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A Legal Miscellanea: Volume 1, Number 2

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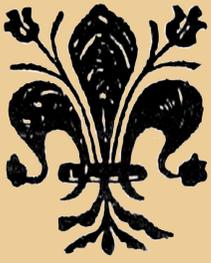


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A LEGAL MISCELLANEA

A NEWSLETTER FOR THE FRIENDS OF THE JACOB BURNS LAW LIBRARY

VOLUME 1, NUMBER 2 AUTUMN 2004

SPECIAL COLLECTIONS FOCUS: NEW ACQUISITIONS

Dei Delitti e Delle Pene (1764)

Through a noted antiquarian bookseller in Amsterdam, the Law Library has acquired a copy of the very scarce first edition of Cesare Beccaria's *Dei Delitti e Delle Pene* (Livorno, 1764), known in English as *An Essay on Crimes and Punishments*. Cesare Beccaria (1738-1794), a Milanese aristocrat, is widely considered to be the founder of the modern penal system. With this small work of only 104 pages, Beccaria influenced heads of state and lawmakers worldwide on issues of criminal justice, and is considered especially influential among America's Founding Fathers.

Beccaria, through association with his two close friends, the Verri brothers, formed an intellectual and literary society ("Academy of Fists"), one focus of which was the reform of the criminal justice system. The product of Beccaria's activities with this group was *Dei Delitti e Delle Pene*, originally published anonymously due to Beccaria's fear of political reprisals. Subsequently, after its favorable reception by European governments as well as by intellectuals, the work bore Beccaria's name and went through six editions in eighteen months, and was translated into several different languages.

It was Beccaria's sense that government in his time was archaic and dramatically in need of reform, resting as he contended it did on the ancient barbaric principles of an unsophisticated people in a chaotic past. The criminal justice system, as part of this arrangement, was critically in need of renovation.

Beccaria's utilitarian perspective sees punishment not as revenge but as a way toward improving society, and he was an advocate of deterrence in preference to punishment. Laws should benefit society and should be promulgated by enlightened, educated persons with no thought to their own private
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THE "FATHER OF INTERNATIONAL LAW" IS WELL-REPRESENTED AT THE JACOB BURNS LAW LIBRARY

Herb Somers, Foreign/International Law Librarian

Huib van Groot of Holland, better known by the latinized version of his name, Hugo Grotius (1583-1645), is regarded as the "Father of International Law" in recognition of his considerable influence on the development of the law of nations. His two greatest contributions to the nascent field of international law, *De Jure Belli Ac Pacis* (*The Law of War and Peace*) and *De Jure Praedae* (*The Law of Prize*) stand as seminal treatises on the rights and duties of nations in their relations with other states.

Although Grotius wrote *De Jure Praedae* in 1604 as a young man, it remained in greatest part unpublished until a Dutch professor discovered the manuscript in 1868 and had it printed at The Hague. Grotius' treatise on the law of prize was written in defense of the claims of the Dutch East India Company to the capture of the Portuguese vessel *Catharina* in 1603. Of particular note to international law scholars is that chapter XII of the work was issued separately and anonymously in 1609 as *Mare Liberum* (*The Free Sea*). In that chapter, Grotius argues that the seas could not be appropriated by any one nation, but were free and open to all nations as they pursued their lawful right to trade with others. Indeed, it is probable that Grotius was the first to articulate the concept of the oceans as the "heritage of mankind," which found its ultimate expression in the 1982 United Nations Convention on the Law of the Sea.

Without question, Grotius' paramount intellectual achievement came with the publication of his 1625 magnum opus on the law of war and peace entitled *De Jure Belli Ac Pacis*, considered a ground-breaking work of international law by legal scholars. Written in response to the

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Etching of Hugo Grotius from *De Jure Belli Ac Pacis* (1720). Presented to the Law School Library in 1949 by Richard W. Flournoy, LL.B. '04, LL.M. '05, State Department advisor and author of works on international law.

LIBRARY EXHIBIT COMMEMORATES 200TH ANNIVERSARY OF THE CODE CIVIL



Beginning in mid-October, the Law Library celebrates the 200th anniversary of the *Code Civil* with an exhibit commemorating the appearance in 1804 of the compilation of laws which for the first time unified the disparate customary, canon, and royal laws of France. In part a product of French Revolutionary thought and the desire for law to apply equally to all citizens, it was the accomplishment of which Napoleon claimed to be most proud, and knew would "live eternally." And so it has. The *Code Civil* since 1804 has governed legal relationships among the citizens of France, and has been

modified over time to suit changing conditions. Even so, nearly half of the articles as originally drafted remain unchanged. It is the one document which probably is most part of the fabric of France, and is consulted in print, CD-ROM, or downloaded from the internet.

Please take a moment as you pass through the entrance to the Law Library to see our exhibit with its examples of various editions of the *Code Civil* displayed from Special Collections.

Early November through the end of the Fall Semester 2004.

(Dei Delitti e Delle Pene continued)

benefit. Precepts which emerged from Beccaria's work include an opposition to capital punishment (preferring instead imposition of a life of perpetual hard labor), refusal to allow torture to obtain confessions, a ban on secret accusations by the government, the necessity for consistency in sentencing, and refusal to allow power or status to obtain leniency in applying the laws. Beccaria also opposed laws prohibiting individuals from carrying firearms, arguing that these laws benefit criminals. Though these concepts may seem unoriginal today, it is evidence of their broad acceptance (and, in some cases, debate) that this is so.

Beccaria's thought as articulated in *Dei Delitti e Delle Pene* exerted great sway over heads of other European governments, and especially our own Founding Fathers. Thomas Jefferson's library included an 1809 copy translated from the Italian, as well as a copy of Voltaire's commentary on the work, published anonymously in 1766. In his commonplace book, Jefferson quotes Beccaria's text on laws forbidding the carrying of firearms. John Adams makes reference to Beccaria's work in his diary and quotes him in certain of his letters. And the French *philosophes* of the 18th century, especially Voltaire, were taken with the simple and systematic expression of his proposals for reform, and embraced his treatise.

This first edition of *Dei Delitti e Delle Pene* is the crown jewel of the Law Library's collection of Beccaria, which also includes a 1780 edition, as well as several French editions, including Voltaire's anonymous commentary, and of course many translations into English. ❀

(“Father of International Law” continued)

Machiavellian statecraft of the time which culminated in a series of brutal conflicts including the Thirty Years War, this treatise explicates the methods by which nations lawfully may resort to war as a remedy for a violation of rights. Scholars generally concur that the legacy of *De Jure Belli Ac Pacis* lies in the notion that the conduct of warfare must be subject to law, and resorting to war is based upon justice rather than “reason of state.” These principles are recognized as fundamental to our contemporary system of international law.

While Grotius is renowned for these two legal works, he was a scholar of formidable intellectual talents, and his lifetime literary oeuvre spanned diverse fields of academic endeavor. Selection of Grotius titles for Special Collections accordingly has been broad-based, and many of his non-law works have found a home at the Law Library. These holdings illuminate the immense intellectual range of Grotius the scholar, and include his letters and poetry, as well as his writings on social philosophy, theology, and history. An example is a little-known Grotius work, *On the Origin of the Native Races of America: A Dissertation*, which first appeared in 1642. It explores the genesis of native peoples, and surveys contemporary theories on the subject.

The Law Library's Grotius collection is one of the largest in the nation among academic law libraries, numbering over 160 volumes. Many of the Grotius materials were acquired from the Carnegie Endowment for International Peace, and through auction purchases, notably from the collection of the Birmingham Law Society in England.

Other avenues of acquisition also have been key to the development of the Grotius collection. Historically, alumni and faculty gifts have enhanced the Law Library's collections, and the Grotius holdings are no exception. Prominent 19th century lawyer and law faculty member Calderon Carlisle's donation of a 1738 edition of *De Jure Belli Ac Pacis* once was owned by Supreme Court Chief Justice John Marshall. Alumnus Richard W. Flournoy's 1949 gift was a 1720 edition of *De Jure Belli Ac Pacis* (frontispiece pictured on p.1). In more recent times, alumnus Joseph L. Brand presented the Library with a copy of the 1735 *De Jure Belli Ac Pacis*.

The influence of Grotius' writings is no less far-reaching today than centuries ago. In Special Collections, his many works are preserved for the benefit and support of the Law School's preeminent international law program, and for researchers now and in the future. ❀

WELCOME TO OUR NEW FRIENDS!

We extend a hearty welcome and sincere thanks to all our new Friends! We are delighted that so many of our Washington, DC, area law colleagues, law firms, and other organizations have decided to become Friends. Word is out about our superb collection, and as a Friend this collection, as well as research assistance from our highly-regarded and experienced staff of legal reference librarians, can be accessible to you.

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We look forward to welcoming you as a Friend! ❀

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For information on the topics covered in this newsletter or other questions, please contact Jennie C. Meade, Bibliographer/Rare Books Librarian, at jmeade@law.gwu.edu or (202) 994-6857.

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