of Loyola University of the South.

## OIL, GAS, MINERALS, ETC.

The Public's Concern with the Fuel Minerals—Historical Survey of Adjustment of the Law to Social Needs in This Field. Maurice H. Merrill. University of Oklahoma.



## PATENT LAW

Patents in the 19th and 20th Centuries: Substantive Principles, Soliciting and Licensing Techniques, and Judicial Reactions and Reform Proposals. Frank D. Prager. Philadelphia, Pa.  
Privileges and Patents until 1800. Frank D. Prager. Philadelphia, Pa.

## TRUSTS

Trusts by Operation of Law—a text, containing considerable legal history treatment. Neill H. Alford. University of Virginia.  
The Development of English Legal Policy Concerning Philanthropic Giving. Neill H. Alford, Jr. University of Wisconsin and University of Virginia.  
The Impact of Foreign Policy upon the American Law of Charities. Neill H. Alford, Jr. University of Virginia.

## Current Developments

### NEWS AND NOTES ABOUT LEGAL HISTORY RESEARCH

#### AMERICAN JOURNAL OF LEGAL HISTORY

The Editorial Board of the *American Journal of Legal History* has voted to devote a full issue of the Journal to John Parker and to the contributions of Supreme Court Justice Joseph Story to American law.

#### THE JOHN MARSHALL PAPERS

The American Bar Foundation has authorized a project in the field of legal history, and the Committee for the John Marshall Papers has been appointed by the President. The project envisions (1) the completion of the collection of the John Marshall Papers; (2) their indexing and copying; and (3) the preparation of a legal study on John Marshall based on these documents and other available materials. Inquiries concerning this project should be addressed to the Chairman of the Committee, Mr. Irwin S. Rhodes, 1410 Union Central Building, Cincinnati 2, Ohio.

#### ENGLISH CRIMINAL LAW

The Rockefeller Foundation has granted about \$42,750 to the University of Cambridge in England for completion of the monumental *History of English Criminal Law and Its Administration from 1750*.

#### LEGAL RECORDS PROJECT

Plans are under way to microfilm some 1,500 old record books containing about 900,000 pages in the files of the Fulton County Superior Court, Atlanta, Ga., J. W. Simmons, clerk of the court, has announced. Most of the records are writ and mortgage records, some dating back to the beginning of the county. The sum allocated for this job is \$25,000.

#### THE MOSES COIT TYLER PRIZE

The LEGAL HISTORIAN has been asked to announce The Moses Coit Tyler Prize in American Intellectual History, and members of the American Society for Legal History are invited to submit unpublished works.

The Moses Coit Tyler Prize, made possible by the Cornell University Press and the Council of the American Historical Association, will be offered in 1959 for the best complete original manuscript submitted on "American intellectual history." This term is to be under-



stood broadly—the offer invites histories of movements of thought, and of the recognized institutions or agencies of intellectual life, and biographies or studies of intellectual leaders in America. The only restriction is that the history must concern the area of the present United States during the years since 1607. Manuscripts must be the author's first or second book, and doctoral dissertations are eligible for the prize under certain conditions. The Prize consists of \$1,500 in cash and publication of the manuscript by the Cornell University Press. Two copies of the manuscript must be submitted, one of them the ribbon copy, no later than June 1, 1959. All manuscripts and correspondence should be sent to: Prof. Charles A. Barker, Chairman, Committee on the Moses Coit Tyler Prize of the American Historical Association, The John Hopkins University, Baltimore 18, Maryland.

#### SOCIAL SCIENCE RESEARCH COUNCIL

During the academic year 1958-1959, the Social Science Research Council will accept applications from permanent residents of the United States and Canada for *Fellowships in Political Theory and Legal Philosophy* from Ph.D. candidates who have completed all requirements except the dissertation, and from persons who have received the Ph.D. or a law degree within the past three years. Those interested should write for further information to The Social Science Research Council, 230 Park Avenue, New York 17, N. Y.

#### FORD FOUNDATION GRANTS

During the first three quarters of the 1958 fiscal year, the Ford Foundation made the following grants in support of legal studies:

*American Association of Law Libraries*—for a study of the practicability of preparing an Index of Foreign Legal Periodicals.

*University of Miami*—to finance translation and research in inter-American law.

*University of Illinois*—for research on measures to increase the effectiveness of the Federal prison system.

*Northwestern University*—for a program of training and research by the School of Law in criminal law and criminology.

*University of Wisconsin*—for legal research and writing on criminal law and administration; and for a law school seminar on legal research relating to philanthropic giving.

#### LEGAL AND POLITICAL PHILOSOPHY

The Rockefeller Foundation program in Legal and Political Philosophy represents the major effort of the Foundation in the field of law:

About four years ago, the Foundation undertook a modest program of encouragement to legal studies, fully realizing that funds

alone can do little to stimulate speculative thinking. In the first decades of this century, political scientists and lawyers were necessarily caught up in reform movements and in the immediate task of blueprinting new and expanding systems of public administration, social services, and the administration of justice. However, their efforts left them little time for the elaboration of more general theories of democracy, law, or administration. The scholars are frank to call this their unfinished business. In consequence, the decade following World War II has witnessed a resurgence of interest in the broader issues of law and politics which in earlier times were the province of philosophers and statesmen.

Three lines of approach can be identified. First, some scholars of law and politics, in pursuit of more general principles, are returning to the study of the classics of the Western and non-Western world. A few examples may illustrate this interest. The Foundation has made grants for research on Thomistic legal and political thought, on the classical background of modern political theory, and on the idea of justice and virtue in Greek political thought. Other scholars have turned to the more recent classics of John Stuart Mill, John Locke, Edmund Burke, and David Hume; still others are investigating the underlying political and legal philosophy of jurists and statesmen like Justices Holmes and Brandeis, and Abraham Lincoln.

Another promising trend results from attempts to grapple with the pressing issues of contemporary societies. It is obvious, for example, that the problems of constitutionalism, political representation, federalism, freedom and order, and civil liberties have taken on new urgency throughout the world.

A third approach is the quest for new and relevant political concepts that will reduce the study of political behavior to tractable proportions. Without a few ordering concepts to demarcate the field of politics or law from other social spheres, the scholar can scarcely orient himself in a maze of empirical phenomena. Promising newer concepts that have been elaborated and applied are power, interest groups, decision-making, and forms of leadership and organization.

The Foundation has sought to respond to this revived interest in theoretical work by encouraging younger scholars on these three fronts. A few distinguished senior scholars who have already made definitive contributions have also been encouraged to bring important and original work to completion.

Inquiries concerning this program of the Foundation should be addressed to: Mr. Kenneth W. Thompson, The Rockefeller Foundation, 49 West 49th Street, New York 20, N. Y.



## *In Memoriam*

SINCE the organization of the Society, two members of the Board of Directors have died, Honorable Arthur Vanderbilt, Chief Justice of the Supreme Court of New Jersey, and Dean Alison Reppy, Dean, New York Law School.

Judge Vanderbilt encouraged the organization of the Society and the AMERICAN JOURNAL OF LEGAL HISTORY. A short biography could not record all the events of the active and successful professional life of Justice Vanderbilt. He was born in Newark, New Jersey, 7 July 1888. He received his A.B. Degree in 1910, his A.M. from Wesleyan University and his LL.B. Degree from Columbia University. Late in life, he received many honorary degrees. He entered the practice of law and served both the New Jersey Bar Association and the American Bar Association, becoming the President of the latter organization in 1937. In addition to his practice, he taught at New York University School of Law from 1914 to 1943 and served as Dean from 1943 to 1948. He resigned as Dean to become Chief Justice of the Supreme Court of New Jersey.

Justice Vanderbilt was a leader of the movement for the improvement of the administration of law, and many other activities for the improvement of the law. His contributions to the development of the law in the United States were great and in any history of American law, his name shall be very prominently mentioned.

Dean Alison Reppy had a scholarly interest in the history of the law as his list of publications will indicate. LAW, A CENTURY OF PROGRESS which he edited, has served as a text book in American legal history. Dean Reppy was born in Missouri in 1893 and graduated from the University of Missouri School of Law in 1922. After practicing law for several years, he entered teaching, first at the University of Oklahoma in 1922; New Jersey Law School in 1924; New York University in 1926; and in 1950, became Dean of New York Law School. He was a bibliophile and had acquired one of the most complete personal collections in legal history.

At the time of his death on 20 August 1958, he was engaged in preparing an article entitled "The Influence of Blackstone on American Law" which was to appear in an issue of the AMERICAN JOURNAL OF LEGAL HISTORY. His obituary appeared in the NEW YORK TIMES, August 21, 1958, p. 25.

## *Bequests*

A number of persons have expressed an interest in furthering the purposes and functions of The American Society for Legal History by gift or bequest. The officers of the Society will be glad to discuss details with anyone interested. A standard form of bequest, one of several types, is reproduced below.

### LEGAL FORM OF BEQUEST

I hereby give, devise and bequeath to the Directors of the American Society for Legal History, and their successors forever, the sum of \$..... (or the following described property:.....) to be used by said Directors at their sole discretion for the general purposes of the Society (or name a particular Society purpose).



## Legal History Societies

THE following is a partial list of scholarly societies in a number of countries whose members are dedicated to the study of legal history. The list will be expanded in future issues of *THE LEGAL HISTORIAN* as the names and addresses of other societies and associations become known to us.

THE SELDEN SOCIETY  
Institute of Advanced Legal Studies  
25 Russell Square  
London, W.C.1, England

THE STAIR SOCIETY  
Signet Library  
Edinburgh, Scotland

SOCIETE D'HISTOIRE DE DROIT  
22 rue Soufflot  
Paris V, France

COLECTIVUL DE DREPT VECHI ROMINESC  
(Old Rumanian Law Research Group)  
Piata Krubisev, 9  
Bucharest, Rumania

ACADEMIA PARAGUAYA DE CIENCIAS HISTORICAS,  
POLITICAS, Y SOCIALES  
15 de Agosto, 410  
Asuncion, Paraguay

ACCADEMIA ROMANA DE S. TOMMASO D'AQUINO  
1 Piazza della Cancelleria  
Rome, Italy

ISTITUTO DE DIRITTO ROMANO  
Via Carlo Tavrolacci 5  
Rome, Italy

## Membership

MEMBERSHIP in the American Society for Legal History is open to all persons who are interested in the historical background and development of the law, and who wish to keep informed of current developments and progress in this area. Members of the Society are entitled to the following privileges:

- (a) to receive without charge, and as part of their dues, *The American Journal of Legal History*, a quarterly publication containing scholarly articles on law. The Journal is the official publication of the Society.
- (b) to receive *THE LEGAL HISTORIAN*, an annual publication of the Society.
- (c) to attend the annual and regional meetings and discussions of the Society.
- (d) to participate in the activities of the Society, through membership on committees for preservation of legal records, publications, etc.
- (e) to purchase books on legal history at reduced rates.

The annual dues are \$10.00, payable on the first of each year.

Prospective members should write to the Secretary of the Society, indicating their desire to join and enclosing the amount of their annual dues. The Society's membership year is the same as the regular calendar year (January 1st to December 31st). Those joining after the first will receive all issues of *The American Journal for Legal History* published that year prior to the date of their membership.



# A SELECTION OF LETTERS

of Justices of the

Supreme Court of the United States in the

HAMPTON L. CARSON COLLECTION

of the Free Library of Philadelphia

Edited by HOWELL J. HEANEY\*

IT IS NOT SURPRISING that the two thousand legal autographs in the Hampton L. Carson Collection include a remarkable group of letters of Justices of the Supreme Court, for Mr. Carson was not only a noted lawyer and public speaker, but also a distinguished historian of the Court. The Collection includes letters or documents of all the Justices from John Jay through Louis D. Brandeis, and of some of the Justices appointed after 1916. Many of the letters were gathered by Mr. Carson in preparing *The Supreme Court of the United States: Its History* (Philadelphia, 1891; second edition, 1892). Some of them were written by men then on the Court supplying biographical information for the book. The letters of Bushrod Washington and Joseph Story have already appeared in the *Journal of American Legal History* (2:161 and 2:68). The selection now published suggests something of the wealth of the whole. It has been made to include letters of the widest general interest, as well as those of legal interest, in the group. They are arranged in alphabetical order, with the first part of the selection, A through F, published here, and others to follow. Students of the Court and biographers of the Justices will find valuable additional material amongst the considerable number of letters in the Collection still unpublished.

\* Bibliographer, Rare Book Department, The Free Library of Philadelphia.

BALDWIN, Henry, 1780-1844. Associate Justice, 1830-1844.

To DANIEL APPLETON, publisher and bookseller. June 1, 1834.

Dear Sir

I find that I have no proceedings of the House of Commons subsequent to 1760. You will therefore please to send me the 13 volumes for the price of which there is a check on the other side. You will also please to send me any books of the proceedings of the House of Lords subsequent to 1740 with an account of their price.

I am desirous of procuring the following books if they can be had at the following prices or near them.

Year books Maynard's Edition—& the Book of Assises 11. Vols not exceeding three dollars per Vol.

Lane—Allen—Popham—Style's—John Bridgman—Orlando Bridgman—Gold[e]sbrough—Benloe—Calthrope—Clayton—Ley—Sir Heneage Finch—Jenkins Centuries—Lilly's—Pollexfen's—Winch—Anderson—Foley—Fortesque—William Jones—William Kelynge—reports.

These books are all old folios varying very much in size & value. They are generally in bad condition as to the binding so that it is difficult to bid an average price upon them. I will give for any of them 2 Doll[ar]s per vol. & from that to 4 according to their contents & condition.

I also want the following which are modern reports in Octavo. Kenyon—Eden—West's Chancery Temp L<sup>d</sup> Hardwicke—Brown's Cases in Parliament Tomlin's Edition—Tomlin's supplement to Do.—Bligh, Cases in Parliament—Do. New Series—Reports of Cases in the House of Lords subsequent to Bligh. Douglas's Reports New Edition—Russell & Ryan Reports—Reports of Criminal Cases referred to the twelve judges—Leach's Crown Cases.

These are all high priced books in this country as none of them are republished they are valuable but I cannot afford to purchase them at the prices demanded by our booksellers or perhaps at those in London. If your correspondent can purchase those which have been in use I would prefer it for the sake of economy rather than pay a higher price for new. I will give for them on an average four dollars per vol. new in boards & the additional price for those bound equal to the difference between those in boards & bound. I cannot be more definite in my limitation of prices. There must be a degree of discretion confided to your correspondent which I take for granted he will exercise with prudence—he may not be able to procure all the books at the prices noted. I wish him to do his best to effect it on the best terms & shall not be disposed to confine him to the exact limit. I want the books on the lowest terms at which they can be purchased but am willing to pay for them their fair value. You will therefore understand me as giving my general views as to prices allowing a reasonable latitude if they cannot be procured otherwise.

Yours with esteem

HENRY BALDWIN

Philadelphia 1. June 1834.

[Addressed on verso of last leaf:] Mr Daniel Appleton 200. Broadway New York



CAMPBELL, John A., 1811-1889. Associate Justice, 1853-1861.

To JOHN C. BRECKINRIDGE. After February 17, 1864, the date of the later of two acts referred to in the letter. Campbell was then Assistant Secretary of War of the Confederacy.

Hon. J. C. Breckinridge  
Secy of War

I have examined the act of Congress, which you handed to me.

I think all that is valuable in the act has been provided for by previous laws & that what is added to the laws by this act, is objectionable.

The act of 13 Octo 1862 enabled the Generals commanding departments to relieve the army from disqualified, disabled & incompetent officers by means of an examining board.

These proceedings were required to be careful, exact, and scrutinizing & to relieve an officer from his position the approval of the General, Secretary of War & President was required.

This proceeding can now be resorted to but it is dilatory & tedious. The act of 17 february 1864 authorizes the dropping of an officer, for inefficiency, incompetency, absence without leave or as a supernumerary upon the recommendation of a General commanding an army or Department.

This proceeding is prompt, summary, & embraces all the cases mentioned in the act under consideration.

The 1<sup>st</sup> section of this act, embraces the case of absence without leave.

The 2<sup>nd</sup> [section] embraces instances that under the preceding acts of Congress would be reached, as evidence of incompetency or inefficiency.

The 3<sup>rd</sup> section embraces cases that are punishable under the Articles of War, & might be evidence also of incompetency.

The 21<sup>st</sup> Section will hardly increase the penalties, now existing against desertion & may be adopted as a matter of regulation.

The objection to the act is that it places power in the hands of inferior officers & would introduce great confusion in the rolls of the A[djutant] G[eneral]. It is important as a matter of order that no disposition of an officer should be finally made except through that office.

It is the *record* office of the Army & the position of every officer should be ascertainable from the orders & appointments made therein.

I do not consider any enactment that deprives the President of the authority to decide, finally, upon the terms upon which an officer should be displaced, or which discharges him from the service without his intervention, or without a formal trial as founded upon a sound principle.

The Act of 17 february 1864 before referred to has been found very efficacious & if there be any doubt as to its value, that doubt arises from the summary method in which the remedy is administered.

I do not advise any increase to its vigor. You will find in the general orders announcing those instances in which it has been applied, sufficient evidence that this stringent statute has been, severely applied.

Very Respectfully  
J. A. Campbell  
A. S. W.

CATRON, John, 1786-1865. Associate Justice, 1837-1865.

To ROBERT J. WALKER, Senator from Mississippi. Written January 26, 1843, in explanation of the Court's order of the previous day which had been made in accordance with an act of Congress approved August 16, 1842. The order transferred John McKinley from the Ninth Circuit (the Southwestern, including Mississippi) to the Fifth Circuit, and Mr. Justice Daniel, a Virginian, from the Fifth to the Ninth Circuit. The Fourth Circuit, including Virginia, was then presided over by Chief Justice Taney.

*Confidential.*

My dear Sir,

Mr. Carroll the Cl[er]k, mentioned to me this morning that from what you said to him it was your desire that Judge McKinley should be assigned to your circuit.

Our fr[ien]d Col. Sevier urged me to a contrary course & on much reflection I thought it promised best. Should a vacancy occur the app[oin]tm[en]t will come from your Circuit—and we need it on our principles very much.

The Ch[ief]. Justice is exceedingly frail—indeed he will hardly outlast the next three years, I think clearly not. If he dies, then Judge Daniel will of course be retained in the Virginia Circuit.

The again; Daniel is a feeblar man than McKinley, & not likely to last as long. Then we get another Western Judge. McKinley was *not* deemed afflicted with palsy, when I was in K[entuck]y. I imagine it a mistake myself. Still it may have Something in it.

Yr. frd.

J. Catron

Hon. R. J. Walker.

[Addressed on verso of leaf:] Hon. Robt. J. Walker.

J[a]n[uar]y 26.

It is proof of the futility of scheming that Daniel outlived McKinley by eight years, dying in 1860, and Taney outlasted both of them, living to preside over the Court for twenty-one years after this letter was written.



CATRON, John, 1779-1865. Associate Justice, 1837-1865.

To JAMES M. CARLISLE. February 26, 1863.

Dr Sir.

Judges Clifford, Nelson & myself are desirous that the speech you concluded yesterday on the hearing of the Prize Cases should go into Judge Black's forthcoming vol of reports<sup>1</sup>—not abbreviated, but as it



was delivered, as nearly as it can be made. My associates request me to make the application to you, to see if you will undertake the task, and *extensive* labour to write out your argument: we will see to its finding its place in the report of the case.

It is idle to disguise the fact that the claim set up to forfeit these ships & cargoes, *by the force of a proclamation*, is not founded on constitutional power, but on a power assumed to be *created* by Military necessity. *Necessity* is an old plea—old as the reign of Tibereas; its limits should be looked for in Tacitus. It is the commander's will. The End, we are told is to crush out the Rebellion; that the whole means are at the Presdt's discretion and that he is the sole Judge in the Selection of the means to accomplish the End. This is a rejection of the Constitution with its limitations.

To  
James M. Carlisle, Esqr  
1 2 Black 635, at 639.

Most respectfully,  
Y<sup>r</sup> obt Servt  
J. Catron  
Fby 26/[18]63.

CHASE, Salmon Portland, 1808–1873. Chief Justice, 1864–1873  
To MR. DAY.

Columbus, March 13, 1856.

Dear Day,

Thanks for your welcome letter. Your free & decided tone is quite refreshing a contrast with much that I see & hear. You are right about Whitfield & Reeder. The facts are patent. Whitfield is the Delegate of Missourians—not of Kansas.

Our legislature has determined to hold an adjourned session—a false move, I think; but there are some reconciling considerations. One is that less mischief will be done now.

You have noticed the Cincinnati Tragedy<sup>2</sup> & its sequences. I hated to send a requisition, after Ohio Custody had been ousted by the Federal Judge, merely to regain the custody thus invaded. But I felt compelled to do it; and now I don't regret it. Kentucky occupies a false—Ohio a right position. I only wish the sheriff had held on to his custody. I told them plainly at Cincinnati that he should be sustained with all the force needed. I was here when the murder took place. It was wholly unanticipated by me. All I had heard led me to believe that Leavitt would never make the order he did.

We are rejoicing over New Hampshire. Our *people* are loved. What of the future as it seems to you.

Sincerely yours,  
S. P. Chase

<sup>2</sup> The Gardner Case. For a more complete account of this incident by Chase see R. B. Warden, *An Account of the Private Life and Public Services of Salmon Portland Chase* (Cincinnati, 1874) 346.

CHASE, Salmon Portland, 1808–1873. Chief Justice, 1864–1873.  
To BENJAMIN F. BUTLER.

Washington, Mar. 25, [18]70[?].

Dear General,

I return the telegram as you may wish to use it.

Mr. Howe called the attention of the Court this morning to the original motion to dismiss & stated that he had no notice of the motion for certiorari: and was informed that if he would call your attention to the matter the latter motion would be heard today.

He will doubtless call on you, & you can arrange the matter as to [the] hearing. In the absence of an affidavit under Rule 14 the Certiorari must needs be denied unless he will admit the facts. Indeed the motion strictly speaking is too late but the Court has not usually been so strict as to refuse to hear a motion because not "made at the first term."

Yours sincerely  
S. P. Chase

Hon. B. F. Butler

[Postscript along left margin:] The case now is hearing will probably require an hour. After that you and Mr. Howe can move the Court.

CHASE, Samuel, 1741–1811. Associate Justice, 1796–1811.

To WILLIAM TILGHMAN. The letter was written as Chase was setting out for the trial before the Senate on the articles of impeachment presented by the House of Representatives on March 2, 1804.

Baltimore 28<sup>th</sup> January 1805

Dear Sir

I have now some leisure, and it is more than probable, I shall e're long have a good deal of idle time. I am too old to return to my profession; and if able many other powerful reasons would prevent me. So much for preamble.

I am informed that there are four vacancies in the Direction of the Office of Discount & Deposit in this city.—If you think I can render services to the Institution, and can first discover that my appointment would be agreeable to the Board, you may name me as one of the Directors. If you see any impropriety in, or the least obstacle to my being elected, I pray your silence. You may consult with Mr. Willing and Mr. Lieman.

On Saturday I set off for Washington, but in an unprepared state to put in my answer, as it is imperfect; and altogether unprepared to proceed



to trial. But *power* will forget *right*, and I do not expect any further time will be allowed me. You may be assured the Independency of the Judiciary shall not suffer in my hands, if I can prevent it.

With every sentiment of respect & esteem

I am Dr Sir  
Yr. most Obedt Ser.  
Samuel Chase

William Tilgman [sic] Esq<sup>re</sup>

[Addressed on verso of last leaf:] William Tilghman Esq<sup>re</sup> Philadelphia By mail.  
[Endorsed by Tilghman:] S. Chase—28 Jan<sup>y</sup> 1805 Concerning Bank Ans<sup>d</sup> verbally  
at Washington, Feby. 1805

CLIFFORD, Nathan, 1803–1881. Associate Justice, 1858–1881.

Announcement, presumably for publication in the newspapers, in the hand of Mr. Justice Clifford. Written between May 1865 and May 1867, when Jefferson Davis was released.

We are authorized to say that Judge Clifford of the Supreme Court was never present at any consultation with Attorney General Speed or with any other persons in respect to the prosecution of Jefferson Davis for treason and that he never disclosed at a dinner table or in any other place, the reasons assigned for the abandonment of that prosecution that he could not do so as he does not possess any knowledge upon the subject.

CLIFFORD, Nathan, 1803–1881. Associate Justice, 1858–1881.

To an unnamed correspondent.

My Dear Judge:

I am writing the opinion in No 99 Reed v McIntire.<sup>3</sup>

The proof is very strong on all the points except one. It is rather weak to show that the bankrupt procured the property to be seized on the execution. Your suggestions on that point will be very acceptable. Please oblige me by an early answer. Read the enclosed carefully.

Yours Truly  
Nathan Clifford

<sup>3</sup> 98 U.S. 507.

CURTIS, Benjamin R., 1809–1874. Associate Justice, 1851–1857.

To WILLIAM A. BUTLER.

Dear Sir,

Mr. Dana has handed me your note & requested me to reply to it. The brokers who sold the cotton in Liverpool are Hollingshed Titley & Co. Their individual names are not known here. Under our practice it is not necessary

to designate them otherwise than by the name of their firm. If it is otherwise with you, perhaps you can learn their names in your city. Mr. Dana may also send you the names of some other witnesses. I think they should be examined to show that there is no usage to hold cotton until notice to the consignors, when the consignee is expressly authorized to sell *at his discretion*, & the cotton is held under advances, and also that no such usage as the pl[aint]iffs interrogat[i]ones enquire after, does in fact exist. I would also prove by them that very large sales were made by themselves & others just before & after & at or near the time when this cotton of the Pl[aint]iffs was sold, & what induced holders to think it prudent to sell, & whether experienced & prudent men did sell both on their own account & on account of others.

These suggestions will also indicate the line of cross examination of the pl[aint]iffs witnesses which has occurred to me both as to usages & sales. Two of the interrogations I have noted an objection to, in the margin of the copy sent. They seem to me to be far too loose; & *de bene spe* they should be cross examined about the particulars & compelled to give names & reasons for their testimony as to *expectations, general character* &c.

It will also be highly important to take Mr. Morgan's evidence & show by him

1. That Mr. Dana acted as agent of G. P. & Co. in making these advances, & procuring these consignments.
2. The authority to sell at discretion.
3. That *he* acted either with or without his copartners, as the case may be.
4. The reason why he sold.
5. That he acted fairly in the honest exercise of the discretion given him.
6. Whether known to him that others who were experienced & prudent men were selling at that time.
7. Whether there is any usage, such as Pl[aint]iffs enquire about, & especially when consignee is to sell at his discretion & the cotton is held under advances.

These seem to me the proper general subjects of enquiry. Mr. Dana will give his deposition tomorrow &, I think, will leave the pl[aint]iffs no case at all.

Your obt. svt.  
B. R. Curtis.

W<sup>m</sup> A. Butler Esq  
New York

CURTIS, Benjamin Robbins, 1809–1874. Associate Justice, 1851–1857.

To an unnamed correspondent.

Washington Nov 28. [18]73

My dear Sir

I have your despatch & after reading it have only a very short time before the close of the mail to answer. 1st I have been & now am wholly



unable to see any ground on which Mrs. J. can ask for a receiver. Her claim of money due is yet *sub judice*. Even the Circuit Court has not finally passed on it & an appeal is open. If she were an admitted creditor, what right would she have to obtain the appointment of a receiver *in this suit*. Perhaps I am obtuse; but I can not see. Judge Barnard in N. Y. might have done it. I hope no U. S. judge will. What is the equity, which enables the creditor of a corporation, large or small, who is prosecuting his suit ag[ain]st the corporation to establish his claim, to ask for a receiver of the corporate property any more than if he was prosecuting a similar claim against a natural person he could ask for a receiver of his property. And as for her claim as a stockholder

1. That is also still *sub judice*.
2. If established it would not give her the right to control the corporate affairs.
3. There is no ground laid for saying anything is intended to be done for the purpose of prejudicing her interests as a stockholder (if she be one) but only for the common interest of all. The law of the state has committed the management of the affairs of this cor[poratio]n to its directors & no court can take it away from them unless in bankruptcy, or on a bill filed by an admitted or proved stockholder charging breaches of trust. A petition in a suit brought to endeavor to establish a claim to stock & for no other purpose can not lay foundation for such relief.

I have very hastily written the above tho' it is not the result of hasty thought.

On reperusing the papers I may write further tomorrow. I can not be in N. Y. early next week. I have two cases to argue here Monday to Wednesday probably.

Yours Truly  
B. R. Curtis



FIELD, Stephen Johnson, 1816-1899. Associate Justice, 1863-1897.

TO ALBERT ROSENTHAL, the artist. The etching by Rosenthal referred to in this and the next letter faces page 406 of Hampton L. Carson's *The Supreme Court* (Philadelphia, 1891; second edition, 1892).

Washington D. C.  
May 19, 1890

Albert Rosenthal, Esq.

Dear Sir:

Your letter of the 10th inst. was received a few days since. Soon afterwards the etchings of my portrait came also.

I am sorry to say that I do not like the etchings. I do not think I ever saw a robe thrown over a person's body in such a tumbled and shabby way as the one that is represented in that etching. In fact the photograph from which it was taken was rejected by me as being one of the poorest ever taken of me,—and yet it is curious enough, the portraits of myself that have been spread over the country since the Centennial Celebration of the Organization of the Supreme Court, in New York in February last, have been taken from that photograph.

I should like to know what one of those etchings costs; for if the price is not too great, rather than have it in Carson's book I would prefer to pay for a new one, on the condition that the plate of this one should be destroyed. Please let me hear from you on this subject. I am

Very respectfully yours  
Stephen J. Field

All but the signature in the handwriting of a clerk.



FIELD, Stephen Johnson, 1816-1899. Associate Justice, 1863-1897.

TO ALBERT ROSENTHAL.

Washington D.C.  
May 21, 1890

Albert Rosenthal, Esq.

Dear Sir:

Your letter of yesterday has been received. I was not aware how expensive the etchings are, or I should not have spoken of having a new one made. I have therefore concluded to let the matter go, not any further concerning myself with the etching already made.

I regret that you were not more fortunate in the selection of a photograph of myself, and also regret that I have put you to so much trouble about the matter.

I am

Very respectfully yours  
Stephen J. Field

All but the signature in the handwriting of a clerk.





FIELD, Stephen Johnson, 1816-1899. Associate Justice, 1863-1897.

To HAMPTON L. CARSON.

Supreme Court of the United States,  
Washington, D. C.

Washington  
June 30, 1892

Hampton L. Carson Esq.

Dear Sir,

Your letter of October 9th last was received some months ago, in which you stated that you were anxious to have a few lines in my handwriting to complete your collection of autograph letters of Justices of the Supreme Court. Although I am in the habit of dictating my letters to an amanuensis I wrote to you that I would send you a letter in my own handwriting. I have failed to do so and this is my only apology for the neglect.

Your history of the Supreme Court was at the time lying on a table near the one I used. I then intended to read it through carefully and give you my impression of its merits. I had read several pages, and had become very much interested in it, and supposed that in a few days I should complete its perusal. Many things occurred to prevent me from carrying out my intention. The duties of my judicial office, as you know, are very exacting, and it seemed to me that they were for months after the receipt of the volume unusually pressing, taking every moment of my time. There were also many unpleasant things occurring which gave great sorrow & distress to members of my family. So weeks passed and months passed without my completing the perusal of your history & giving you my judgment upon it, and as yet the work has not been read by me.

I notice that you speak in very strong terms of admiration of the opinion of the majority of the Court, delivered by Mr. Justice Miller, on the Slaughter House Cases, and add a note containing an extract from a speech of Mr. Wise speaking of that opinion in most extravagant terms. You will pardon me if I say that I do not think that either yourself or Mr. Wise fully appreciates the character of the dissenting opinions in those cases.

The dissenting judges never questioned the power of the states over all matters of internal concern, nor did they in any respect attempt to impair or seek to impair the full exercise of any authority which the states had ever exercised or claimed to exercise over their internal affairs. They never asserted that the 14th amendment gave any such authority to the United States or to their courts. What they claimed was that in the exercise of the powers of the state there should be no unjust or partial discrimination against any classes or persons, giving to some rights and privileges denied to others in like condition. They only insisted that in the exercise of the police powers the rule of equ[a]lity should prevail. Certainly the state of Louisiana had the right to require the slaughtering of cattle to be done outside of the limits of the city of New Orleans, but that is a very different thing from giving in connection with that regulation to seventeen persons for twenty-five years the exclusive right of preparing animal food for

market within a district of eleven hundred & forty-five square miles embracing a population of over two hundred thousand souls.

I send you a copy of my opinion in the Butchers' Union Slaughter House & Live Stock Handling Co. vs. The Crescent City Handling & Slaughter House Co.<sup>4</sup> which may be regarded as a supplement to the Slaughter House Cases. I recommend its perusal.

Very respectfully yours  
Stephen J. Field

<sup>4</sup> 111 U.S. 746.

FULLER, Melville Weston, 1833-1910. Chief Justice, 1888-1910.

To HAMPTON L. CARSON.

1800 Mass. Ave.  
Washington, D. C.  
March 6, 1891.

My dear Sir:—

I think *Leisy v Hardin*, and *Lyng v Michigan*, 135 U.S. 100-161; *In re Baiz*, 135 U.S. 403; *Peters v Bain*, 133 U.S. 670; *Reynes v Dumont*, 130 U.S. 354; *Gibbs v Gas Co.*, 130 U.S. 396; *Hume v United States*, 132 U.S. 406; *Menendez v Holt*, 128 U.S. 514; or some of them, may fairly be referred to as leading decisions which I have delivered.

As to the sketch, I do not recall the details of those in the *Legal News* and the *Green Bag*. If you wish dates and ancestors, I can give them. While necessarily brief, what is said should be correct.

My first case in this Court was *Dows v Chicago*, 11 Wall. 108, and my last one, *Railway Companies v Bridge Co.*, 131 U.S. 371. I was not admitted, however, until February, 1872, and then argued *Traders' Bank v Campbell*, 14 Wall. 87. Between 11th Wallace [1870] and 131st United States [1889], I had a considerable number of cases, and could have them looked up without much trouble, if desired, though I suppose it is not of any moment that this should be done.

In saying I could get some friend to attend to it, I did not mean the matter of writing the sketch, but in verifying small details, which in so important a work ought to be accurate. But thirty-two years active practice at the bar, does not always give much material for biography.

Very truly yours,  
M. W. Fuller

Hampton L. Carson, Esq.  
Philadelphia, Pa.



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