

A black and white line drawing of a woman in classical Greek or Roman dress. She is seated on a high-backed chair, facing right. She wears a long, draped chiton with a sash. In her right hand, she holds a small book or tablet with the words 'KOSMOS' and 'STYPIAN' written on it. In her left hand, she holds a large, ornate vase or jar with a handle and a decorative base. The drawing is simple and stylized, with bold lines and no shading.

AMERICAN SOCIETY FOR LEGAL HISTORY
MCMLX

the
LEGAL HISTORIAN

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

—Cic. *de Or.* II, 62

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

CHAMBERS OF
JUSTICE HAROLD H. BURTON

May 26, 1958

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,



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

THE AMERICAN SOCIETY FOR LEGAL HISTORY, INC.

(INCORPORATED, 1959)

BROOKLYN LAW SCHOOL

375 Pearl Street
Brooklyn 1, N. Y.

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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 Association of American Law Schools held in Chicago.

But the history of our Society antedates its formal inception.¹ 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, continuing as an organization through 1937, although sessions as round-table discussions of the AALS were held for some years thereafter. 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 organized as the American Society for Legal History. This Society was not limited to American legal history (the old society's title), 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 this purpose.

Through the efforts of the officials of Temple University School of Law, and the Provost of Temple University, the ground work had been laid for the inauguration of 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. 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 inaugural meeting of the new American Society for Legal History 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 officers and directors of the Society were elected.

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*.²

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. The Society's progress during 1958 can be somewhat measured by the publication of the first issue of this *Legal Historian*, with the cooperation of THE BOBBS-MERRILL COMPANY, INC. At the third annual meeting held in Chicago on December 29, 1958, new officers were elected and some Board members replaced.

Under the new administration the years since 1959 have seen the incorporation of the Society, the obtaining of tax-exempt status, the utilization of monthly "membership reports" as a means of keeping members in touch with developments, the formation of numerous committees for the purpose of furthering the Society's interest, endorsement by the American Law Student Association, plus cooperation, and, in short order, a membership drive which has more than doubled the Society's roster, and the inauguration of a series of regional conferences which were held in Los Angeles, Chicago, Indianapolis, Philadelphia, New Orleans, Washington, and New York. The By-Law Committee's proposed by-laws were adopted and, pursuant to their provisions, members petitioned the Board for permission to form a Pacific Coast Branch, a Chicago Branch, a Northeastern States Branch, a Southern Branch and a Middle Atlantic States branch. Such permission was granted to each Branch.

In the short space of four years the Society and its members have

made, and are continuing to make, significant contributions in 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.

¹ 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) and "Legal History as a Course," 10 Jl. Leg. Ed. 79 (1957).

² Besides so receiving the *Journal* without charge, members may avail themselves of substantial discounts in purchasing books in the field of legal history. The secretary of the society may be contacted for available titles and prices.

President's Letter

THIS is the third issue of our "LEGAL HISTORIAN" and, if we compare it with those of the past two years, the continuing development of our Society is best revealed. Not alone has our membership continued to increase, but the method of operating our Society has proved a success.

That method can best be described as consisting of a break with the original one of holding a short "annual" meeting at the conclusion of the Round Table on Legal History held at the annual convention of the Association of American Law Schools. In its place our Society has organized into Branches, and as of now we have these in the Pacific Coast area, Chicago, the South, the Northeast, and in the Middle Atlantic portion of the country. In the forthcoming period of 1961 we hope to inaugurate two more Branch groups.

The functions of these Branches are co-extensive with those of our Society but, in addition, they hold at least one Conference each year. It is a remarkable demonstration of the worth of our Society that it has enlisted, and continues to enlist, the efforts of men in all fields of endeavor who, if they were to be paid for their work, would bankrupt most organizations of even fifty thousand members. I confess, personally, that I have succeeded as President because the shoulders of these members have been strong and available.

Notwithstanding our organizational success, our Society ends must never be clouded, and in the forthcoming year it is my hope that substantive gains in our endeavors will be made. For example, we seek even now to publish, and our Board of Directors is engaged in an examination of this area of our work. We are also interested in having a national, and even international, conference in legal history, with learned papers suitable for publication being delivered; the proceedings and papers would, of course, be distributed to our members, and made available to libraries and individuals.

We also have three committees engaged in furthering projects in the field, in obtaining funds for research and publication, and in setting up lists of research studies for prospective doctoral candidates. One of my "pet" projects involves our Committee for the Preservation of Legal Records. It is my view that our federal and state laws and decisions in this area are in a state of chaos, unreliability, and inefficiency. There should be a 50-state examination of statutes and decisions, plus the federal area, which should point up deficiencies and errors, and a model statute drafted, all to be published and

distributed to legislatures and the Congress, and the adoption of such a model law pushed. If we seek to penetrate the past historical development of the law, let us not be remiss in preserving its current development.

Last year I mentioned the cooperation extended to our Society by the Brooklyn Law School; not alone has this cooperation been continued but it has increased. I also called attention to the efforts of numerous individuals who had cooperated to such an extent that I dedicated that "Letter" to them; this message acknowledges their efforts again over the past span of months and again finds it impossible to measure these efforts in terms of money or material things. If I may, however, I would like to dedicate this "Letter" to our very good friend, The Bobbs-Merrill Company, Inc.

From personal experience with Bobbs-Merrill and its own workers I can attest to the fact that they have cooperated "above and beyond" the clauses in their contract with us. They have exemplified what to me is a bright spot in the world of competition and money-grubbing, and our Society owes them thanks beyond count. I make special mention of two of the Bobbs-Merrill family of workers, Howard Bates and Lisa Mancl, but they are only standard bearers for the others in that fine organization who have contributed so much to our Society.

MORRIS D. FORKOSCH, *President*

Brooklyn Law School
Brooklyn 1, New York

Program of the Society

THE American Society for Legal History was founded (1) to promote the study of legal history in the United States and elsewhere, (2) to publish articles and volumes in the field, (3) to encourage the preservation of American legal records, and (4) to bring together at conferences and 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 Committees established for this purpose. The work of these Committees during the past year is summarized below.

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 . . .

Conferences and meetings of the Society are held throughout the year 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.

THE PROGRAM OF THE SOCIETY ALSO INCLUDES . . .

An important part of the program during the past years 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, and Pollock and Maitland's *History of English Law* from the Lawyers' Literary Club of Washington, D. C. Additional books are available to members of the Society under this plan.

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, and a *Monthly Historian*, a photo-offset publication of from four to eight pages, dealing with items of immediate interest to the membership.

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 Bacon¹ said every man owes to his profession.

¹ *Maxims of the Law*, "Preface" (1630).

Reports of Branches

As our Society continues to expand in numbers and in Branches the members find themselves becoming active in their regional groups. Thus reports of these Branches in effect disclose the activities of the Society on these local levels.

In 1960 the following Branches had been organized: the Chicago Branch; the Middle Atlantic States Branch; the Northeastern States Branch; the Pacific Coast Branch; and the Southern States Branch.

Besides activities within each Branch, a Conference was held in each area during the fall of 1960, save for the Chicago Branch which will hold one in the Spring of 1961. The programs of these Conferences are set forth below.

These Conferences, however, required the cooperation and assistance of law schools in the areas, and the aid which only an institution of this kind could give. The Washington College of Law, The American University, with Dean John Sherman Myers, cooperated in the Middle Atlantic States Conference, with Professor Ralph A. Newman chairing the Committee on Arrangements; the New York Law School, with Dean Daniel Gutman, cooperated in the Northeastern States Conference; The University of California at Los Angeles School of Law, with Dean Richard C. Maxwell, cooperated in the Pacific Coast Branch Conference, with Colonel Donald McClure chairing the Conference Committee; and Loyola University School of Law, with Dean Antonio Papale, cooperated in the Southern States Conference, with Donald A. Meyer, Esq., chairing the Committee on Arrangements.

At each of the Conferences provision was made for the election of Branch officers and committees, the reports of standing committees, and such other business as might come before the local organization.

The national president, Professor Morris D. Forkosch, attended each of these Conferences, his travel expenses being kindly defrayed by the Brooklyn Law School.

MIDDLE ATLANTIC STATES BRANCH

Topic of Conference: Equity in Anglo-American Law

Round table panel discussion on topic: The evolution of equity

Kazimierz Grzybowksi, formerly professor of law at the University of Cracow: Equity in Roman Law

Edward D. Re, St. John's University School of Law: Equity in Canon Law
Kenneth R. Redden, Virginia Law School: The Nature and Origins of Equity in Anglo-American Law

Luncheon: Talk by Hon. James R. Browning, Clerk of the United States Supreme Court, on the Marshall Court. Historical Manuscripts on display
Round table panel discussion on topic: The treatment of Equity in Various legal systems.

Wen-Yen Tsao, Cultural Counselor of the Embassy of the Republic of China and formerly Dean and President, Soochow University: Equity in Chinese Customary Law

G. M. Razi, Docteur en droit, Paris: Equity in the Civil Law Systems

Hon. Thurman Arnold: Equity in Administrative Law

NORTHEASTERN STATES BRANCH

Topic of Conference: Aspects of American Legal History

Hon. Calvert Magruder, former Chief Judge of the Court of Appeals for the First Circuit

Lawrence Newman, New York Law School: Historical Development of Double Jeopardy in the United States

Bernard Schwartz, New York University Law School: The Administrative Agency in Historical Perspective

Hon. James R. Browning, Clerk of the United States Supreme Court, talk and anecdotes on Marshall Court

Paul M. Hamlin, New York Law School: Need for an American Legal History

PACIFIC COAST BRANCH

Topic of Conference: Aspects of Legal History, at home and abroad

W. W. Robinson, Esq.: Some Historical Highlights of the Los Angeles County Bar Association

Geoffrey C. Hazard, Jr., UCLA School of Law: Some Aspects of Equity Procedure in the United States

Moffat Hancock, Stanford Law School: Use of the Yearbooks of Edward II in the Teaching of Legal History

John G. Clarkson, Esq., Chief of Division of Administrative Procedure, California: Historical Development of Administrative Law in California

SOUTHERN STATES BRANCH

Topic of Conference: Medieval and local history

Joseph W. McKnight, Southern Methodist University Law School: Some Anomalies of Our Medieval History

Discussants: Brendan F. Brown, Loyola Law School; F. Roger Crane, Kings College, University of London, and visiting professor at Tulane Law School; Robert Pascal, Louisiana State Law School

Richard H. Lee, Miami University School of Law: A New Role for Legal History

Francis P. Burns, Esq.: The Batture Case in New Orleans, *Livingston v. Jefferson*

INDIANAPOLIS CONFERENCE

An Indianapolis Conference was held in 1959 and in 1960, with the latter Conference consisting of a joint breakfast meeting in con-

junction with the annual meeting of the Indiana State Bar Association. Howard H. Bates, of the Bobbs-Merrill Company, was the chairman in charge of arrangements for the Conference and was instrumental in having the joint meeting take place. No Branch was organized at the Conference but one is being projected for 1961.

MID-WESTERN CONFERENCE

The Chicago Branch did not sponsor a fall conference in 1960 but, instead, is projecting a spring 1961 conference. As of this writing it will be "hosted" by Notre Dame Law School with the cooperation of Dean Joseph O'Meara. Details will be publicized in the *Monthly Historian* and set forth in the 1961 *Legal Historian*.

CERTIFICATE OF INCORPORATION

of

AMERICAN SOCIETY FOR LEGAL HISTORY, INC.

Pursuant to the Membership Corporations Law of the State
of New York

WE, THE UNDERSIGNED, desiring to form a membership corporation pursuant to the provisions of the Membership Corporations Law of the State of New York

DO HEREBY CERTIFY AS FOLLOWS:

FIRST: That the name of the proposed corporation is: AMERICAN SOCIETY FOR LEGAL HISTORY, INC.

SECOND: That the purposes for which it is to be formed are: to foster the increased study of the general history of law, its origins and its institutions; to encourage the teaching of the subject of legal history in both professional and non-professional institutions of higher education; to provide an assured forum for the exchange of data and ideas among those working in the area of legal history; to sponsor occasional international congresses for the furtherance of the study of legal history, both in the United States of America and abroad; to issue publications, in serial and monographic form, so that work done in the area of legal history may secure publication; to cooperate with other organizations, with institutions, individuals, with governments, and agencies of government, and all or any who might be interested in the subject of legal history; to receive gifts, to collect dues and make assessments, to extend grants, and to direct projects that further the study of legal history and the purposes of this corporation;

Said corporation is organized for the purposes hereinbefore set forth, but in no way for profit. For any and all such purposes, it may obtain, purchase, hold, dispose of, and otherwise possess real and personal property of any and all kind and description, but to be devoted to and solely for the purposes above set forth.

THIRD: That the territory in which its operations are principally to be conducted is in the State of New York although the operations of the corporation are not to be deemed limited to such territory but may take place in the United States of America, its possessions and dependencies and elsewhere in the world.

FOURTH: That the office of said corporation shall be located in the Borough of Brooklyn, County of Kings, City and State of New York.

FIFTH: That the number of directors of said corporation shall be not less than five (5) nor more than twenty-five (25).

SIXTH: That the names and residences of the directors until the first annual meeting of the members are as follows:

NAME	RESIDENCE
Harold Hitz Burton	The Supreme Court, Washington 25, D.C.
Andrew V. Clements	Albany Law School, 80 New Scotland Ave., Albany 8, N. Y.
Jerome Prince	Brooklyn Law School, 375 Pearl St., Brooklyn 1, N. Y.
Jacob D. Hyman	Buffalo Law School, 77 West Eagle St., Buffalo 2, N. Y.
William C. Warren	Columbia Law School, New York 27, N. Y.
Gray Thoron	Cornell Law School, Ithaca, N. Y.
William H. Mulligan	Fordham Law School, 302 Broadway, New York 7, N. Y.
Joseph A. Cox	New York Law School, 244 Williams St., New York 38, N. Y.
Russell Denison Niles	New York University Law School, Washington Sq., New York 3, N. Y.
Rev. Joseph T. Tinnelly, C.M.	St. John's Law School, 96 Schermerhorn St., Brooklyn 1, N. Y.
Ralph E. Kharas	Syracuse Law School, Ernest I. White Hall, Syracuse 10, N. Y.
Benjamin F. Boyer	Temple Law School, 1715 N. Broad St., Philadelphia 22, Pa.
Morris D. Forkosch	Brooklyn Law School, 375 Pearl St., Brooklyn 1, N. Y.
Francis S. Philbrick	University of Pennsylvania, Philadelphia 19, Pa.
Earl Finbar Murphy	1715 N. Broad St., Philadelphia 22, Pa.
Erwin C. Surrency	1715 N. Broad St., Philadelphia 22, Pa.

SEVENTH: That all of the subscribers to this certificate are of full age; that all of them are citizens of the United States; that at least one of them is a resident of the State of New York, and that of the

persons named as directors all are citizens of the United States and at least one is a resident of the State of New York.

IN TESTIMONY WHEREOF we have made, subscribed and acknowledged this Certificate of Incorporation this 17th day of October, 1958.

HAROLD HITZ BURTON

ANDREW V. CLEMENTS

JEROME PRINCE

JACOB D. HYMAN

WILLIAM C. WARREN

GRAY THORON

WILLIAM H. MULLIGAN

JOSEPH A. COX

RUSSELL DENISON NILES

REV. JOSEPH T. TINNELLY, C.N.

RALPH E. KHARAS

BENJAMIN F. BOYER

MORRIS D. FORKOSCH

FRANCIS S. PHILBRICK

EARL FINBAR MURPHY

ERWIN C. SURRENCY

STATE OF NEW YORK }
COUNTY OF KINGS } ss:

MORRIS D. FORKOSCH being duly sworn deposes and says:

I am an attorney-at-law duly admitted to practice before the Supreme Court of the State of New York, and I know of my own knowledge that no previous application has been made to any Justice of this Court for an order approving the foregoing Certificate of Incorporation and consenting that the same be filed.

That I am presenting this proposed Certificate of Incorporation on behalf of the incorporators named therein who are, as their names indicate, individuals of the highest standing in the legal profession, including therein Deans of the Law Schools in this State. That all of the said incorporators are either personally known to me or are personally known by others in the group of incorporators whom I personally know.

That the reason for the organization of this group is that while many associations exist to foster and further the study and the practice of the law, there is no organization in existence in this State or in this Country which is devoted exclusively to the study of legal history and, more particularly, the legal history in and of this Country. That for all of the above reasons, it is respectfully requested that the within certificate be approved.

MORRIS D. FORKOSCH

Sworn to before me this
20 day of October 1958

GERALD A. GILBRIDE
Notary Public, State of New York
No. 24-6514935, Qualified in Kings County
Commission Expires March 30, 1960

I, HONORABLE GEORGE EILPERIN a Justice of the Supreme Court of the State of New York of the Second Judicial District, do hereby approve the foregoing certificate of incorporation of the AMERICAN SOCIETY FOR LEGAL HISTORY, INC., and consent that the same be filed.

GEORGE EILPERIN
*Justice of the Supreme Court,
Second Judicial District*

Dated: January 15, 1959, Brooklyn, N.Y.

By-Laws of The Society

In order to further the purposes of this Society and provide for its management, the following provisions are adopted as its by-laws.

ARTICLE I

MEMBERS

1. Any person interested in legal history may, upon application to the Society and payment of dues, be admitted to membership. Any institution may do likewise.

2. A member shall be entitled to attend and vote at all assemblies, meetings, and conferences; run for, be elected or appointed to, and serve in any office; be considered for appointment to any committee; make motions and work for their adoption within the Society; and receive all publications of the Society under the terms to be set for each type or unit of the said publication.

3. The Society may, upon prior recommendation of the board of directors, (1) elect persons to honorary membership in the Society, but no more than one such honorary membership may be voted each year; and (2) create such classifications of memberships as it determines upon such terms and conditions as it sets forth.

4. A member may withdraw from or transfer to any class of membership for which he is eligible at any time upon presentation of his resignation or request for transfer, to the board.

5. The dues for annual or regular membership shall be \$10.00 each year, and dues for all other classifications shall be fixed by the Society upon prior recommendation of the board. All annual dues are payable annually on January 1st of each year. Only those members who have paid their dues and fees are to be members in good standing entitled to all the privileges and benefits and the right to vote and hold office.

6. Fees and dues shall be set by the Society upon recommendation of the board of directors. All such fees and dues shall be subject to change by the Society.

ARTICLE II

DIRECTORS AND OFFICERS

1. The chief executive agency of the Society shall be a board of directors.

2. There shall be not less than nine (9) or more than fifteen (15) members of the board. Directors shall be elected for terms of three (3) years each. If any member of the board shall die or resign, leaving an unexpired part of his term, then, by majority vote of the board, a successor shall be elected to the unexpired part of that term. Directors for full terms

shall be elected by the Society. The number of persons who shall compose the board shall be determined by majority vote of the Society.

3. Of the first board of directors, one-third ($\frac{1}{3}$) shall be elected for a term of one (1) year, one-third ($\frac{1}{3}$) for a term of two (2) years, and one-third ($\frac{1}{3}$) for a term of three (3) years. Thereafter, elections shall be for a term of three (3) years except when any increase in the board is voted by the Society, in which event increase(s) shall be placed in one of the three aforesaid categories of directorships in order and the initial term of that office(s) shall be for a part or full period of three (3) years.

4. There shall be an executive committee of the board of directors composed of the officers of the Society and no less than three (3) or more than five (5) directors chosen by the board, which executive committee may exercise the powers of the board at such times when it is impossible for them to assemble a quorum of the said board.

5. The officers of the Society shall be a president, a vice-president, a secretary, and a treasurer. The powers and duties of these officers shall be such as are usually held by officers of like organizations plus those assigned them by the board or the Society. If the office of president becomes vacant the vice-president shall perform the duties of the president for the unexpired term.

6. The terms of office for the officers shall be one (1) year and shall run from January 1st until the following December 31st of each year. No person may serve as an officer for more than four (4) years out of six consecutive years.

7. The board is empowered to create a system of regional vice-presidents and secretaries, who shall be appointed by the president for terms equivalent to his.

8. No salaries shall be paid by the Society to any member, officer, or director. Compensation, to be set by the board after full consideration of the Society's resources and subject to approval of the Society, may be made to any clerical employee retained by the Society for the furtherance of its purposes. Travel expenses may be extended to directors and officers of the Society by vote of the board, but only when such persons are engaged in the Society's business. Notwithstanding the above provisions, the president shall have power and authority to authorize and make disbursements up to fifty (\$50.00) dollars without prior or subsequent authorization or ratification by the board or the Society, and the board shall have like power and authority to vote and make disbursements up to one hundred (\$100.00) dollars, provided that said disbursements pertain and relate to the necessary and usual operations of the Society and are necessary for its regular conduct of Society business, and provided further that a full and complete accounting be made of all such disbursements to the Society's officers.

9. The board may appoint a person to assist the secretary or the treasurer in the performance of his work, and each such assistant may be deputed by the secretary or treasurer to represent him at meetings of the Society, whenever it is impossible for the secretary or treasurer to attend. The Society may require a written report from either the secretary or treasurer in the event of the absence of either or both, in addition to the report submitted by the assistant of the absentee.

ARTICLE III

ELECTIONS

1. No later than September 1st of each year, commencing with the year in which these by-laws are approved, if adopted before August 1st thereof, the President shall appoint a nominating committee consisting of not less than three members of the Society. The names of the committee shall be published in the first available issue of the American Journal of Legal History then appearing, with invitation to the general membership that suggestions of nominees for the various offices be sent to the chairman of the committee. The committee shall be instructed to present to the secretary of the Society on or before October 1st of each year a nominee for the presidency and nominations for each elective office to be filled, including the board, the nominees being members in good standing at that time. Space shall be provided on the ballot for the individual voter's alternative choice.

2. Elective offices and board members shall be chosen through elections to be held during the month of November. Each member in good standing shall be given the opportunity to vote by mail, upon appropriate ballots, to be prepared by the nominating committee, and mailed to all members in good standing no later than November 1st. The secretary of the Society or his assistant shall attend to all such mailings. All ballots must be returned by mail addressed to said chairman of the nominating committee and post-marked no later than November 20th of that month. The results of the election shall be certified and announced by the said chairman of the nominating committee at the earliest opportunity but no later than December 15th, the method of announcement being either by a special or general membership report or by publication in the American Journal or both.

ARTICLE IV

MEETINGS

1. A quorum of the board of directors for the purpose of carrying on business shall consist of not less than four (4) members or one third ($\frac{1}{3}$) of the total board membership, whichever is the greater. A quorum of the executive committee shall consist of the president, or in his absence the vice-president, the secretary, the treasurer, and the representatives of the board selected in accordance with the provisions of Article II, ¶4 of these by-laws. Any quorum may be made up by a written proxy sent by the absent person to the secretary of the Society. The secretary or treasurer in their respective absences shall be represented by their respective assistants, if any, as provided for in Article II, ¶9 of these by-laws.

2. The Society shall, whenever possible, hold a general meeting or assembly at a time and place specified by the board of directors. A special meeting or assembly of the Society may be called not more than once in any calendar year. Neither this limitation nor the previous one shall apply to regional or branch meetings or conferences or panels or round tables which meet in conjunction with the meetings of other associations or separate therefrom.

3. If at any meeting of the board of directors or of the executive committee a quorum is not present, then any action taken at such a meeting

shall be consultative only and without effect for any other purpose unless subsequently ratified by the Society.

4. The board of directors shall meet not less than once each calendar year for the purpose of conducting the business of the Society. It can be called more often by the president or by one-third ($\frac{1}{3}$) of its members, and the place of its meeting shall be selected by the president. The meetings of the executive committee shall be called at the discretion of the president for the purpose of conducting the routine business of the Society, subject to any approval needed for its actions from the board or the Society. The president shall serve as the chairman of the board and the executive committee, and in his absence the vice-president shall serve as such.

5. The place of meeting for all boards, committees, and other agencies of the Society shall be determined by the president upon consultation with the persons concerned, subject to the provisions of Article IV, §2 above.

ARTICLE V

REGIONAL BRANCHES AND CONFERENCES

1. Notwithstanding anything set forth in Article II, §17, or Article IV, §13, above, there is hereby created a group of "branches" of this Society, as follows: an Eastern Branch (including the area in the northeast portion of this country); a Central Branch (including the area in the north central portion of this country); a Pacific Coast Branch; a Southern Branch; and a South-Western Branch; and such others as the board of directors may deem it advisable to create. The names of these branches may be amended or adopted by the branches in accordance with their own rules, provided only that all branches must affix this Society's name, e.g., The Eastern Branch of the American Society for Legal History, Inc.

2. Whenever fifteen or more members in good standing of this Society desire to activate one of the above-mentioned branches they may apply to the president of this Society who, with the approval of the board of directors, will authorize such activation.

3. Any such region shall be autonomous, shall be empowered to elect its own officers and board and committees, and shall be empowered to hold conventions, conferences, and meetings as it sees fit, all subject, however, to the following: (a) these by-laws and the charter of this Society are supreme; (b) the dues of all regional members are to be paid directly to the national offices, but of all dues as and so paid there may be remitted to the regional treasurer by the national treasurer such sum as the national board of directors, upon application of such regional branch, recommends; (c) no convention, conference, or general meeting shall be held without prior "clearing" of the date and time and place with the president of this Society (this does not apply to committee meetings); (d) no regional organization may incur any Society expenditure, or pledge the Society's funds, or otherwise use or utilize the Society's name, without first obtaining the written authorization therefor from the president who must first poll the board and obtain its approval on each general item.

4. Notwithstanding anything above set forth, the national and regional members owe their first loyalty and duty to this Society. National mem-

bers may affiliate with branches, and may serve upon committees of national and regional jurisdiction without limitation.

5. In case of any conflict between the national Society and a regional group the national board of directors has and is given sole and undisputed power to determine the dispute and its decision shall be final and not appealable to any internal or external forum. The national Society, on recommendation of the national board of directors, may disestablish and withdraw recognition of any regional branch, regardless of any reason therefor, and such a Society decision shall likewise be final and not appealable to any internal or external forum.

ARTICLE VI

AMENDMENTS AND MISCELLANEOUS

1. The official organ of this Society is and shall be the American Journal of Legal History, and this Society shall make available to said Journal all news, information, and business for publication therein. Of all dues received for any class of membership, there shall be a portion thereof set aside for and turned over to the said Journal as and for a subscription for said member so paying dues to said Journal. The treasurer of the Society is directed so to do. The board of directors of the Society shall determine the sum to be so allocated.

2. The Society being empowered to receive gifts and property, both real and personal, and to extend grants and to direct projects that further the study of legal history and the purpose of this Society, the agency within the Society that shall act for or shall depute others to act for it or with it is the board of directors. Grants for research, and other academic purposes, may be made by or through the Society to members, officers, directors, or any person connected in any capacity with the Society, as well as to persons having no connection with the Society.

3. The board of directors shall issue to the members of the Society an annual report of the condition of the Society, as provided by law. This report may contain such additional information as the board shall determine. It may be published in such form as the board determines is most suitable and practicable.

4. Any and all papers, documents, correspondence, and like and analogous items held or written or obtained by any officer or member pertaining directly or indirectly to the affairs of this Society belong to it, and upon the expiration of the term of said individual shall be turned over to the Society's designee.

5. Unless specified to the contrary, all votes referred to in these by-laws and all actions referred to shall be taken by a majority vote.

6. Amendments to these by-laws can be made only upon the recommendation of the board of directors to the Society, and only by a two-thirds ($\frac{2}{3}$) vote of those voting. If the board fails to recommend any proposal forwarded to it for consideration by any member in good standing, then upon the affirmative vote of a majority of the said board and all committees' members, such proposal may be considered by a general vote of the Society, and if two-thirds ($\frac{2}{3}$) of those members of the Society so vote therefor, the said proposed amendment shall be adopted.

Members of the Society

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

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Trials in Alabama, The Alabama Lawyer, Vol. II, p. 284. Our Law Books, The Alabama Lawyer, Vol. III, p. 363. Georgia Line, The Alabama Lawyer, Vol. IV, p. 282. Henry Hitchcock of Mobile, The Alabama Review, Vol. V, pp. 3-39 (1952), also The Alabama Lawyer, Vol. 13, p. 252. Law and Courts in Pioneer Alabama, The Alabama Lawyer, Vol. VI, p. 390. Alabama Doctor, The Alabama Lawyer, Vol. VI, p. 247 (Reprinted in Journal of the Alabama Medical Association). Alabama Secedes, The Alabama Review, Vol. VII, pp. 165-185. Trial of Alabama Supreme Court Judges, 1829, The Alabama Lawyer, Vol. VII, p. 381. Stand Up for the Sheriff, The Alabama Lawyer, Vol. 11, p. 396.

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to the Review of Facts Determined by the Jury in Early English Common Law; *pub.*: "The Office of Master in Chancery: Early English Development," *A.B.A. Journal* (June, 1954); "The Office of Master in Chancery: Colonial Development," *A.B.A. Journal*; "The Office of Master in Chancery: Development and Use in Ill.," *Northwestern Univ. L. Rev.*, Vol. 49, No. 4 (Sept., 1954).

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A project will be carried in the Registry for only two years, unless the member requests that it be carried for a longer time. Members should notify the Secretary when a project has been completed and published in order that the title may be transferred to the Members' Bibliography section of THE LEGAL HISTORIAN.

The Registry is open for the submission of new titles at any time. These should be sent to the Secretary of the Society.

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A Review of Recent Publications of Ancient Charters. Joseph Webb McKnight. Southern Methodist University.
Phaleas: Legal and Political Theories in the 5th Century B.C. John C. Hogan, Santa Monica, California.

AIR LAW

History of International Public Air Law. W. J. Wagner, Notre Dame Law School, Notre Dame, Ind. (with John M. Specca).

BIOGRAPHY

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

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

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

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

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Privileges and Patents until 1800. Frank D. Prager. Philadelphia, Pa.

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Trusts by Operation of Law—a text, containing considerable legal history treatment. Neill H. Alford. University of Virginia.

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The Impact of Foreign Policy upon the American Law of Charities. Neill H. Alford, Jr. University of Virginia.

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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.

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

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POLITICAS, Y SOCIALES
15 de Agosto, 410
Asuncion, Paraguay

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1 Piazza della Cancelleria
Rome, Italy

ISTITUTO DE DIRITTO ROMANO
Via Carlo Tavrolacci 5
Rome, Italy

THE PIPE ROLL SOCIETY
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- (d) to receive a membership certificate.
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Bequests

A number of persons have expressed an interest in furthering the purposes and functions of The American Society for Legal History, Inc., 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 American Society for Legal History, Inc., a New York State membership non-profit corporation, the sum of \$. (or the following described property.) to be used in its sole discretion for the general purposes of the Society (or state a particular Society purpose).

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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*

This third, and final, selection completes the series begun in *The Legal Historian*, Number 1, 1958, pages 48-59, and continued in Number 2, 1959, pages 81-94. It includes two letters of Joseph Story, which supplement the group of his letters published in the *American Journal of Legal History*, Vol. II, No. 1, pages 68-86, and two letters of Bushrod Washington, which supplement those published in the *Journal*, Vol. II, No. 2, pages 161-171. These turned up in an uncatalogued copy of Mr. Carson's history of the Supreme Court extended by the insertion of letters and portraits by Adrain Hoffman Joline, the noted lawyer and autograph collector. With the letters of Bushrod Washington is published the document which marks the beginning of his legal career, the promissory note given James Wilson by George Washington for the one hundred guineas which was Wilson's fee for receiving "Mr. Bushrod Washington—as a student of Law in his office." It represents, as well as any of the two thousand autographs in his collection, that sense of the liveliness of the past which made Mr. Carson eminent not only as a lawyer but as a collector.

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

McKINLEY, John, 1780-1852. Associate Justice, 1837-1852.

To JOHN McLEAN.

Louisville December 22 1842

My Dear Sir

I would have written to you ere this, but was uncertain as to the proper place to address you. Presuming the court, at Columbus, to be now in session, I direct to that place. Although my health has improved, within the last few days, considerably, I have no expectation that I can meet you at the Supreme court. Indeed my physicians advise me to avoid all mental exertion for some time to come. I hope, however, no public inconvenience will result from my absence. Unless other members of the court should be kept away by indisposition, as well as myself, my absence will not be felt. I was very sorry to see by the newspapers, that Judge Story's health was very much infirm. His absence from the court, would be a very serious loss indeed.

The allotment of the Judges, required by the act of the last session of Congress, is the only question to be determined, in which I have any personal interest.¹ Why this provision was deemed necessary, I have been unable to conjecture. It could hardly have been intended to extend to the whole court; & if not it can only apply to Judge Daniel & myself; After abolishing the 5th circuit, & creating another by the same number, was a sufficient allotment;² & thus I am willing it should remain; unless some good reason can be given for the change of others as well as these two. I am making arrangements for removing my planting establishment into Mississippi; but will wait for the decision of this question. I was very much surprised that Congress did not remodel all the circuits, so as to equalize more perfectly the labors, & duties of the judges. And although so little sympathy was manifested, by many of my brethren, for my condition, when I had more than half of the business of the United States allotted to me, I am now willing to consent to any arrangement, which will impose the least inconvenience on any of the Judges, approach nearest to equality of duties, & labors, & be most likely to produce harmony among the Judges. I leave all these matters, however, to those who may be fortunate enough to be at the next term of the court.

Col. Taylor, Mrs. T., & all the family were well a day or two ago. When you reach Washington I shall be pleased to hear from you.

Your friend,

J. McKinley

(Addressed on Verso of last leaf:) Hon. John McLean Columbus Ohio
(With note in Judge McKinley's hand:) Should Judge McLean have left Columbus the Postmaster will please to forward this to Washington.

¹ An act approved August 16, 1842, amending the act of March 3, 1837. Under the earlier act the Fourth Circuit had consisted of Maryland and Delaware and was Taney's, the Fifth Circuit of Virginia and North Carolina was Daniel's, the Sixth of South Carolina and Georgia was Wayne's, and the Ninth of Alabama, Eastern Louisiana, Mississippi and Arkansas was McKinley's. By

the amendment of August 16, 1842, the Fourth Circuit included Maryland, Delaware and Virginia, the Fifth, Alabama and Louisiana, the Sixth, North Carolina, South Carolina and Georgia, and the Ninth, Alabama, Mississippi and Arkansas. When the Court met in January Daniel was transferred from the old Fifth Circuit to the new Ninth Circuit, and McKinley from the Old Ninth to the new Fifth Circuit. For the supposed political advantages of the shift see the letter from Mr. Justice Catron to Senator Walker of Mississippi published in 1 *Legal Historian* 51.

² The sentence reads thus to this point. Apparently McKinley omitted a thought in writing.



MARSHALL, JOHN, 1755-1835. Chief Justice, 1801-1835.

TO PETER S. DU PONCEAU. The following letter is published as representatives of the fourteen letters of Marshall in the Carson Collection. All of them will be included in the projected edition of his papers.

Richmond July 17th 1824

Dear Sir

I have deferred my acknowledgements for your polite attention in sending me a copy of your "Dissertation on the nature and extent of the jurisdiction of the courts of the United States³," till I should finish its perusal. I have now read it with attention & pleasure. That part of it particularly which respects the criminal jurisdiction of the courts in some cases where the punishment is not prescribed by any act of Congress, connected with the Chief Justice Tilghman's opinion in the case of Kosloff⁴, deserved the most serious consideration.

I thank you for the flattering manner in which you have noticed some opinions of mine which were expressed in such general terms as to extend farther than was required by the particular case to be decided.

With great respect
I am Sir your obed^t serv^t.

J Marshall

(Addressed on verso of last leaf:) Peter S. Du Ponceau esquire Philadelphia

³ Published at Philadelphia by Abraham Small in 1824.

⁴ *The Commonwealth of Pennsylvania v. Kosloff*, 5 Serg. & Rawle 545.



MOODY, William Henry, 1853-1917. Associate Justice, 1906-1910.

To his brother.

Haverhill Nov. 17th 1879

Dear Brother,

I should of course be gratified to receive the notice you speak of in Mr. King's new enterprise, and will furnish you with the facts you ask for.

I suppose by my "career", you mean what I have done *since* graduation and not before. I began the study of law at the Harvard Law School, the fall after graduation ('76), and continued there three months, when I entered the office of the Honorable Richard H. Dana jr where I remained fifteen months, and was then admitted to the bar. I became associated in the practice of law in Haverhill Mass., with E. N. Hill (H. U. '72) and have so continued up to this time.

The argument which you speak of was my first before the Supreme Court, and was heard in the November term, at Salem, before Chief Justice Gray and Morton, Endicott, Lord, and Soule J. J. The first, third, and last of those are Harvard graduates. The questions involved were in real property law—the construction of a will, and whether a power to sell for the support of the donee of the power implied a power to mortgage, and several other collateral questions.

At the conclusion of my argument I received very high compliments from members of the bar present and from the Chief Justice and later from others of the Judges. What they said I do not care to repeat.

If anything previous to the time covered by the above statement is needed, you could undoubtedly supply it. If Mr. King should think I have overdrawn the account and cared to know anything of it, he might learn from Geo. B. Ives Esq^r. of Salem, a classmate of mine, who was present at the time. If he should say anything to Ives don't let it appear that the suggestion came from me.

I agree with you that it would not do at all for it to appear that I had furnished anything laudatory of myself, and if he concludes to make any notice of me, I must impress on you to see personally that the form of what is printed does not suggest *in the remotest way* that I had anything to do with it. You must be *sure* to look after that.

Father is ill, and confined to his bed with a touch of diphtheria, but he is getting some better. Mother is anxious to hear from you.

Yours truly

W. H. Moody



SHIRAS, George, 1832-1924. Associate Justice, 1892-1903.

TO GENERAL C. H. T. COLLIS.

GEORGE SHIRAS 3rd
Attorney at Law,
Pittsburgh.

Sept 6th/92

Genl C. H. T. Collis:

My dear Sir:

Your letter of congratulation, dated July 27th, and enclosing one from the President, would have received earlier attention, but I have been absent from home, fishing in the cool waters of Northern Michigan,