alternative to legal formalism. Unless Hegel's justification of a modern legal order can be recast so as to avoid reliance on an unknowable force that drives us to become self-conscious, one can hardly expect persons to reject legal formalism and embrace Hegel's legal philosophy.

Whitten Sullivan Watson


Kathryn Preyer passed away on 19 April 2005 at the age of eighty. She was a teacher of American history in the history department at Wellesley College in Massachusetts. This book is a collection of her essays, published between 1962 and 1992, put together by those who knew and loved her and had the deepest respect for her work on the early national period in America. The book itself is a testament to that affection and admiration, which comes shining through in the preface, the general introduction by Stanley Katz, and the introductory essays by each of the three editors.

The book is divided into three sections - none of which, it must be said, deals with Blackstone. The first, introduced by Maeva Marcus, editor of the Documentary History of the United States Supreme Court and past president of the American Society for Legal History, contains four essays focused on the role of the judge in the early national period. Most of these pieces were written in the 1960s and were based on Preyer's doctoral dissertation on the Judiciary Act of 1801 (when she was Kathryn Turner) (7). The first essay gives a sense of Preyer's style and methodology. It begins with a description of the federal Judiciary Act of 1789 and the limited jurisdiction given to federal courts. When a lame-duck Federalist Congress expanded federal jurisdiction under the Judiciary Act of 1801, it was not in response to the election of Thomas Jefferson in 1800, as is commonly supposed. In fact, Federalists had begun planning to expand federal jurisdiction as early as 1799. Their intention related to their fear that state legislatures and state courts would side with settlers when determining rights involved in large land purchases (no one else paid, and they themselves) (8). The crimes of federal crime set in policy in policing state courts but were multi-state. The desire to paper it was a good example of standard account and involving a correction.

James T Cally the impeachment of the midnight judges to place on the political modern United States this suspension, and know there is a great harmonious the contingency can happen.

The second section the criminal the period of the Jurisdiction of the Common Law with Newmyer and Joseph Story to understand the jurisdiction over common law was never at law there was less.

The location of a modern lawyer on an unknowable society, one can hardly expect Whitten Sullivan Watson’s legal philosophy, to be a celebration of a younger generation of American lawyers. Her essay reveals a deeper concern with the future of the profession, and with the role of lawyers in society.


The image of eighty, she was a professor of philosophy at Wellesley College. One of her essays, published in 1984, was about those who knew and worked with Whitten Sullivan Watson in the early national period. In that essay, she wrote, “The case of affection and the case of the surface, the general mood of the essays by each of the women of the Wellesley generation, of which it must be said, is that written by Maeva Marcus, ‘The Midnight Judges’ in Supreme Court and American Law’. The story, contains four different stories of early national period. The essays were written in the spring of 1801 (when she was 75), and deeply influenced Preyer’s style of writing. It is the first case of the federal judiciary in the United States. When a number of cases were decided under the Federalist Court, the selection of Thomas Jefferson as Chief Justice, Federalists had already been elected in 1799. Their power in the federal courts and state courts was not as large and involved in large land purchases (rather than with out-of-state speculators like the Federalists themselves) and also to their desire to expand the criminal jurisdiction of federal courts, their wish for effective tax collection, and their interest in policing sedition (29–37). In other words, the causes of enactment were multi-factorial. Political defeat gave ‘a driving urgency’ to the desire to pass the statute; it did not, however, occasion it (38). This is a good example of a technique Preyer frequently used: explaining the standard account and how that account was overly simplistic and then offering a correction. In another piece, she explains why the sedition trial of James T Callender was not just ‘a way station’ to the better-known story of the impeachment of Samuel Chase (92). Another looks into who ‘the midnight judges’ were, the Federalists John Adams rushed to put in place on the eve of Jefferson’s election, pointing out that they were political moderates rather than rabid anti-Republicans (89). To my mind, the stand-out essay in this group and the one that would appeal to a wide audience is Preyer’s piece on the appointment of John T Marshall to the United States Supreme Court. Preyer somehow manages to make this suspenseful despite the fact that we can hardly say we do not know where it is going. This, it seems to me, is one of the hallmarks of a great historian, to be able to tell an engaging story that highlights the contingency of events, how what happened is not what had to happen.

The second set of essays, introduced by R Kent Newmayer, relate to the criminal law in post-revolutionary America and come from a later period of Preyer’s career, the 1980s. The third and last of these pieces, ‘Jurisdiction to Punish: Federal Authority, Federalism, and the Common Law of Crimes in the Early Republic’ is in direct conversation with Newmayer’s own work on United States Supreme Court judge Joseph Story. This is an incredibly helpful essay for anyone seeking to understand the American controversy over the federal common-law jurisdiction over crimes. Not surprisingly, a historical inquiry reveals that there was never any original intent on the point in the Constitution. However, there was lots of controversy on the question and various legal actors, 4 Kathryn Preyer, United States v Callender: Judge and Jury in a Republican Society in Maeva Marcus, ed, Origins of the Federal Judiciary: Essays on the Judiciary Act of 1789 (New York: Oxford University Press, 1992) 173 [rpt in Blackstone in America 92].
including Story, proceeded to battle it out in interesting ways, winning some and losing some. Again the story is told in a suspenseful and gripping way. Again it is a central moment in the history of the early national period when the shape of the federation was being worked out in ways that were by no means pre-decided. The other two essays in this section are focused on substantive criminal law. 'Penal Measures in the American Colonies: An Overview' is the stand-out for a general audience here in my view, as it provides a wonderfully systematic investigation of the regime of punishments in Virginia, Massachusetts, New Haven, Pennsylvania, and New York, replete with nitty-gritty detail on what those punishments were and emphasizing above all else the importance of recognizing diversity among the colonies on these issues. The second essay in the set, winner of the Surrency Prize awarded by the American Society for Legal History and originally published in the first volume of *Law and History Review*, focuses specifically on criminal law in post-revolutionary Virginia.

The third and last section of the book contains two essays, both on criminal law and more specifically on the influential Italian jurist Cesare Beccaria, who advocated the abolishment of the death penalty, certainty of punishment over severity, and proportionality between the offence and the punishment. To quote Preyer, 'The simultaneous transnational attention to the laws of crime and punishment and the networks among those engaged in efforts to reform criminal codes is - like the abolition of slavery - one of the most absorbing phenomena of modern Western history.' These two essays explore Beccaria's influence on the founding fathers and, specifically, on Thomas Jefferson's *Draft Bill for Proportioning Crimes and Punishments*. Mary Sarah Bilder's introduction to these last essay situates them in the context of continuing interest in Beccaria in the 1990s. It also connects Preyer's essays to literature on the history of the book and 'the physical means by which ideas had been transmitted across the Atlantic ... For Preyer, reception and influence could not be separated from the question of transmission' (255).

9 Kathryn Preyer, 'Crime, the Criminal Law, and Reform in Post-Revolutionary Virginia' (1985) 1 LHR 53 [rpt in *Blackstone in America* 147].
introduction discusses Preyer's own interest in book collecting (including her copy of the 1778 Philadelphia edition of Beccaria) and interests Preyer was developing in law-book publishing as late as 2001 (237–8). These two essays are must-reads for anyone interested in the history of the book.

This collection obviously serves the practical purpose of gathering together the work of a careful and well-respected historian of early America and making it readily accessible to those who might be interested in it. It will also serve in many cases to introduce Preyer to a younger generation of legal historians like myself who were not already familiar with these essays. The collection also serves the purpose of homage very nicely, something that is so often ultimately defeated in Festschriften, which frequently end up collecting together essays that are completely unrelated to the person being honoured. This is a nice way to do it: gather the work together and let it speak for itself.

In his general introduction to the work, Stanley Katz calls Preyer a 'hedgehog' in Isaiah Berlin's sense: the 'one big thing' she knows is 'the role of law in the creation of the American Republic' (2). He also explains that Preyer never published a monograph and that the volume is an effort by her friends 'to put together the culminating volume she planned to write' (1). This book is not a monograph, however, and one should not come to it with the expectation that the pieces will build one on another like the chapters in a book. Each has its own preoccupation and emphasis. There is no macro-thesis as such. The essays, while wonderfully written, are by no means breezy. Each one tells a complex story, the dimensions of which cannot be taken in at a glance. The essays are probably best digested in separate sittings. If they are read serially, there are problems with repetition, especially in the case of the criminal-law essays in the second and third parts. However, each paper is like a gem, packed full of information, imagination, and insight. Anyone working on a topic covered in this book (the 1801 Judiciary Act, federal jurisdiction for federal common-law crimes, Thomas Jefferson's crime bill) will be very grateful to find that Preyer has been there before them and written about it. Meticulous and exacting when she chose to shine the flashlights of her mind on a particular issue, yet careful not to make connections between events or to assert there were influences where the evidence was lacking, Preyer demonstrated in her writings that a great historian need not produce a flashy monograph in order to be an important voice in the profession.

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