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"That Most Congenial Lawyer/Bibliographer"

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“That Most Congenial Lawyer/Bibliographer”*

Mary Whisner**

Ms. Whisner delves into Morris L. Cohen’s Bibliography of Early American Law, demonstrating how much information it contains that will be interesting and useful for law librarians.

¶1 Morris Cohen, generous in crediting the work of others, called J.G. Marvin, whose *Legal Bibliography* was published in 1847, “that most congenial lawyer/bibliographer.”¹ I never met John Gage Marvin, of course, but I think Morris Cohen himself could have given him a run in any congeniality competition. And so I apply to him the label he gave to his nineteenth-century intellectual forebear.²

¶2 Cohen’s *Bibliography of Early American Law* (*BEAL*) “represents the apex of the bibliographic scholar in the law.”³ I knew that. I knew he had spent more than thirty years at work on it. And I knew that *BEAL* stood at the ready on a shelf in our reference area, six hefty volumes with a supplement that’s nearly as big. But, frankly, I had never spent time with it until I decided to write about it for this issue of *Law Library Journal*.

¶3 How do you make the acquaintance of such a mammoth work? The author’s own introduction⁴ is a good place to start. He explains the bibliography’s purposes, its scope, and its organization. From there, you can use *BEAL* for your research. Or, if you don’t have an immediate research need, you can sit down and browse, as I did.

* © Mary Whisner, 2012. Once again, I am grateful to my friend Nancy Unger (an actual historian, not just an interested reader as I am) for commenting on a draft.

** Reference Librarian, Marian Gould Gallagher Law Library, University of Washington School of Law, Seattle, Washington. Mary Whisner has been writing the “Practicing Reference” column for *Law Library Journal* since 1999. Her tribute to Morris Cohen’s *Bibliography of Early American Law* marks her fiftieth column.

1. 1 MORRIS L. COHEN, *BIBLIOGRAPHY OF EARLY AMERICAN LAW*, at xviii (1998). See also Morris L. Cohen, *Compiling an Historical Bibliography of American Law: Problems, Procedures and Prospects*, 9 *LEGAL REFERENCE SERVICES Q.*, nos. 1/2, 1989, at 127 [hereinafter Cohen, *Compiling*].

2. Like Cohen, Marvin was for a time Harvard Law School’s librarian. 1 COHEN, *supra* note 1, at 248 (entry 1815).

3. Robert C. Berring, *The End of Scholarly Bibliography: Reconceptualizing Law Librarianship*, 104 *LAW LIBR. J.* 69, 71, 2012 *LAW LIBR. J.* 10, ¶ 5.

4. 1 COHEN, *supra* note 1, at xvii. The introduction is repeated at the beginning of each volume. The appendixes listing abbreviations used for the locations of the works examined and for works cited are also included in each volume. This is a convenience for a user interested in the subject covered in one volume: there’s no need to tote another volume or two to be able to refer to the front and back matter.

¶4 As the introduction explains, the bibliography presents information about a wide variety of works related to U.S. law, whether published in America or abroad, and works on foreign and international law if published here, from the earliest colonial times through 1860. One of Cohen's goals was "to broaden the concept of legal and law-related literature by including categories of material not usually present in law bibliographies,"⁵ and so *BEAL* includes sermons and self-help manuals as well as American editions of Blackstone's *Commentaries on the Laws of England*. Many of the works included are quite short—broadsides, pamphlets, and so on—while others are substantial treatises.

¶5 The basic unit is the bibliographic entry, identified with a number, that gives author, title, publication information, and so on, and often includes notes by Cohen and the staff who assisted him.⁶ The entries are presented by subject, first within monographs and then within trials and special proceedings. Thus, you can go to page 165 of volume 1 to start reading about works on admiralty and maritime law, or, if you want to find works on the trials of military offenses, you can go to volume 4, page 731. In addition to this access by broad subject area, *BEAL* offers access by eight (count 'em, eight!) indexes: author, title, subject, jurisdiction, parties (for litigation-related material), place and publisher, chronological, and language.⁷

¶6 Browsing gave me an impressionistic view of three centuries of American law, legal publishing, and society. It also revealed little surprises tucked among the dry, matter-of-fact entries. You might not think that a textbook could have much of an impact on national events, but take a look at this note that ties the Revolutionary generation to the Civil War:

William Rawle (1759–1836), a Philadelphia lawyer who previously had held loyalist sympathies, was appointed United States Attorney for Pennsylvania in 1791. He also served as counsel for the Bank of the United States and as a member of the Pennsylvania legislature.

This work [*A View of the Constitution of the United States of America*], suggesting that Rawle believed the states had the right to secede from the Union, was used as a textbook for many years at West Point and other schools throughout the country. It is therefore generally considered to have influenced subsequent leaders and supporters of the Confederacy, although in fact Rawle opposed secession.⁸

5. *Id.* at xxii.

6. *Id.* at xvii–xviii. Cohen is the author of *BEAL*, but it is the work of many. His acknowledgments list eight people who worked on it full-time for some period, and thirty-eight people who worked on it part-time. *Id.* at xiv–xv.

7. Some non-English works were intended for European or Latin American audiences. For example, Story's *Commentaries on the Constitution* was published in French (Paris) and in Spanish (Buenos Aires). *Id.* at 568–69 (entries 2918–2919). Others were meant for Americans whose first language was not English. For instance, the proceedings of the 1787 Pennsylvania constitutional convention were published in English and German editions, *id.* at 558 (entries 2885–2886), and those of the 1849 California constitutional convention were published in both English and Spanish, *id.* at 592 (entries 2998–2999).

I did a quick tally of the entries in the language index, and from least common to most common, the languages were Algonquian (1 entry); Italian (4 entries); Latin (6 entries); Dutch (11 entries); Spanish (1½ pages); German (1¾ pages); French (5 pages). 5 *id.* at 1031–44.

8. 1 *id.* at 560.

¶7 Not all of the interesting nuggets were as historically significant as that. For instance, I was struck by the elaborate titles that used to be the style. Nowadays almost any title fits easily on a line, even if a subtitle is included: *International Taxation: Corporate and Individual*;⁹ *Climate Change: A Reader*;¹⁰ *Asylum Denied: A Refugee’s Struggle for Safety in America*.¹¹ Contrast this title by Joseph Chitty, from 1836:

*A practical treatise on bills of exchange, checks on bankers, promissory notes, bankers’ cash notes, and bank notes . . . 8th American from the 8th London edition [1833], newly modelled, and greatly enlarged and improved; and with references to the law of Scotland, France, and America; and new chapters on agents, partners, consideration, stamps, requisites, loss, times of presentment, non-payment, protest and notice, evidence, bankruptcy, forgery, larceny, embezzlement, and false pretences; and an appendix of precedents. Containing the American notes of former editions, by Judge Story, E. D. Ingraham, and Thos. Huntington, esqs. To which are now added, the cases decided in the courts of the United States, and of the several states, to the present time, and the decisions of all the English courts in 1833 and ’34.*¹²

¶8 Sometimes, the title told an amazing story:

*Sketches of the life of William Stuart, the first and most celebrated counterfeiter of Connecticut; comprising startling details of daring feats performed by himself—perils by sea and land—frequent arrests and imprisonment—blowing out of jail with powder—failure of escape after he had led his cowardly associates out of the horrible pit, in Simsbury, into the prison yard, &c. As given by himself.*¹³

Cohen observes that throughout the text the author “confesses and repents of his crimes, and warns of the dangers of vice and crime.” So this 1854 memoir must have been quite morally uplifting and couldn’t have been taken as a thrilling adventure tale. Or perhaps the author wanted his book to be thrilling enough to sell well, while expressing enough repentance to satisfy the righteous.

¶9 The authors are as much fun to browse as the titles. There were plenty of works by Georges, Johns, and Josephs, but I enjoyed the names that you just wouldn’t see on a class roster today, so I started listing the ones that were particularly appealing: Theodorick Bland, Estwick Evans, Ezekiel Forman Chambers, Lysander Spooner, Erastus Cornelius Benedict, Mordecai M’Kinney, Jabez Delano Hammond, Peletiah Webster. These were all in the early parts of volume 1. Later I skimmed the author index¹⁴ and found even more: Ventura de Arquellada, Kazlitt Arvine, Orestes Augustus Brownson, Ebenezer Devotion, Lucius Quintus Cincinnatus Elmer, Michel René Hilliard d’Auberteuil, Theophilus Parsons (two!), Marmaduke Blake Sampson, Cornelius van Bijkershoek, Zephaniah Swift. The richness of the names makes me want to stand on a stage and declaim.

9. PHILIP F. POSTLEWATE & SAMUEL A. DONALDSON, *INTERNATIONAL TAXATION: CORPORATE AND INDIVIDUAL* (4th ed. 2003).

10. *CLIMATE CHANGE: A READER* (William H. Rodgers, Jr., et al. eds., 2011).

11. DAVID NGARURI KENNEY & PHILIP G. SCHRAG, *ASYLUM DENIED: A REFUGEE’S STRUGGLE FOR SAFETY IN AMERICA* (2008).

12. 1 COHEN, *supra* note 1, at 455 (entry 2531).

13. *Id.* at 951 (entry 4173).

14. 6 *id.* at 3–161.

¶10 *BEAL*'s author index also presents a parade of pseudonyms. Many have classical origins: Agonistes, Agrestis, Brutus, Cincinnatus, Indus Britannicus, Probus, Publicola, Publius. A whole string of pseudonyms were built on the Greek root for "loving": Philadelphus, Philalethes, Philandros, Philanthropos, Philo-Caroliniensis, Philodemos, Philodicaios, Philo-Dicaios, Philoeunomos, Philo-Keithius, Philopatriae, Philopolites. The classical references don't mean much to me or, I'm sure, to most readers today, but educated men in the eighteenth and nineteenth centuries had studied Greek and Latin and would have recognized the allusions. Of course, Madison, Jefferson, and their contemporaries wouldn't have known what to make of a pseudonym like "Wonkette,"¹⁵ so we're even.

¶11 Even more of the pseudonyms describe the purported author: An American, An American Citizen, An American recently returned from Europe, A citizen, A citizen of Massachusetts, A citizen of New York, A friend, A friend of truth, and of honorable peace, A friend to the constitutional rights of the citizen, A gentleman of the bar, and so on. A gentleman of the bar was particularly prolific, and that made me notice something I didn't find in the author index: many women. Fewer than three dozen appear in an index that's over 150 pages long. It's not surprising, but it's a good reminder of the constraints on women through most of American history.

¶12 It is little surprise that a bibliography covering this period would include writings by the men who were active during the Revolutionary War, created the Constitution, and led the new nation: Thomas Paine, Benjamin Franklin, James Madison, Thomas Jefferson, John Adams, Alexander Hamilton, John Jay, and others. And, as you'd expect, there are many entries for the famous legal authors of the period: William Blackstone (whose *Commentaries on the Laws of England* was a mainstay of early American lawyers and was published in many U.S. editions¹⁶), James Kent, John Marshall, Joseph Story, Daniel Webster. *BEAL* also includes works by philosophers and political theorists, such as John Locke, Montesquieu, Jean Jacques Rousseau, and Jeremy Bentham.

¶13 But *BEAL* has much more than just founding fathers, eminent jurists, and philosophers. Flipping through the author index, one also finds many names familiar from other periods of U.S. history: presidents (John Quincy Adams, Millard Fillmore, William Henry Harrison, Andrew Jackson), abolitionists (Frederick Douglass, William Lloyd Garrison, Angelina and Sarah Grimké), women's rights advocates (Elizabeth Cady Stanton). Sometimes, these historical figures appear for a reason unrelated to their most famous roles—for instance, Abraham Lincoln is in the bibliography not for his time as President (remember, *BEAL*'s coverage ends

15. WONKETTE, <http://wonkette.com> (last visited Nov. 2, 2011). That generation would recognize the news blog PubliCola (but not the pun on "cola"—"Seattle's News Elixir" includes sections named "Morning Fizz" and "Jolt"). PUBLICOLA, <http://publicola.com> (last visited Nov. 2, 2011). "Bringing you cola for the people, PubliCola is named after Publius Valerius PubliCola [sic], the alias for the authors of the Federalist Papers—the original bloggers." *About*, PUBLICOLA, <http://publicola.com/about> (last visited Nov. 2, 2011).

16. 2 COHEN, *supra* note 1, at 218–31 (entries 5310–5352).

in 1860, just before he took office) or for his law practice, but because he was one of the commissioners reporting to the Illinois governor on canal claims in 1853.¹⁷

¶14 The bibliography also records legal documents that were incidental to historical events. For instance, when he was bringing Anglo-American settlers to what is now Texas, Stephen F. Austin edited a translation of Mexican laws for their use.¹⁸ The colony used a printed form as a permit to settle.¹⁹ Sam Houston, another figure in early Texas history, also appears in the bibliography. In 1859, he gave an impassioned speech in the Senate urging the removal of the judge of the federal court in Texas.²⁰ Cohen quotes Houston's conclusion: "I insist that we be relieved from this judicial monster"²¹

¶15 Houston is also in *BEAL* for an incident in 1832, long before he moved to Texas. Offended by Representative William Stanbery, he struck the congressman on a street in Washington, D.C. Houston's subsequent trial for contempt of Congress "raised novel questions in American law and congressional procedure."²² President James K. Polk visited the House to argue that that body lacked constitutional authority to punish an offense not committed there.²³ Houston's counsel was Francis Scott Key, a historical figure I had mentally left forever in 1812 under the rockets' red glare, wondering if the flag was still flying over Fort McHenry.²⁴

¶16 After Austin and Houston, it's natural to think of Dallas, the reporter of the first four volumes of *United States Reports* (1790–1806). *BEAL*'s author index lists three men named Dallas: Alexander Dallas, Alexander James Dallas, and George Mifflin Dallas. Rather, the index lists two men, one of them twice: Alexander Dallas and Alexander James Dallas are one and the same. (The title page of 1 U.S. credits A.J. Dallas, Esquire.) In 1795, Dallas opposed the Jay Treaty that set the terms of the peace with Britain.²⁵ And as a U.S. Attorney in 1802, he issued an opinion denying the vote to Tories who had been loyal to Britain during the war.²⁶ George Mifflin

17. 3 *id.* at 891 (entry 10961).

18. 2 *id.* at 206 (entries 5280–5281).

19. 3 *id.* at 858 (entry 10866). For more on Austin, see Eugene C. Barker, *Austin, Stephen Fuller*, in *HANDBOOK TEX. ONLINE*, <http://www.tshaonline.org/handbook> (last visited Nov. 2, 2011) (site published by the Texas State Historical Association).

20. 5 COHEN, *supra* note 1, at 119 (entries 14543–14544). The speech was separately published in two editions, twenty-eight pages and one hundred pages.

21. *Id.* The attempt to remove the judge, John Charles Watrous, failed. He served until 1870. *Watrous, John Charles*, in *BIOGRAPHICAL DIRECTORY OF THE FEDERAL JUDICIARY, 1789–2000*, at 833, 834 (2001).

22. 5 COHEN, *supra* note 1, at 141. Material related to *United States v. Houston* is in *id.* at 141–43 (entries 14605–14612).

23. *Id.* at 143 (entry 14612).

24. Key also shows up in *BEAL* prosecuting a doctor charged with criminal libel for allegedly inciting slaves to revolt (the doctor was acquitted). 4 COHEN, *supra* note 1, at 705. For more on Houston, see Thomas H. Kreneck, *Houston, Samuel*, in *HANDBOOK TEX. ONLINE*, *supra* note 19. The *United States v. Houston* trial resulted in a reprimand by the House. 5 COHEN, *supra* note 1, at 141.

25. See 2 COHEN, *supra* note 1, at 948 (entry 7677), 951 (entry 7689).

26. 1 *id.* at 406 (entry 2352). Dallas served as Pennsylvania's secretary of the commonwealth in the 1790s. Later he was Secretary of the Treasury (1814–16), succeeding Albert Gallatin, and also served as Acting Secretary of War (March–December 1815), then, briefly, as Secretary of State (1815). John K. Alexander, *Dallas, Alexander James*, in 6 *AMERICAN NATIONAL BIOGRAPHY* 30, 30–31 (John A. Garraty & Mark C. Carnes eds., 1999).

Dallas was Alexander's son and, like his father, a lawyer and politician. He was Vice President in the Polk Administration and minister to Britain under Pierce and Buchanan.²⁷

¶17 Dallas is just the first of the reporters whose names are preserved in Supreme Court citations.²⁸ Cohen's biographical notes in *BEAL* show that several of these men had quite distinguished careers, in addition to the roles that put their names on *United States Reports* and in millions of citations.²⁹ William Cranch, who was the reporter from 1801 to 1815, was later Chief Justice of the United States Circuit Court of the District of Columbia; he is credited with preparing *Code of Laws for the District of Columbia* in 1816.³⁰ He was also a nephew of John Adams.³¹ Henry Wheaton, who was the reporter from 1816 to 1827, served as a diplomat for the next twenty years (1827–1846) and wrote two important treatises on international law.³² Wheaton also made it into *BEAL* as a plaintiff, when he sued his successor, Richard Peters, for republishing his reports (albeit without his commentary).³³ John W. Wallace was a legal scholar, a librarian, and a Master in Chancery, in addition to serving as reporter.³⁴ He took reporting so seriously that he wrote a book about English and American reporters with, as he said in the subtitle, "occasional remarks upon their respective merits."³⁵

27. Phyllis F. Field, *Dallas, George Mifflin*, in 6 *AMERICAN NATIONAL BIOGRAPHY*, *supra* note 26, at 31, 33. Field concludes her portrait of Dallas: "Remarkable in none of his achievements, he represented the honorable norm for public servants of his generation."

Lest you think that there's no connection between the Philadelphia lawyers named Dallas and the city in Texas and that I was merely making a pun when I transitioned from Austin and Houston to Dallas: "The origin of the name Dallas [Texas] is unknown. Candidates include George Mifflin Dallas, vice president of the United States, 1845–49; his brother, Commodore Alexander J. Dallas, United States Navy; and Joseph Dallas, who settled near the new town in 1843." Jackie McElhaney & Michael V. Hazel, *Dallas, TX*, *HANDBOOK TEX. ONLINE*, *supra* note 19.

28. The list is Dallas, Cranch, Wheaton, Peters, Howard, Black, Wallace. *THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION* 215 tbl.T1.1 (19th ed. 2010).

29. While you can piece together information from the bibliographic notes, as I did, you can learn much more about the reporters' lives in Gerald T. Dunne, *Early Court Reporters*, 1976 *Y.B. SUP. CT. HIST. SOC'Y* 61.

30. 3 COHEN, *supra* note 1, at 692 (entry 10307). Cranch apparently handled appeals from the commissioner of patents, because a treatise and a compilation of patent laws both included his decisions. *See 2 id.* at 780 (entry 7116), 791 (entry 7161).

31. 1 *id.* at 291 (entry 1965).

32. *See 2 id.* at 807–11 (entries 7201–7211). *Elements of International Law* went through six editions between 1836 and 1855 and was translated into French, Spanish, and Italian. *History of the Law of Nations in Europe and America* was first published in French (1841), then in an enlarged edition in English (1842), and in Italian (1859). *Id.*

33. 4 *id.* at 143 (entries 11538–11539). *See also* Dunne, *supra* note 29, at 64–65. The case went to the Supreme Court, which held that a reporter could not have a copyright in the opinions of the Court, so Wheaton lost his case against Peters. *Wheaton v. Peters*, 33 U.S. (8 Pet.) 591 (1834). Peters's summary of the arguments of counsel is so extensive that the opinion of the court does not begin until page 654.

34. 1 COHEN, *supra* note 1, at 243.

35. *Id.* at 243–44 (entries 1796–1798). Although the first edition of *The Reporters* (1844) was just seventy-seven pages, the third (1855) was 424 pages. *Id.* I took a look at this because Bob Berring recommended it, Robert C. Berring, *How to Be a Great Reference Librarian*, *LEGAL REFERENCE SERVICES Q.*, Spring 1984, at 17, 22–23, but I've never tried to read the whole thing. Wallace also published a lecture decrying the lack of uniformity in state commercial law. 1 COHEN, *supra* note 1, at 437 (entry

¶18 While *BEAL* covers some works by the reporters, it does not cover the reports themselves, since it is limited to “the monographic and trial literature of American law”³⁶ For coverage of the early reports of Supreme Court cases, we have a bibliography Morris Cohen prepared with Sharon Hamby O’Connor.³⁷ Bibliographies of nominative reporters in American states were among the projects Cohen listed for future bibliographers.³⁸

¶19 When you’re beachcombing, it’s a delight to come across a particularly nice shell or piece of glass. When I was browsing in *BEAL*, I took a similar pleasure in finding literary figures. Washington Irving wrote (or might have written) *A Plea for Authors and the Rights of Literary Property*.³⁹ Letters from Victor Hugo and Alexis de Tocqueville were included in one of the American Anti-Slavery Society’s publications.⁴⁰ Daniel Defoe wrote tracts criticizing the British government’s treatment of people in Carolina.⁴¹ Samuel Johnson’s ninety-one-page work, *Taxation No Tyranny: An Answer to the Resolutions and Address of the American Congress*, went through four editions in 1775.⁴² Half a century later, an essay he’d written about imprisonment for debt was printed as an appendix to *The Debtor’s Prison: A Tale of a Revolutionary Soldier* (1835).⁴³ Nathaniel Hawthorne wrote a biography of Franklin Pierce for his campaign; Cohen opines that “its quality is better than usual for the genre.”⁴⁴ After her influential novel, *Uncle Tom’s Cabin* (1852), Harriet Beecher Stowe published a book of “documentary sources underlying and substantiating the fictional incidents and slave conditions” it described.⁴⁵ *Key to Uncle Tom’s Cabin* went through two American editions, at least five in London, and one in Leipzig.⁴⁶

¶20 People from other fields also pop up in *BEAL*. For instance, Charles Bulfinch, the influential Boston architect who designed the Capitol in Washington, D.C., is in *BEAL* for his reports on penitentiaries.⁴⁷ Why would Joseph Priestley, the man who discovered oxygen, be in a legal bibliography? Because he was interested in much more than oxygen (just as Benjamin Franklin was interested in much more than electricity). In 1769, Priestley wrote *The Present State of Liberty in Great Britain and Her Colonies*.⁴⁸ A 1773 collection by Thomas Paine included *Priestley’s Remarks*

2463).

36. 1 COHEN, *supra* note 1, at xvii.

37. MORRIS L. COHEN & SHARON HAMBY O’CONNOR, A GUIDE TO THE EARLY REPORTS OF THE SUPREME COURT OF THE UNITED STATES (1995).

38. Cohen, *Compiling, supra* note 1, at 138.

39. 2 COHEN, *supra* note 1, at 777 (entry 7107). The pamphlet says only that it was written by “an American.” It has been attributed to Washington Irving and to Grenville A. Sackett. *Id.*

40. 3 *id.* at 594 (entry 9946).

41. 1 *id.* at 724 (entries 3452–3453).

42. 2 *id.* at 608 (entry 6597).

43. *Id.* at 170 (entry 5170).

44. 1 *id.* at 323 (entry 2075).

45. 3 *id.* at 609.

46. *Id.*

47. 1 *id.* at 973 (entries 4243–4244).

48. 2 *id.* at 644 (entries 6724–6725).

on *Blackstone*.⁴⁹ A minister, Priestley also wrote about biblical law.⁵⁰ (There are remarkably few typos in *BEAL*, considering its size, but “Priestley” seems to have been a problem, showing up as “Priestly” several times in the notes.⁵¹)

¶21 Some famous inventors appear in *BEAL* because of intellectual property disputes: Isaac Singer (sewing machine patent),⁵² Charles Goodyear (vulcanized rubber patent),⁵³ Samuel Colt (revolver patent),⁵⁴ Robert Fulton (monopoly to operate steamboat).⁵⁵ Samuel F.B. Morse and his telegraph show up under both civil trials and special proceedings.⁵⁶ Perhaps there should have been even more. A note by the material for *Morse v. O'Reilly* advises: “For related cases see: Special Proceedings/Intellectual Property/Morse, Samuel F. B.; Trials/Civil/Intellectual Property/*Morse et al. v. Smith*; and Trials/Civil/Intellectual Property/*Smith v. Downing*.”⁵⁷ This cross reference is the only time *BEAL* let me down. Despite my best attempts—looking under the headings I was directed to, using the party index, and full-text searching—I never did find anything about *Morse v. Smith* or *Smith v. Downing*.

¶22 Ministers are also represented in the bibliography. Toward the end of the period covered, they were outspoken on slavery, both for and against.⁵⁸ And near the beginning of that period, Increase and Cotton Mather were outspoken on many issues of morality and proper conduct. Cohen reports that “Increase and Cotton Mather, distinguished Boston ministers,” contributed to the witchcraft hysteria in Salem in 1692.⁵⁹ But Increase Mather also “issued the first public criticism in New England against the Salem witchcraft trials.”⁶⁰ Speeches that Cotton Mather

49. 1 *id.* at 754–55 (entry 3551). The remarks concerned religious dissenters. See 2 *id.* at 236–37 (entry 5368).

50. 1 *id.* at 193 (entry 1638) (citing *THE ORIGINALITY AND THE SUPERIOR EXCELLENCE OF THE MOSAIC INSTITUTIONS DEMONSTRATED* (1803)).

51. *Id.* at 755 (entry 3551); 2 *id.* at 644 (entry 6724) (two occurrences). Although the main volume has “Priestley,” *id.* at 236–38 (entries 5368–5370), the title index has “Priestly” in *A Reply to Dr. Priestly's Remarks*, 6 *id.* at 411.

52. 4 *id.* at 141 (entry 11531).

53. *Id.* at 133 (entries 11501–11502); 5 *id.* at 165 (entry 14679).

54. 4 *id.* at 131 (entry 11496).

55. *Id.* at 134–35 (entries 11506–11509); 5 *id.* at 180–86 (entries 14724–14744).

56. 4 *id.* at 129 (entry 11491) (*Bain v. Morse*, appeal from Commissioner of Patents to the Chief Justice of the District of Columbia, William Cranch); *id.* at 136–40 (entries 11515–11528) (*Morse v. O'Reilly*); 5 *id.* at 165–67 (entries 14681–14685) (proceeding before the Commissioner of Patents).

57. 4 *id.* at 136.

58. Defenders of slavery included John Lafayette Girardeau, 3 *id.* at 616 (entry 10030); Nehemiah Adams, 4 *id.* at 828 (entry 13687); and Ichabod Smith Spencer, 3 *id.* at 653 (entry 10179) (religious duty to obey even unjust laws, such as the Fugitive Slave Law). Abolitionist ministers included Samuel Nott, *id.* at 573–74 (entries 9860–9866); William Ellery Channing, *id.* at 585 (entry 9907); and Wendell Phillips, *id.* at 651 (entry 10174).

59. COHEN, *supra* note 1, at 415 (Supp. 2003).

60. 1 COHEN, *supra* note 1, at 926 (entry 4099). I was puzzled by this apparent contradiction, but found this:

[Increase] Mather sailed for Massachusetts in March 1692 after an absence of four years. When he arrived in Boston in May, the Salem witch hunt was in full cry. He was slow to intervene, but later that summer at the request of other ministers he wrote a criticism of the use of spectral evidence, *Cases of Conscience Concerning Evil Spirits* (1692), which was important in bringing the trials to a stop. His son Cotton simultaneously wrote a book supporting the trials, *Wonders of the*

gave to condemned pirates were published in 1704 ("Faithful warnings to prevent fearful judgments"),⁶¹ 1724,⁶² and 1726.⁶³ Here's the title from a booklet with two of Cotton Mather's sermons on murder:

*The sad effects of sin. A true relation of the murder committed by David Wallis, on his companion Benjamin Stolwood: on Saturday night, the first of August, 1713. With his carriage [sic] after condemnation; his confession and dying speech at the place of execution, &c. To which are added. The sermons preached at the lecture in Boston, in his hearing, after his condemnation; and on the day of his execution, being Sept. 24, 1713.*⁶⁴

You might expect ministers to preach against murder and piracy. But Cotton Mather also weighed in on commercial law: Cohen calls his *Lex Mercatoria* a "sermon on business ethics."⁶⁵ And Cotton Mather's essay *Proposals to Lawyers* (originally one of his *Essays to Do Good*) was published separately around 1812, long after his death.⁶⁶

¶23 Today some writers, bloggers, and other commentators are sharply critical of law and the legal profession. That sentiment is hardly new. For instance, in 1822, interested readers might find

*The English Practice: A Statement, Showing Some of the Evils and Absurdities of the Practice of the English Common Law, as Adopted in Several of the United States, and Particularly in the State of New-York. Addressed to Liberal Minded and Intelligent Men of All Classes and Professions, Who Are in the Habit of Examining and Thinking for Themselves.*⁶⁷

The title page named the author only as "a lover of improvement." In 1829, Lorenzo Dow, whom BEAL describes as "an eccentric, itinerant preacher," wrote a seventy-one-page book, *Omnifarious Law Exemplified: How to Curse and Swear, Lie, Cheat and Kill; According to Law!*⁶⁸

¶24 Long before Nolo published its first book helping nonlawyers,⁶⁹ there was Isaac Ridler Butts, a Boston printer who compiled and published, between 1846 and 1860, works aimed at, variously, businessmen, creditors and debtors, landlords and tenants, merchants and common carriers, sailors and fishermen, and executors and administrators.⁷⁰ And Butts was far from the only producer of do-it-yourself law

Invisible World (1692), which Mather approved of in an introduction, thus straddling one of the most troublesome moral issues in New England Puritan history. Increase Mather's ambivalence about the witchcraft trials did nothing to harm his career during his lifetime but greatly damaged his later reputation.

Michael G. Hall, *Mather, Increase*, in 14 AMERICAN NATIONAL BIOGRAPHY, *supra* note 26, at 686, 688.

61. 4 COHEN, *supra* note 1, at 901 (entry 13923).

62. 1 *id.* at 921 (entry 4089).

63. COHEN, *supra* note 1, at 86 (Supp. 2003) (entry 4097.50).

64. 1 COHEN, *supra* note 1, at 921 (entry 4090).

65. *Id.* at 429 (entry 2429). Mather also wrote about bills of credit. *Id.* at 461 (entry 2550).

66. 3 *id.* at 192 (entry 8515). The publisher was Joseph Dix, father of the social reformer Dorothea Dix.

67. 1 *id.* at 29 (entry 1081).

68. *Id.* at 6 (entry 1005).

69. Nolo's first books, in 1971, were *How to Do Your Own Divorce in California* and *The California Tenants' Handbook*. About Nolo, NOLO, <http://www.nolo.com/about.html> (last visited Nov. 3, 2011).

70. 3 COHEN, *supra* note 1, at 76–82 (entries 8169–8188).

books. There were also, for instance, *The Seaman's Manual* (1830),⁷¹ *The Banker's Common-Place Book* (1851),⁷² *The Merchant's and Shipmaster's Assistant* (1822),⁷³ and *The American Trader's Compendium* (1811).⁷⁴ A law professor from the University of Pennsylvania wrote *Popular Lectures on Commercial Law: Written for the Use of Merchants and Business Men* (1856).⁷⁵ A book from 1858 was aimed at women:

*Every woman her own lawyer. A private guide in all matters of law, of essential interest to women . . . containing the laws of the different states relative to marriage and divorce, property in marriage, guardians and wards, rights in property of a wife, rights of widows, arrest of females for debt, alimony, bigamy, voluntary separations, discarded wives, suits by and against married women, breach of promise, deserted wives, clandestine marriages, adultery, dower, illegitimate children, step-fathers and step-children, slander, minors, medical maltreatment, just causes for leaving a husband, a wife's support, property in trust, transfer of property, deeds of gift, annuities, pretences in courtship, etc., etc., etc.*⁷⁶

Because of the book's viewpoint, Cohen speculates that it "may have been written by a woman under a pseudonym." He goes on:

A section on the limitations of the liability of husbands for their wives' debts ends with this sentence: "Justice does not recognize a husband's right to play the brute, the sordid miser, nor the despot to his wife, who is, in law, his equal." Which equality, of course, the text does not bear out.⁷⁷

I love it that Cohen quoted the author's lofty (and hopeful) sentence, and that he added his own dry comment about the state of the law in 1858.

¶25 Unless you're fixated on footnotes, you probably didn't notice that these examples of self-help law books came from two separate volumes of *BEAL*. Butts's works were grouped in volume 3 under Legal Manuals/Legal Manuals for Laymen. *Every Woman Her Own Lawyer* was also in volume 3, but under Women. The others were in volume 1, under three different subjects: Admiralty and Maritime Law, Banks and Banking, and Commercial Law. You could make an argument that they all should have been under Legal Manuals/Legal Manuals for Laymen—or that Butts's books, like the others, should have been listed under their subjects. It's hard—or impossible—to come up with a perfect classification scheme because works can often fit comfortably in two or more places.⁷⁸

¶26 Cohen said that it was a difficult decision to arrange the entries in *BEAL* primarily by subject, rather than alphabetically by author or chronologically by year.⁷⁹ He based that decision on consultation with legal historians and law librarians and judged that indexes could serve the needs of researchers who wanted to

71. 1 *id.* at 169 (entry 1571).

72. *Id.* at 201 (entry 1657).

73. *Id.* at 421–23 (entries 2396–2404).

74. *Id.* at 429 (entry 2430).

75. *Id.* at 432 (entry 2445).

76. 3 *id.* at 920 (entry 11076).

77. *Id.*

78. See Mary Whisner, *Alphabetical Order and Other "Simple" Systems*, 96 LAW LIBR. J. 757, 2004 LAW LIBR. J. 50.

79. 1 COHEN, *supra* note 1, at xxiii; Cohen, *Compiling, supra* note 1, at 132.

see how works fit together in other ways. As a browser and a dabbler, I appreciated the subject arrangement. Sometimes there were odd temporal juxtapositions (when a work from the seventeenth century was close to one from the nineteenth), but I wasn't bothered by them—I just reminded myself to look at the dates as I browsed. I also availed myself of the indexes when a question occurred to me, for example, turning to the author index to find more works by an author I stumbled across while browsing a subject.

¶27 I love BEAL's short biographical and historical notes. Because of the subject arrangement, choices had to be made: If author A wrote in three or four subject areas, do you add a biographical note in each place? If so, do you add the same note, or do you adapt it to the context? Cohen chose to provide biographical notes for only some works, and they vary.

¶28 For example, when I was skimming the constitutional law section, I noticed a speech by Judah Philip Benjamin in San Francisco in 1860.⁸⁰ I wondered whether this was the same Judah P. Benjamin I remembered seeing in a portrait in New Orleans. If so, what was he doing in California? That entry lacked a biographical note, so I looked for one elsewhere.⁸¹ The section on Civil Trials/Real Property had several entries for documents related to *Castillero v. United States*, including one with a note about Benjamin: "Judah Philip Benjamin (1811–1884) was an attorney who represented California settlers who made claims under Spanish land titles in 1847. He later became Attorney-General of the Confederacy."⁸² Under Monographs/General Works/Digests/Louisiana, there's a longer note, attached to the digest of Louisiana decisions Benjamin compiled:

Benjamin (1811–1884) practiced law in New Orleans begining [sic] in 1832. He later served in the United States Senate from 1852 to 1861, and as Attorney General and Secretary of State of the Confederacy. He fled to England after the Civil War and had a successful legal career there.⁸³

So sometimes you see a biographical note and sometimes you don't, and when you do, it might tell only part of the story.⁸⁴

¶29 I first encountered Abel Brewster under Banking, where he has three books about his invention to make it hard to counterfeit bank bills.⁸⁵ A note informed me: "Abel Brewster (1776–?) began his career as an engineer in a Connecticut silver-smith business and later became an inventor and builder."⁸⁶ How interesting! It

80. 1 COHEN, *supra* note 1, at 530 (entry 2792).

81. When I searched for "Benjamin, Judah" in BEAL on HeinOnline, I got hits in volumes 2, 4, and 6, but not the entry in volume 1 where I started. Out of curiosity, I looked at the text version of entry 2792 and saw the name was rendered: "BENjAMIN, Judah Philip." That looks a little funny, but shouldn't have stopped the search. I don't know what the glitch was. The lesson is to use the indexes as well as full-text searching.

82. 4 COHEN, *supra* note 1, at 211 (entry 11732).

83. 2 *id.* at 287 (entry 5536).

84. For an admiring portrait of Benjamin, see Laurie H. Riggs, *The Strange Career of Judah P. Benjamin*, 36 LAW LIBR. J. 57 (1943). "[T]he only two injuries suffered by Benjamin at the hands of the Northerners, of which he spoke with anything like bitterness, was [sic] that they burned his law books and drank his Madeira." *Id.* at 63.

85. 1 COHEN, *supra* note 1, at 205 (entries 1669–1671).

86. *Id.* (entry 1669).

makes sense that a silversmith would know about engraving bank notes and thus have works listed under Banking. I was a little surprised to meet Mr. Brewster again under Jurisprudence, where he had two editions of *Free man's companion; a new and original work, consisting of numerous moral, political and philosophical views, examples and explanations, tending to illustrate the general cause of truth, justice, virtue, liberty, and human improvement*.⁸⁷ It's less obvious why a silversmith would write about all of that, but this time, there's a longer biographical note:

Abel Brewster, born in Connecticut in 1776, was engaged in the watch, jewelry, and silversmith business when, in 1806, he began a campaign to prevent the counterfeiting and passing of counterfeit bank bills. This led to his prosecution for libel by one George Murray in the United States Circuit Court. That was decided in his favor. Those events and his continuing attacks on the legal profession are more fully described in his 1832 pamphlet, *A brief memoir of Abel Brewster . . .*

This collection of short essays reflects his wide-ranging interest in law and his aversion to lawyers.⁸⁸

¶30 The memoir appears under another category, Biographies, and this time there is no biographical information, other than to say that Brewster “defends himself against those he claimed attempted to ‘defame, defraud, persecute and ruin’ him, by thwarting his efforts to patent a device to prevent the counterfeiting of bank bills.”⁸⁹ If *BEAL* had been arranged by author, all of this information would have been in one place—but a researcher wanting to read everything about banking, say, would have had a lot more work to do. It wasn't so hard to use the author index to find the three locations where Brewster's works were listed.

¶31 Brewster wasn't the only author with an eclectic career. There was Jesse Chickering, “a statistician, a Unitarian minister, and a physician,” who wrote a tract on immigration.⁹⁰ Pierre Armand Dufau, “a French economist and publicist who taught blind children and later directed an institute for the education of the blind,” produced a six-volume compilation of constitutions from Europe and the Americas.⁹¹ William Jones was “a talented linguist and Oriental scholar, who turned to the bar to improve his livelihood.”⁹² Jacob Bailey Moore (1797–1853) was “a writer, printer, publisher, bookseller, librarian and government clerk” in New Hampshire, New York, Washington, D.C., and San Francisco.⁹³ I could go on, but I'll rest with one more improbable résumé: William “Thornton (1759–1838), a man of varied occupations and talents (architect, poet, magistrate, and race-horse breeder), who was also a Quaker and a militia captain, drafted a constitution for his dream of a united North and South America.”⁹⁴

¶32 Welcome navigational aids in this sea of citations are the scope notes at the beginning of each category. They suggest other categories where one might find

87. 2 *id.* at 987 (entries 7804–7805).

88. *Id.* at 986.

89. 1 *id.* at 280 (entry 1936).

90. *Id.* at 395 (entry 2317).

91. *Id.* at 516–17 (entries 2748–2749).

92. *Id.* at 426.

93. *Id.* at 475 (entry 2610). Here was another of *BEAL*'s rare typos: the note referred to the author as “Bailey” rather than “Moore.”

94. *Id.* at 525 (entry 2778).

relevant material. For instance, the scope note for Slavery and African Americans (within Monographs) refers researchers to Monographs/Constitutional Law/General Works; Monographs/Territorial Problems/States and Territories; Civil Trials/Slavery; and Criminal Trials/Obstruction of Justice among others.

¶33 When *BEAL* was first published, it was possible to acquire it in CD-ROM as well as in print. My library bought only the print, but as of August 2011, *BEAL* is available on HeinOnline (in Spinelli's Law Librarian's Reference Shelf, to which we subscribe). I began my browsing in print, hauling thick volumes from work to home, home to Starbucks, and so on. Flipping through a book, I took notes on my iPad. When I found *BEAL* on HeinOnline, I used both, browsing in a print volume while searching in HeinOnline. Later I downloaded PDFs of some sections to my iPad, so I always had the author index with me, as well as selected topical sections, and I jumped between the PDFs and live HeinOnline. Finding an app that allows me to annotate PDFs made note taking even easier. Moving to the writing phase, I have had before me handwritten notes, notes on my iPad, PDFs on the iPad, HeinOnline, and Word on both my laptop at home and my desktop computer at work. I think Morris Cohen would have appreciated the ways I used different technologies to explore his great work. He began his project in 1964, when the bulk of data collection had to be done manually (although he and his team sent off their five-by-eight-inch note cards to the publisher to be entered into a computer file).⁹⁵ Years later, when *BEAL* was finally published, Cohen's "major regret" was "over the unavailability of computer support in the early years and [his] failure to utilize that technology when it did become a realistic option in the late seventies."⁹⁶ He was enthusiastic about the ways that new technology could aid researchers. While not claiming that technology would create new insights into history, he certainly valued the use of technology in research. "Although the nature of historical evidence has not changed, our access to it has certainly broadened, deepened, and been made faster."⁹⁷

¶34 Now that I have explored *BEAL* in different ways—browsing, using the indexes, full-text searching—I have a much better sense of the riches it holds. And that will make me more likely to use it in my work, both doing research myself and helping library users to do their research. It really is an impressive work, by a most congenial lawyer/bibliographer.

95. Cohen, *Compiling*, *supra* note 1, at 135, 138 n.1.

96. 1 COHEN, *supra* note 1, at xxii.

97. Morris L. Cohen, *Researching Legal History in the Digital Age*, 99 LAW LIBR. J. 377, 391, 2006 LAW LIBR. J. 21, ¶ 41.

