INTRODUCTION

Thomas Jefferson's Legal Commonplace Book is one of three commonplace books, or collections of notes from his readings, that he considered worthy of preservation on high-quality paper and in professionally bound volumes.[1] In addition to this Legal Commonplace Book (LeCB), Jefferson also produced a Literary Commonplace Book (LCB)[2] and an Equity Commonplace Book (ECB).[3] All three date from relatively early in his life, with the LCB having been begun, according to the best scholarly estimate, as early as 1758 during his days at the school of the Rev. James Maury. He began the LeCB at the conclusion of his years as a student of law under George Wythe, possibly as early as late 1765 when he passed his bar examination, or more probably in 1766 when he was admitted to practice before the General Court. He began the ECB as a spin-off from the LeCB, probably later that year.[4] The LeCB manuscript is in the Library of Congress (DLC) and consists of 905 entries covering some 315 pages in a quarto format. The volume is not in all respects aptly named, for in the course of making entries from the 1760s through the 1820s Jefferson took notes on philosophic and historical subjects as well as the legal reports that have defined its characterization.

In choosing to commonplace his notes, Jefferson joined the ranks of fellow colonials, especially lawyers and law students, who used

[1] TJ recorded his legal commonplacing in a notebook that also included a table of maxims from the 1749 edition of *The Grounds and Rudiments of Law and Equity, Alphabetically Digested* (London). TJ purchased his own copy of *Grounds and Rudiments* in October 1765, but the hand that copied from it in the LeCB is distinct from Jefferson's. Daniel Coquillette notes a similar "surprise" list of maxims "copied in another hand" into Josiah Quincy, Jr.'s legal commonplace book. See Daniel R. Coquillette and Neil Longley York, eds., *Portrait of a Patriot: The Major Political and Legal Papers of Josiah Quincy Junior,* vol. 2: *The Law Commonplace Book* (Boston, 2007), 10.

[2] Manuscript in DLC. Edited by Douglas L. Wilson, it has been published as *Jefferson's Literary Commonplace Book* (Princeton, 1989), part of the Second Series of the PTJ.

[3] Manuscript in the Huntington Library, San Marino, Calif. The equity commonplace book (2018 entries) is more than twice the length of that on the common law, with far more lengthy verbatim transcriptions. For a fuller description of this unpublished volume, see Edward Dumbauld, "Thomas Jefferson's Equity Commonplace Book," *Washington and Lee Law Review*, 48 (1991), 1257-83.

[4] Frank L. Dewey, *Thomas Jefferson Lawyer* (Charlottesville, 1986), "Appendix A: Thomas Jefferson's Bar Examination and Admission to the Bar," 117-21.

their commonplace books as a way to organize and make available to themselves for future reference the legal principles they gleaned from reading the reports on cases and the legal treatises that made up the main elements of eighteenth-century legal training. For a law student or beginning practitioner, such a process was essential. Like others, Jefferson began his reading in the law with the first volume of Sir Edward Coke's *Institutes of the Laws of England,* a work that Holdsworth describes as "a legal encyclopedia arranged on no plan, except that suggested by the words and sentences" of fifteenth-century jurist Thomas Lyttleton (Littleton) and, which, Jefferson agreed, was a source "whose matter cannot be abridged."[5] He frequently cited *Coke on Littleton*, as it was commonly known, but did not, with the exception of a couple of entries, abstract from it. To abridge and organize other works, he had many standard models to follow, including Giles Jacob's *The Common Law Common-placed*.[6] Yet he did so in an unorthodox way of his own, following Sir Francis Bacon's injunction not to be bound by the practices and thinking of others. This idiosyncratic manner of commonplacing illuminates his approach to the law, but it is not readily apparent in the 905 entries he made over the course of decades and demands editorial comment if his efforts are to be understood and made useful to future researchers.

The LeCB follows a source-based organization. During the course of his studies, Jefferson seems mostly to have read through entire works, commonplacing those subjects he believed of particular importance as he reached them and—with but a few significant exceptions—generally not turning to other sources until he finished the one at hand. A particular source might inspire a large number of entries, sometimes numbering in the dozens, or very few. Unlike many or most of his fellow attorneys, Jefferson did not organize his notes alphabetically, a form of organization which, he believed, ill served the substantive matter and principles of the law. Despite his admiration for Matthew Bacon's *Abridgement*, which he owned and recommended

[5] W. S. Holdsworth, *A History of English Law*, 17 vols. (Boston, 1922-72), 5:467. TJ to Thomas Cooper, 10 Feb. 1814 (RS, 7:190). Wythe's library, which he bequeathed to Jefferson, included *The First Part of the Institutes of the Lawes of England; or a Commentary upon Littleton, Not the Name of the Author Only, but of the Law It Selfe* (London, 1639; Sowerby, No. 1781).

[6] *The Common Law Common-placed: Containing, the Substance and Effect of All the Common Law Cases Dispersed in the Body of the Law, Collected as Well from Abridgments as Reports, in a Perfect New Method* (London, 1726; Sowerby, No. 1802).

to law students,[7] he was disappointed that it had been compiled "unfortunately under an Alphabetical, instead of Analytical arrangement of matter."[8] How he chose to engage the legal literature of his day, and why, emerges from a close examination of his method, one that suggests that he may have had a different purpose in his commonplacing than that of the majority of his fellow practicing lawyers. It would be easy to dismiss the 905 entries as linked by little more than Jefferson's rambling and inquisitive mind and thus another example suggesting his impracticality. His "Analytical arrangement" is not obvious, nor does it describe all his efforts, but it emerges as a typically Jeffersonian exercise in critical reading and historical interrogation, befitting a man who was described to John Adams as "the greatest Rubber off of Dust that he has met with."[9] Within an apparently random and eclectic collection of entries is a purposive agenda for studying the law as a "science," a term that Jefferson used in its common eighteenth-century meaning of an intellectual understanding acquired by study.

This is not the first printing of the commonplace book. In 1926, Gilbert Chinard edited a publication of parts of the manuscript under the subtitle "A Repertory of His Ideas on Government."[10] Chinard, a distinguished French literary scholar, also edited editions of Jefferson's correspondence with Volney, Destutt de Tracy, and Lafayette. Jefferson's entries in his edition of the LeCB included extensive transcriptions of French writers such as Montesquieu while providing only title heads and scant text for the English common law materials. For that reason alone a new edition is required; in the words of Douglas Wilson, editor of the LCB and of the best study to date of the Jefferson commonplace books, "Chinard's edition is carelessly transcribed and riddled with errors. It fails to identify many of the

[7] *A New Abridgment of the Law*, 5th ed., 7 vols. (London, 1798; Sowerby, No. 1792). When citing this work in the LeCB, TJ consulted the first edition, published in five volumes from 1736 to 1766.

[8] TJ to John Minor, 30 Aug. 1814 (RS, 7:627).

[9] L. H. Butterfield and others, eds., *Diary and Autobiography of John Adams*, 4 vols. (Cambridge, 1961), 2:218 (entry of 25 Oct. 1775). The editors of the list of books TJ sent to the Library of Congress in 1815 observe that "his weaving of topics and titles, far from being obvious or straightforward, is artful and deft." James Gilreath and Douglas L. Wilson, eds., *Thomas Jefferson's Library: A Catalog with the Entries in His Own Order* (Washington, D.C., 1989), 8.

[10] Gilbert Chinard, ed., *The Commonplace Book of Thomas Jefferson: A Repertory of His Ideas on Government* (Baltimore, 1926).

works commonplaced or referred to, and its editor's pursuit of bibliographical information for those works that are identified is often desultory and inconclusive." Adding that insufficient attention had been given to the dating of entries and the volume's composition, Wilson concluded with the hope that "these matters will all be fully addressed" in a future volume.[11] In this edition we have labored to remedy these deficiencies so far as we were able. We have taken pains to provide an accurate transcription of Jefferson's text, a task that is most of the time not very difficult because of his eminently readable handwriting. We have also attempted to give the reader a clear indication of the appearance of Jefferson's text by identifying interlinear and marginal texts as such. When these interventions, whether as marginalia or interlineation, are analyzed in conjunction with the selectivity he practiced in the inclusion, abstracting, and quoting of items, a fuller picture of the developing legal mind of Thomas Jefferson emerges.

We have attempted to supply the bibliographical information that Wilson complained was missing in Chinard's edition, including the identification of the specific texts that Jefferson was using. This has not proven to be possible in every case—the Shadwell fire of February 1770 destroyed many of the sources Jefferson had been using—and again we have indicated where we are unable to do so. Thorough annotations identify not only the sources Jefferson was commonplacing but, wherever possible, give the reader an idea of the nature of his note-taking by indicating what sort of material he was passing over, thus highlighting what he found of particular interest in his sources. Such selectivity reflected his belief that "the sentiments of men are known not only by what they receive, but what they reject also."[12] Through analysis of the different chronological phases of Jefferson's commonplacing (about which, see below), this edition makes clear his evolution from a precocious and well-read student of the law to a politically engaged thinker and actor.

The LeCB differs from other commonplace books kept by lawyers not merely in its different principle of organization, but in its content and range. Perhaps most striking about the LeCB is how much it

[11] Douglas L. Wilson, "Thomas Jefferson's Early Notebooks," WMQ, 3d. ser., 42 (1985), 448. The present editors have learned much from Professor Wilson, and this project could not have begun, much less have succeeded, without his guidance and support.

[12] "Autobiography," in *Thomas Jefferson, Writings* (Library of America: New York, 1984), 18.

strays from strictly legal topics and how much in even the strictly legal topics it shows its author striving for a perspective on law different from and broader than the merely practical uses a practicing attorney would have for a compilation of legal principles and rules. The LeCB acquired this character, in part it seems, because Jefferson began it with one purpose, but allowed his inquisitive mind to direct his efforts as he proceeded. The first 556 entries are on strictly legal topics, consisting of notes on reports of English common law cases and legal commentary. Two reporters provided Jefferson with the bulk of his common law notes: William Salkeld (163 entries)[13] and Robert Raymond, first Lord Raymond (302 entries),[14] together constituting more than four out of five such entries. On the basis of his handwriting analysis, Wilson estimates that Jefferson began this first group of entries while reading law with George Wythe and continued into the late 1760s, after he had established his own legal practice. Jefferson picked up earlier legal principles in commonplacing the last three parts of Coke's *Institutes*,[15] though he devoted far less space to these texts than to the law reports—roughly fifty short entries of those he made preceding the turn to the historical studies of law at entry 557 on Lord Kames. Although the law practice he had begun in 1767 was thriving, by 1770 it had grown increasingly routine. Frank Dewey is correct in commenting that "his zest for the practice of law was declining,"[16] and Jefferson ultimately would leave his practice in 1774. But we see in his commonplace book evidence of a preference for more philosophic legal matters by 1770, when, except for 104 additional entries (588-692) drawn from George Croke's *Reports*,[17] Jefferson left the commonplacing of common law cases, returning to them only sporadically in later years. Instead, he turned to making extensive transcriptions of Kames's *Historical Law-Tracts* (1st ed., 1758), John Dalyrmple's *History of Feudal Property* (1st ed., 1757), and Matthew Hale's *History of the Common Law* (1st ed., 1713).

[13] William Salkeld's *Reports* (Sowerby, No. 2073) spanned the reigns of William and Mary and Queen Anne (1689-1712).

[14] Lord Raymond's *Reports* (Sowerby, No. 2077) extended from the sixth year of William and Mary's reign into the fifth year of George II's (1694-1732).

[15] The second part of the *Institutes* concerned the "exposition of many ancient and other statutes"; the third, treason; and the fourth, court jurisdiction (Sowerby, No. 1782).

[16] Dewey, *Thomas Jefferson Lawyer*, 112.

[17] George Croke's *Reports* spanned the reigns of Elizabeth I, James I, and Charles I (Sowerby, No. 2052).

Even so, the years of his practice had provided him with the foundation of legal knowledge and, more importantly, with a method for study of the law as a "science." The value of commonplacing, as Jefferson put it years later, was thus to train the mind. The remarkable concision with which he could restate the complex theory of government contained in the Declaration of Independence is testimony to how well this exercise in compression worked for him. Like Francis Bacon, he prized the ability to extract the "pith" of a case,[18] a skill that no doubt also aided the famous Jefferson memory to hold on to the legal principles extracted from the cases. This was a skill that he admitted had been difficult to develop. Recalling the "difficulty" of his own first attempts, he confessed to his grandson,

> I remember when I began a regular course of study. I determined to abridge in a common place book, every thing of value which I read. at first I could shorten it very little: but after a while I was able to put a page of a book into 2. or 3. sentences, without omitting any portion of the substance. go on therefore with courage & you will find it grows easier and easier. besides obliging you to understand the subject, & fixing it in your memory, it will learn you the most valuable art of condensing your thoughts & expressing them in the fewest words possible.[19]

This first cluster of materials divides naturally into two parts: the first on the law reporters and Coke, the second dominated by historical and philosophic treatises. He began with the reports of Sir George Andrews,[20] but after entry 28 he shifted his interest to questions of riot, treason, and insurrection, which drew him to Coke. Excusing himself of the need to repeat the agony he had endured with Coke's *First Institute*, he turned selectively to Coke's third, second, and fourth volumes, in that order. That he next focused his attention on the post-Glorious Revolution law reports of Salkeld and Lord Raymond suggests that he saw that political upheaval to be replete with legal significance. From an early stage he was taking a political approach

[18] See text at nn. 34 and 35 below.

[19] TJ to Thomas Jefferson Randolph, 7 Dec. 1808 (Albert and Shirley Small Special Collections Library, University of Virginia, Charlottesville). Printed in Edwin Morris Betts and James Adams Bear, Jr., eds., *The Family Letters of Thomas Jefferson* (Columbia, Mo., 1966), 368-9.

[20] *Reports of Cases Argued and Adjudged in the Court of King's Bench, in the Eleventh and Twelfth Years of the Reign of His Present Majesty King George the Second* (London, 1754; Sowerby, No. 2080).

to law, or better put perhaps, he was recognizing the political underpinning to law. It is safe to assume that Jefferson, as a great partisan of the Glorious Revolution and its constitutional consequences, was especially concerned with the law developed in the wake of the definitive constitutional rejection of the sovereign monarch in favor of the sovereign King-in-Parliament. Although validating parliamentary supremacy would later cause some tension with the theory of empire he put forward in 1774 in the *Summary View of the Rights of British America*, it is not surprising that he should valorize the post-1688 law as more consistent with the principles of civil and religious liberty to which he professed lifelong allegiance.

In both the form and the content of the LeCB we can perceive a Jeffersonian legal project. Jefferson's reliance for case law on Coke, Salkeld, and, especially, Lord Raymond suggests a pattern of inquiry that gives the LeCB more coherence and reveals a more focused legal thought process than might be apparent from what appears to be a disorganized series of legal miscellany assembled to serve as an *aide memoire*. By his choice of cases, Jefferson's political whiggery emerges clearly. Although his youthful study of Coke's first volume of the *Institutes* led him quickly to denounce its author as "an old dull scoundrel,"[21] he never forgot the political lessons of whiggery conveyed. Praise of Coke appears repeatedly in Jefferson's advice for the study of law, and he insisted that Coke be required reading at the University of Virginia. Writing to Madison in 1826, he emphasized the importance of whig principles:

> in the selection of our Law Professor we must be rigorously attentive to his Political principles. you will recollect that before the revolution, Coke Littleton was the universal elementary book of law-students, and a sounder Whig never wrote, nor of profounder learning in the orthodox doctrines of the British constitn, or in what were called English liberties. you remember also that our lawyers were then all Whigs.[22]

But it was not only Coke who provided Jefferson with the whig principles of English liberties. Jefferson found a more fully developed judicial restraint of government misdeeds in the case law of the Glorious Revolution, in struggles that occurred more than a half century after Coke's death. From that period the opinions of one judge dominate the legal materials that he chose to include: Sir John Holt, chief

[21] TJ to John Page, 25 Dec. 1762 (PTJ, 1:5).
[22] TJ to James Madison, 17 Feb. 1826 (DLC). Printed in *Writings,* 1513.

justice of King's Bench from 1689 to 1710, whom Jefferson called "the greatest lawyer England ever had, except Coke."[23] Holt's attention to the crown side of King's Bench reflected that court's authority to issue writs of *scire facias*, *mandamus*, *quo warranto*, *certiorari*, and, especially, *habeas corpus*, providing Jefferson with numerous examples of the judicial protection of individual liberties. Under Holt's leadership, the court made greater use of *habeas corpus* in criminal trials than ever before. In little more than the year after his appointment, it bailed or discharged eighty percent of persons jailed for treason, treasonable practices, or sedition.[24] Five of these cases appear in the LeCB,[25] an unusual demonstration of interest given the relative rarity with which the writ was used in colonial Virginia, and an indication of Jefferson's interest in the mounting imperial crisis in the years he was commonplacing. Of the common law entries he made in the LeCB before he left his practice, Jefferson cited Holt by name for majority opinions in 54, and in another 106 without naming him. What is more significant, however, is that he cited Holt by name twelve times in dissent—that is, for opinions contrary to settled law in England, but which Jefferson regarded as noteworthy for Virginia jurisprudence. Where Salkeld had omitted some matter by Holt that Jefferson later encountered in a report by Lord Raymond, Jefferson returned to his earlier entry and interlined the latter citation.[26] Jefferson's consuming interest in Holt's jurisprudence reveals his attention to the principles and practices of the whig lawyering tradition, for Holt presided at many clashes of law and arbitrary power.

The cases Jefferson chose to include reveal the developing mind of the young lawyer, but the way he commonplaced them shows us an intellectually aggressive legal scholar. His tutelage under Wythe, who believed that law students must read widely to gain a knowledge of the law and its principles rather than perform the drudgery of an apprenticeship, certainly influenced his approach. The prevailing form of legal training through apprenticeship, which Wythe had endured in his uncle's office, "may have shown him 'how not' to train lawyers."[27] Jefferson shared Wythe's disdain for legal apprenticeship,

[23] TJ to Peter Carr, 8 May 1791 (PTJ, 20:378).

[24] Paul D. Halliday and G. Edward White, "The Suspension Clause: English Text, Imperial Contexts, and American Implications," *Virginia Law Review*, 94 (2008), 626.

[25] Entries 82, 108, 174, 194, and 410.

[26] See, for example, entry 141.

[27] Imogene E. Brown, *American Aristides: A Biography of George Wythe* (East Brunswick, N.J., 1981), 22, 28-9.

which they both believed constrained a lawyer to the narrowest limits of practice—the work of a "drudge," Jefferson described it[28]—and shut off any intellectual inquiry into the law. His commonplacing confirms his recollection in 1814 that he compiled his notes "at a time of life when I was bold in the pursuit of knowledge, never fearing to follow truth and reason to whatever results they led, and bearding every authority which stood in their way."[29] The legal profession in Virginia, by contrast, had become increasingly embarrassed by the lack of legal skills shown by "pettifoggers," lawyers who practiced after perfunctory or superficial efforts at learning the law. For Jefferson, the issue was not always popular resentment of the ambitious and grasping lawyer of dubious ethics,[30] but rather the poor preparation and superficial learning that flooded Virginia with semi-skilled lawyers. These "ephemeral insects of the law" or mere "Blackstone lawyers" were, he believed, content to rely on the four volumes of the *Commentaries*, which had "been perverted more than all the others, to the degeneracy of the legal science. a student finds there a smattering of everything, and his indolence easily persuades him that if he understands that book, he is master of the whole body of the law."[31]

So, too, with the abuse of the practice of commonplacing in legal education, which one seventeenth-century observer called "a short course to those who are contented to know a little, and a sure way to such whose care is not to understand much."[32] Notable among its critics were two of Jefferson's trinity of great men, Sir Francis Bacon and John Locke,[33] whose criticisms shaped his legal and equity

[28] TJ to John Garland Jefferson, 11 June 1790 (PTJ, 16:480).

[29] TJ to Thomas Cooper, 10 Feb. 1814 (RS, 7:191).

[30] Lampooned in popular literature, such as the poem *The Pettifoggers. A Satire. In Hudibrastick Verse. Displaying the Various Frauds, Deceits, and Knavish Practices, of the Pettifogging Counsellors, Attornies, Solicitors and Clerks, in and about London and Westminsters, and all Market Towns in England* (London, 1723). On the endurance of such stereotypes into the next century, see A. G. Roeber, *Faithful Magistrates and Republican Lawyers: Creators of Virginia Legal Culture, 1680-1820* (Chapel Hill, 1981), esp. 112-59.

[31] TJ to John Tyler, 17 June 1812 (RS, 5:136).

[32] Sir Henry Wotton, cited by Peter Beal, "Notions in Garrison: The Seventeenth-Century Commonplace Book," in W. Speed Hill, ed., *New Ways of Looking at Old Texts: Papers of the Renaissance English Text Society, 1985-1991* (Binghamton, N.Y., 1993), 139.

[33] TJ identified Bacon, Locke, and Sir Isaac Newton as "the three greatest men that have ever lived, without any exception, and as having laid the foundation of those superstructures which have been raised in the Physical and Moral sciences." TJ to John Trumbull, 15 Feb. 1789 (PTJ, 14:561).

commonplace books. Bacon acknowledged the utility of commonplacing but also recognized the possibility of its abuse:

> [T]here can hardly be anything more useful . . . than a sound help for the memory; that is a good and learned Digest of Common Places. . . . I hold diligence and labour in the entry of common places to be a matter of great use and support in studying; as that which supplies matter to invention, and contracts the sight of the judgment to a point. But yet it is true that of the methods and frameworks of common places which I have hitherto seen, there is none of any worth; all of them carrying in their titles merely the face of the school and not of a world; and using vulgar and pedantical divisions, not such as pierce to the pith and heart of things.[34]

Bacon's influence on Jefferson is clear in Jefferson's advice to a friend's son about to embark on legal study, whom he advised to

> enter in a commonplace book every case of value, condensed into the narrowest compass possible which will admit of presenting distinctly the principles of the case. this operation is doubly useful, inasmuch as it obliges the student to seek out the pith of the case, and habituates him to a condensation of thought, and to an acquisition of the most valuable of all talents, that of never using two words where one will do.[35]

The point was driven home when Jefferson acquired Sir John Randolph's commonplace book, which Randolph had purchased from the estate of Benjamin Harrison. Following a practice common in the study of law, Harrison had purchased a 44-page volume, *A Brief Method of the Law*.[36] To these, Harrison bound a blank book of more than 800 pages; at the top of each page he followed the "Alphabetical Disposition" to enter the "Heads," or categories, provided by the printed manual, dutifully providing space for such subjects as "Dower de ostium ecclesiae," an obsolete form of assigning dower that had "since fallen into total disuse," according to Blackstone.[37] As Randolph had written on a flyleaf, however, Harrison had merely entered "some few things" in it, which were "generally placed under wrong

[34] James Spedding, Robert Leslie Ellis, and Douglas Denon Heath, eds., *The Works of Francis Bacon*, 14 vols. (London, 1861-79), 4:435.

[35] TJ to John Minor, 30 Aug. 1814 (RS, 7:628).

[36] *A Brief Method of the Law. Being an Exact Alphabetical Disposition of All the Heads Necessary for a Perfect Common-place* (London, 1680; Sowerby, No. 1798).

[37] Sir John Randolph, Commonplace book (DLC), 486; William Blackstone, *Commentaries on the Laws of England*, 4 vols. (Oxford, 1765-69), 2:135.

heads, as if he did not know what Genus the particular species did belong." Most of the pages were largely blank.[38]

Jefferson was joining other critics who believed that the commonplace book was not to be merely a finding aid to locate what was already known. "[S]uch a method of 'storing' knowledge," writes one scholar, "excluded anything like the invention of the new science as Bacon described it in his *Advancement of Learning*."[39] Bacon's method, writes another, "is a reminder that—for him, at least—the commonplace book method was a *process* . . . leading not only to the ordering, but also to the refinement of material."[40] If we puzzle over the uniqueness of Jefferson's commonplacing methods, it is to Bacon that we must look for an explanation. No two commonplace books, properly ordered, should ever be alike, he cautioned, because "in general one Man's Notes will little profit another, because one man's Conceit doth so much differ from another's."[41] Locke's "New Method of Common-Place-Books" addressed the ongoing decline of the commonplace book, which Anne Moss has described as having sunk to that of a "rather lowly form of life, adapted to simple tasks, and confined to the backwaters of intellectual activity." The printed commonplace book imposed its own "heads" and foreclosed any input from the student. Locke did not provide any categories, reflecting what Moss has explained as a conviction "that erudition is not mapped on to any preexisting conceptual grid."[42] "Each head ought to be some important and essential word to the matter at hand," Locke advised. Only after engaging and condensing the substance of the material was the student to enter a "head" for it in an alphabetical index.[43]

Jefferson's active engagement with the law is apparent in the LeCB and offers ample support for Michael Hoeflich's observation that "lawyers read purposively." If, as in Jefferson's case,

> he is reading not for present problem solving but, rather, to increase his own understanding—which, itself, will simply be used for later problem solving—he will simply commit the newly discovered rule, its

[38] Randolph, Commonplace book, note pasted onto flyleaf.

[39] Jean Marie Lechner, *Renaissance Concepts of the Commonplaces* (New York, 1962), 72.

[40] Beal, "Notions in Garrison," 145.

[41] Cited by Beal, "Notions in Garrison," 138.

[42] Ann Moss, *Printed Commonplace-Books and the Structuring of Renaissance Thought* (New York, 1996), 279.

[43] "A New Method of Common-Place-Books," in *The Works of John Locke, in Nine Volumes*, 9th ed. (London, 1794; repr. London, 1997), 2:446-7.

> factual context, and how to find it again to his memory or will record it in a convenient place for future reference.[44]

Jefferson's legal commonplacing bears all the marks of a careful—indeed, meticulous—student of the law. It reveals the influence not only of Bacon and Locke, but of the criticisms expressed by other legal writers. As case law became "a fundamental source of English legal discourse" in the late sixteenth and early seventeenth centuries,[45] the limits of alphabetized commonplacing became ever more apparent. The Elizabethan poet and lawyer Abraham Fraunce concluded in his call for law that followed logic,

> I could heartily wish, the whole body of our law to be rather logically ordered, then by Alphabeticall breviaries torne and dismembered. If any man say, it cannot . . . then I doe not somuch envy his great wisedome, as pitie his rusticall education, who had rather eate Acornes with hogs, then bread with men; and preferreth the loathsome tossing of an A.B.C. abridgement, before the lightsome persuing of a Methodicall coherence of the whole common law.[46]

Jefferson's legal commonplacing shows the influence of this more rigorous approach to the law, one that eschewed the superficiality he deplored in legal training. To appreciate the method that lurked behind what appears to be merely a page-by-page entering of case law from the reports he used, and to discern an actively engaged legal mind, it is necessary to bring to the reader's attention several salient points that emerge from the manuscript. His identification of contested or rejected points of law comes through clearly in the numerous notations of points of law in cases denied to be law or precedents denied (entries 86, 90, 95, 96). After his short entry 119 ("Counterbond or Covenant") he later added two marginal notes: a citation to an equity case in Vernon, and a query, "If bonds for the paiment of money in Virginia are not mere single bills by the act of ass[embly]." William Brown's 1702 work "Modus intrandi," he noted in entry 14, was "a book of small authority." Neither Salkeld nor Coke was immune to Jefferson's penetrating inquiry. Jefferson appears to have added Andrews's comment later in the report on *Shepherd v. Hooker*

[44] Michael H. Hoeflich, "The Lawyer as Pragmatic Reader: The History of Legal Common-Placing," *Arkansas Law Review*, 55 (2002), 89.

[45] Ibid., 102.

[46] *The Lawiers Logike, Exemplifying the Praecepts of Logike by the Practice of the Common Lawe* (London, 1588), facing 120.

(at 157) that 3 Salkeld was "a book of small authority." Encountering *Hook v. Shipp* at Andrews, 75, he records Andrews's evaluation of John Fitzgibbon's *Reports of Several Cases Argued and Adjudged in the Court of King's Bench* (London, 1732) as "a book of small authority." Jefferson later returned to this entry to insert "and 228" to cite Andrews's report on *Norwood v. Stevenson and Elizabeth his wife*, where Sir William Lee described 3 Salkeld as "of no authority." By the time he had made more than 500 entries, even Coke could be a target of criticism, as in 505, where Jefferson cited Holt as contradicting him. For a lawyer engaged in appellate practice, being well versed on the impeachability of sources would have great value in litigation as well as for a critical engagement with the foundations of the law. Throughout his commonplacing, Jefferson repeatedly made note of sources and precedents denied or challenged, frequently inserting his own questioning of received wisdom as well. In his bracketed comments and marginalia we see his willingness to question authorities, apply points of English law to Virginia, and engage with reporters on his own terms.

Even before he began his equity commonplacing in a separate volume after entry 113, he had begun the practice of consulting multiple sources to expand his understanding and to uncover inconsistencies,[47] as well as to record the name of the reporter and identify which report was the best. Reporters did not always agree with each other, he was learning, and their contrary opinions opened an avenue for a critical legal mind. When Matthew Hale edited Henry Rolle's abridgment of cases in Law French for publication in 1668 in an ever more crowded marketplace of reports, its publisher included Hale's "Publisher's Preface Directed to Young Students of the Common-Law" as an attraction.[48] Hale acknowledged that many of the cases, originally in Law French, now appeared in translation in the newly published reports of Croke and Francis Moore,[49] but he made the useful observation that the student "will not be without his advantage by this Book, touching those very Cases," even if not translated. Jefferson, who

[47] This practice sheds light on his design, in 1810, of the famous revolving bookstand that could accommodate five books at once. Jefferson had an enslaved craftsman fabricate it in the joinery at Monticello.

[48] Rolle's *Abridgment des plusieurs cases et resolutions del Common Ley* (London, 1668; Sowerby, No. 1786). Hale's "Preface" is not paginated.

[49] William Hughes, *An Exact Abridgement in English, of the Cases Reported by Sr. Francis More Kt. Serjeant at Law, with the Resolution of the Points of Law Therein by the Judges* (London, 1688).

obtained copies of Croke and Moore, as well of Rolle, no doubt concurred with Hale's point that "the variety of reporting of a Case many times gives a clearer reason of the Judgement in one Report than it doth in another." Hale made clear the need for close (and often difficult) engagement with cases. Although some aspects of the common law were "obvious at the first view to every capacity, yet to get a mastery of the full knowledge of it, requires not only reason but study and industry to understand it." A law student, Hale continued, should "enter the Abstract or Substance thereof, especially of Cases or Points resolved into his Common-place Book." Hale did not gainsay the difficulty involved, but he emphasized that the student would receive "infallible Advantages attending this Course," and he touted Rolle's book as designed to be "the *Basis*" for student commonplacing, "being printed on purpose with a large Margin" for its user's addition of comments and future cases.[50]

By now, Jefferson's commonplacing had achieved a level of sophisticated engagement with the law, and his doubts about the reliability of Salkeld led him to turn to the reports of Lord Raymond, which he much preferred for a number of reasons. One was his belief in their greater reliability. Another was their more extensive coverage of points that interested Jefferson; his earlier entries from Salkeld now received cross references to Lord Raymond's reports of the same case. Another reason would be the much greater attention paid to Holt, who was fast becoming a hero to the young Jefferson.

Unlike Salkeld's reports, which were organized alphabetically by category, Lord Raymond's were arranged by court term, but Jefferson's selective inclusion of cases in the LeCB reveals his emerging interests. He began with entry 242, the first case in Lord Raymond, *Rex & Regina v. Tucker*, at page 1, from Easter term 1694, quoting the opinion of Holt, who was Chief Justice: "ALLEGIANCE is the mutual bond between the king and his subjects, by which the subjects owe duty to the king, and the king protection to them. TREASON is the breach of that duty of allegiance due to the king. if there is no allegiance, there can be no treason."[51] Although his entries from Lord Raymond do not focus exclusively on one issue at a time and show

[50] Hale, "Preface," to Rolle's *Abridgment*, n.p.

[51] Here and below, the use of small caps represents TJ's strategy of writing some words in a larger hand (see the note on editorial method). He may have been highlighting words he believed to have greater significance, not necessarily to serve as a finding aid. See, for example, his prominent capitalization of "MEN" in his draft of the Declaration of Independence (PTJ, 1:426).

him mingling a variety of topics, they show the Jeffersonian method at work, with its attention to identifying errors and inconsistencies, and an interrogation of issues. He omitted the next two reported cases, gave brief attention to two others (on statute of limitations and executorship, absentmindedly numbering both "243"), and then skipped the rest of the term, turning directly to the next, Trinity. There he found and gave extensive attention to the case of *Philips v. Berry*, for entry 244, a dispute on the issue of the autonomy of corporate entities and the removal of officials. Jefferson's interest was clearly piqued by the issues raised in it, because Holt's minority position in the case at King's Bench arguing against removal of the official had later been upheld on appeal to the House of Lords. He therefore devoted his next entry to a case that Holt's dissent in *Philips* had cited from Coke, which he entered in entry 245:

> to the KING'S BENCH belongs authority, not only to correct errors in judicial proceedings, but other errors and misdemeanors extrajudicial, tending to the breach of the peace, oppression of the subject, or any kind of misgovernment: so that no wrong, public or private can be done, but redress may be here obtained by due course of law. Bagges case. 11. Co. 98.a. the law will not allow any custom tending to the support of arbitrary power.

A reader would not realize that Jefferson was doing more than citing Holt, whose reference to *"Bagge's case"* had caught his attention. Setting aside for the moment his copy of Lord Raymond's report, he went directly to Coke's report of that case (see p. 144, n.5), which concerned the removal and disfranchisement of a burgess. Although Lord Raymond's report of *Philips* cited *Bagge*, it omitted a significant passage that Jefferson regarded as the "pith" of the case. He therefore quoted verbatim from Coke's report into 245: "so that no wrong or injury, either public or private, can be done, but that it shall be (here) reformed or punished by due course of law."

The LeCB also reveals Jefferson's focused attention on the legal status of the enslaved and his anticipation, in the 1760s, of issues that Lord Mansfield would address in his famous *Somerset* opinion in 1772.[52] Jefferson's page-by-page commonplacing of "Villeins and Villeinage" in Salkeld's *Reports* brought him to Holt's opinions in the cases of *Smith v. Brown and Cooper* (1702) and *Smith v. Gould* (1706), which he dealt with together in entry 230. English law remained

[52] *Somerset v. Stewart* (BR 1772).

confused and contradictory on the question of the slave's humanity as well as on the nature and source of whatever rights the law conferred on the slaveholder. Within the existing classifications of the common law, was the slave one of many varieties of unfree labor (such as villeinage) or merely chattel? What was the nature of property rights in the system of slavery, as understood within the conventional forms of writs and vocabulary provided by the common law—was it in the slave's personhood, or only in the labor provided? These two cases addressed the issue, and Jefferson quoted directly from the former: "as soon as a NEGRO comes into England he becomes free: one may be a villein in England, but not a slave." Recognizing the significance of the question, he asked in the margin, "whether Virginia act of 1705. c.23. sect.viii[53] [is] any additional authority" for that opinion.

What he omitted or chose to include from those two cases reveals a selectivity suggestive of an agenda in the debate over slavery. He did not, significantly, include that part of the court's opinion in *Smith v. Gould* "that the said negro at the Time of Sale was in *Virginia*, and that Negroes by the Laws and Statutes of *Virginia* are saleable as Chattels." The case report of *Gould* followed *Brown and Cooper* immediately in Salkeld, but Jefferson put aside Salkeld's report of the case and turned instead to Lord Raymond's version. Salkeld as advocate had argued that case before King's Bench, where he had presented precedents for treating the person of the slave as property. Although he reported the court's holding that the law of villeinage, not property, was more appropriate to chattel slavery in England, in court Salkeld as advocate had argued vigorously for the owner's property interest in the slave's person—he even cited "The Case of Monkeys" in its support. By contrast, Jefferson's commonplacing of Lord Raymond's report of the case omitted Salkeld's pleadings and cited a precedent denying a property classification for the person of the slave. He not only included that point but he consulted and added to his commonplaced entry points from three complementary cases not cited by Salkeld.

With entry 556, Jefferson concluded this initial phase of entries based on the law reporters by presenting "The doctrine of Conditions in Feoffments and Bonds as created in Co. Lit. fo. 206" in tabular form, an acknowledged technique for law students, then as now, for

[53] "That it shall and may be lawful, for any person, to sue for, and recover, any slave, or damage, for the detainer, trover, or conversion thereof, by action personal, as might have been done if this act had never been made."

bringing coherence to the intricacies of the common law. Sir Henry Finch, advertising his *Summary of the Common Law of England* (1654), explained, "The Science of the Common Law of England, hath not only been in former times, but even at this day, is accounted so abstruse and intricate, that it hath always seemed an Impossibility to reduce it to method." Jefferson could appreciate the way that Finch's method—he included 47 tables in his *Summary*—"clothed [the common law] with a Logical method," and the table he created for his entry 556 spoke to his own desire to do what Finch and other treatise writers had done: "to shew . . . the Harmonicall frame to the original Common Law before it was altered by Statute Acts of Parliament, and other Constitutions of State." He then turned to three legal historians—Kames, Dalrymple, and Hale. Chinard speculated that the turn to the historians occurred later, in the 1770s, as Jefferson was preparing to pen his *Summary View* and other writings relating to the crisis in colonial relations. Wilson has demonstrated on the basis of handwriting analysis that this is highly unlikely.[54] The sequence of the commonplace book suggests as much, for Jefferson returned immediately to the reports for another stretch of entries. Moreover, we have his own testimony to suggest that he saw his turn to the legal histories as part of his training in the law, recommending, in 1790, many historical accounts in his suggested list of readings he deemed "necessary to form a lawyer."[55]

The entries from Kames and Dalrymple are much fewer in number but much lengthier than those on the law cases. Their influence is obvious in his wholesale copying from their works, which strengthened his belief in the purity of Saxon legal institutions and their corruption by the Norman yoke of feudalism. Together they served as foundational to his application of critical historical thinking to the law and an understanding of the virtues and vices of the common law through its historical evolution. George Wythe had impressed on him "a due value on the study of the Northern languages, & especially of our Anglo-Saxon while I was a student of the law, by being obliged to recur to that source for explanation of a multitude of Law-terms."[56] Guided by Wythe, he found those terms explained by Sir John Fortescue Aland, an otherwise undistinguished jurist who in the preface

[54] Wilson, "Early Notebooks," 445.

[55] TJ to John Garland Jefferson, 11 June 1790 (PTJ, 16:480-1). By now TJ had come to terms with Blackstone, whose *Commentaries* he included here, although he recommended it as an aid to beginning legal study.

[56] TJ to Sir Herbert Croft, 30 Oct. 1798 (PTJ, 30:569).

to his law reports emphasized the very point that Jefferson would make in his rejection of Christianity as part of the common law: "To a Lawyer, even a Practicer at the Bar, this language cannot but be of great Use, since the very Elements and Foundations of our Laws are laid in this Tongue; and for want of it, the very Terms of our Law are sometimes mistaken, and often not thoroughly understood. . . ."[57] Wilson is surely correct that these sources, though commonplaced before 1770, can be seen as "part of the groundwork for the *Summary View* and the Declaration of Independence."[58]

With his return to the law reporters and two additional very brief entries on ancient inheritance practice, Jefferson closed off his first round of commonplacing. It is clearly part of his effort to "form" himself "a lawyer" and reveals something of his theoretical turn of mind even when he was applying himself to this very practical task. The handwriting evidence as interpreted by Wilson suggests that Jefferson then left off commonplacing in the LeCB for some time, from approximately 1770 until "not earlier than 1773," when he resumed with entry 696.[59] Of course, Jefferson had not stopped reading or commonplacing altogether in this interim period, for 1768-1773 was a very active period in the LCB, with a great emphasis on poetry. Wilson called attention to a comment Jefferson was reported to have made many years later: "I was bred to the law; that gave me a view of the dark side of humanity. Then I read poetry to qualify it with a gaze on the bright side."[60] Perhaps it was the last readings he did for the LeCB that led him in search of the "bright side," for these particularly emphasized the role force might have in human affairs.

By 1773, when he returned to his Legal Commonplace Book, the type of reading one finds him engaged in is very different from before, as are his apparent purposes. Steadily entering notes into the LeCB until the end of that decade or the early 1780s, he set aside the law reporters and instead turned first to what might appear to be a set of unrelated historical texts. But just as the earlier cluster of entries related to his preparation for a profession in the law, so this new set of entries reflects his new occupation—man of politics in the era of the escalating conflict between Britain and the American colonies. Although we see no lengthy breaks in Jefferson's commonplacing as

[57] John Fortescue Aland, *Reports of Select Cases in All the Courts of Westminster-Hall* . . . (London, 1748), xvii.

[58] Wilson, "Early Notebooks," 446.

[59] Ibid., 445.

[60] Ibid., 451.

after the late 1760s, we can roughly periodize his readings in this second great stretch of note-taking.

In approaching the LeCB it is helpful to keep in mind the main events of Jefferson's public life and something of the background of major historical events with which his reading became increasingly intertwined. In 1769 he became a member of the Virginia House of Burgesses, where he served until 1776. During part of that period he also served as a Virginia delegate to the Second Continental Congress, where he so fatefully first came to know John Adams and, even more fatefully, was appointed to the committee charged with drafting the Declaration of Independence. He earned that position in large part for his role in drafting *A Summary View of the Rights of British America* in 1774. While in Philadelphia, Jefferson drafted a constitution for Virginia, a constitution, to his dismay, not adopted. After independence was declared, Jefferson returned to Virginia, first as a member of the Virginia House of Delegates and later as governor. Between 1776 and 1779 his most notable contribution was his series of proposals for the "revisal" of the laws of the new state of Virginia, a revision meant to make the Virginia legal code correspond to the new order of republicanism in service to the "rights of man."

The sources from which Jefferson commonplaced changed significantly when he returned to the LeCB in the early 1770s, but just as striking is the significant shift in his style of commonplacing which foreshadows his public transformation into an active revolutionary. His procedure in treating Simon Pelloutier's *Histoire des Celtes* (entries 696-716),[61] which he most likely worked on in 1773 or 1774, is indicative of the shift.[62] Up to this point Jefferson had proceeded in a very neutral manner in commonplacing philosophical works such as those by Kames and Dalrymple, taking notes on the texts under consideration and injecting himself very little into the notes he took. By contrast, he often displayed a more aggressive posture only in his approach to some of the law reports. This changed with Pelloutier, for despite the surface similarity with, say, his treatment of Kames, with Pelloutier he was almost engaging in a dialogue. This author has a point to make—the centrality of the Celts for the settlement and development of Europe—and Jefferson regularly took issue with major aspects of Pelloutier's argument. More than in any other part of the

[61] Simon Pelloutier, *Histoire des Celtes, et particulierement des Gaulois et des Germains, depuis les tems fabuleux, jusqu'à la prise de Rome par les Gaulois* (Le Haye, 1740).

[62] Wilson, "Early Notebooks," 447.

LeCB, Jefferson made editorial comments taking issue with the author's logic, his etymologies, and his claims about the Celts. Substantively, Jefferson championed the Teutons rather than the Celts.

Still more different was Jefferson's treatment of Temple Stanyan's *Grecian History*,[63] the next source to which he turned. In the preceding entries Jefferson went through the books and, with a few omissions, tried to capture their gists as wholes. With Stanyan, he was much more selective; he concentrated exclusively on passages dealing with the Greek colonies—how they were established and what relations prevailed between them and the mother city. As with his treatment of Pelloutier, Jefferson was now coming to his text with a point and purpose of his own; he was not reading these books as a student or scholar might, but as a politically engaged thinker and actor. As the example of Stanyan makes clear, he approached the texts with issues raised by the increasingly bitter conflict between Britain and her colonies.

An even greater break with his earlier patterns occurred in the immediate sequel. To this point (entry 731) Jefferson had made multiple entries from all his readings except a very few at the end of the first phase of commonplacing. But in the second phase, it became the pattern that he made one or at most two entries from a source, and often indeed incorporated several sources on a topic within a single entry (see, e.g., 731). Once again, we see the shift from scholarly reading or note-taking to reading (and note-taking) for a particular purpose. This pattern holds from the end of the treatment of Stanyan (730) until the return to an examination of property rights—a focal point in the revisal of the laws he undertook upon independence—drawn from William Robertson's *History of the Reign of the Emperor Charles V* (757-58, 760-61) and Francis Stoughton Sullivan's *Lectures on the Constitution and Laws of England* (759, 762-74).[64]

During this period, we see Jefferson reading up on historical colonial relations, slavery and the slave trade, and the conflict between the "Norman Yoke" and pristine Saxon liberty, based, it appears, in ancient Teutonic practices, as captured in Montesquieu's notion that

[63] Temple Stanyan, *The Grecian History. From the Original of Greece, to the Death of Philip of Macedon*, 2d ed., 2 vols. (London, 1739).

[64] William Robertson, *History of the Reign of the Emperor Charles V, with a View of the Progress of Society in Europe, from the Subversion of the Roman Empire, to the Beginning of the Sixteenth Century*, 3 vols. (London, 1769); Francis Stoughton Sullivan, *Lectures on the Constitution and Laws of England: With a Commentary on Magna Charta, and Illustrations of Many of the English Statutes*, 2d ed. (London, 1776).

European liberty can trace its roots to the forests of Germany. Jefferson also returned to a topic of the sort that had marked his reading in his first phase of commonplacing, in particular the history of feudal land laws, but this time with an eye to considering the rights and claim of the king to ultimate ownership of the lands of the realm—and of America—a concern that had appeared prominently and importantly in his 1774 *Summary View*.

In the midst of the reading and note-taking of the pre-Revolution period came a rather discrete set of entries (741-8) that can be readily dated to 1774, for they relate to the fee bill controversy in the Virginia legislature in which Jefferson was a concerned participant.[65] After the entries related to the fee bill dispute, we see Jefferson turn back to readings related to the larger political situation. The dramatic events of 1776 seem to have inspired a new round of note-taking. No doubt in connection with the discussion of a confederation of the colonies (and soon, states), Jefferson turned to readings on the federations of the Netherlands and Switzerland (749-50). Another of his projects that summer was the drafting of a constitution for Virginia (composed in June), which leaves tracks in the LeCB in readings on constitutions, and especially on the dangers to free constitutions (754-56). Also of note is Jefferson's chronology of the Anglo-Saxon/English monarchs (754), which allowed him to assert "instances of the right of electing a king by the people of England."

Jefferson may have also composed entries 757-74 during this same period, although this assessment is less certain. Drawn from historical analyses (one of which was published in 1776) of the displacement of allodial property by feudal tenures, the entries bear some connection to Jefferson's assault on entail in Virginia. It is possible that his thoughts on a constitution for his state inspired this section of the LeCB. Regardless, the focus on property led directly to the next phase of Jefferson's career and subsequent entries of the LeCB, which he almost certainly turned to after his return to Virginia. "At 775," Wilson notes, "there is a definite change in the handwriting style: the letters are tighter, somewhat smaller, and more compact."[66] There is also another marked change in Jefferson's commonplacing style. He appears to return to the form he used on Kames and Dalyrmple: a straight reading through and note-taking on his sources. This is at least true

[65] Dewey, *Thomas Jefferson Lawyer*, 94-106, provides the best account of the episode and of TJ's legal argument.

[66] Wilson, "Early Notebooks," 447.

for the two major sources he consulted, Montesquieu's *De l'esprit des lois* (775-802) and Beccaria's *Dei delitti e delle pene* (806-31). It might seem as though he is returning to a less purposive approach to his reading, but that is not the case, for his chief project now (after 1776) was the revisal of the laws of the new state of Virginia into which he threw himself with so much energy on his return to his home state. That task was much broader than those he previously pursued with the aid of the texts he noted in his LeCB. Indeed, the two authors to whom he most devotes himself at this point, Montesquieu and Beccaria, point toward the way Jefferson was conceiving his task as a reformist statesman.

As the annotations to entry 806 make clear, Beccaria had attempted to place thinking on crime and punishment on a rational, i.e., enlightened foundation, which would at once serve the social needs that call for a definition of crimes and their punishment, and would at the same time embody the humane standards of the Enlightenment. In his autobiography Jefferson—a self-taught student of Italian who had acquired the language while in college—alluded to his dependence on Beccaria in his effort to draft his "Bill for Proportioning Crime and Punishments." Jefferson's draft was meant to make the criminal law rational in that, following Beccaria, it emphasized the proportionality between crimes and the punishments to be meted out to criminals. There was to be a rationally discernible connection between the crime and the punishment. Given the comprehensive character of a society's criminal law, a "revisal" in this area can be a very large undertaking, as indeed was Jefferson's draft law. The scope of his project was reflected in the scope of his commonplacing of Beccaria's book.

As large an undertaking as was Beccaria's new science of criminology, it paled before the comprehensiveness of Montesquieu's new science of politics or of "the spirit of the laws." The French philosopher's great contribution in his voluminous book was to develop a new way of looking at political life, both much more comprehensive than that deployed by any of his predecessors and more unified. Montesquieu expanded his horizon to encompass the whole range of social, economic, and even physical variables into his science. Thus not only the traditional matter of forms of government, but such other factors as climate, terrain, and religion were integral parts of his political science. At the same time, he moved further toward trying to find a unifying concept for capturing the holistic character of a society. This was the point of his idea of "the spirit of the laws": there is a coherence to the political-legal system in a nation and the chief tasks

of the legislator are to grasp that "spirit" and to legislate accordingly. Jefferson's treatment of it in the LeCB provides some evidence of his approach to political life at this time, and we would maintain, throughout his subsequent career. It is surely a matter of some interest that Jefferson paid particular attention in his commonplacing to that part of Montesquieu's book that gave counsel to the legislator. Here is one place where the LeCB gives us important insight into Jefferson not readily gleaned elsewhere.

Once Jefferson turned from commonplacing the common law, Montesquieu received more space than any other author in the LeCB, with extensive treatment of lawmaking (775-802). Jefferson was at that time acting the legislator, i.e., attempting to produce a comprehensive code of laws for the new Virginia republic. Taking a cue from Montesquieu, he saw that not everything inherited from the non-liberal monarchic past suited the new republics. Again following Montesquieu, he saw that each regime form has comprehensive sets of laws and other institutions appropriate and harmonious with it. He saw himself as nothing less than the Montesquieu legislator, one who would give to his state the comprehensive and coherent legal code a good political order required. Although he later, in his post-French Revolution days, would turn against Montesquieu as insufficiently republican, he never retreated from the project to which Montesquieu inspired him—to legislate in a comprehensive and unified way for the new regime. One particularly clear example from his early career was his effort to remodel Virginia's land laws by abolishing entail and primogeniture. As he explained his goal in this legislation, it was not merely to effectuate a more fluid kind of property regime, but to affect the entire social structure. The inheritance laws were the legacy of and suitable to a feudal aristocratic or monarchic order, not to a republic. Thus they had to go. Another example, this one from later in his career, was his proposal to subdivide political units into the small "ward republics" he believed more consistent with republicanism. The kind of political structure he and others had earlier supported, he came to see, was not entirely compatible with a republic based on popular sovereignty. A more strenuously republican set of institutions was required in place of the kind of constitution he had proposed in the 1770s and that his friend James Madison had helped secure for the nation in 1787-88.

Once Jefferson left off commonplacing in connection to the revisal—probably after entry 845, which concludes a short section of entries drawn from William Eden's work on penal law—it becomes more difficult to coordinate the entries with any particular political or intellectual

agenda, or to date them with confidence. Some entries, such as those related to colonial charters, do appear to relate to Jefferson's efforts to respond to queries made to him in 1780 while governor of Virginia, by François Marbois, secretary to the French legation. The project eventually came into print in 1785 as *Notes on the State of Virginia*. Much of the rest, however, has the character of miscellany.

In 1782 Jefferson was appointed a commissioner to negotiate peace with Britain, a negotiation to take place in France. Before he could embark on this voyage, however, word came of a provisional treaty with Britain and the commission was suspended. In the period after the entries seemingly related to the Marbois queries, one finds Jefferson commonplacing a number of French texts in French (as he had earlier done with Montesquieu). Here we see him reading a number of more or less contemporary authors—Helvetius, Voltaire, and Buffon (849-861). Since there is no common topic to these readings, perhaps he was most interested in those texts as a means of practicing his French and catching up on some of the latest French thinking in preparation for his diplomatic mission.

Jefferson had resumed some legal work after his retirement from the governorship in 1781, but his departure for France in 1784, this time as minister plenipotentiary, finally completed the withdrawal from practice that his political career had begun. It also marked another hiatus in his legal commonplacing, although definitive dating of entries between his work on the revisal and his tenure in France remains elusive. Entry 873, his robust rejection of the incorporation of Christianity into the common law, was almost certainly written in the 1770s, but for unknown reasons Jefferson included it (and the related entry 879) in the LeCB at some later time.[67] Entries 901-03, capping off a section beginning with entry 882 in which Jefferson returned to commonplacing law reports, address prize law and the rights of neutrals and can be dated to the period between 1800 and 1804. The LeCB, then, remained a resource for Jefferson during his presidency.[68] We can also speak with certainty about the last entry Jefferson made,

[67] TJ enclosed 873 and 879 in a letter of 10 Feb. 1814 to Thomas Cooper, in which he denounced "the pious disposition of the English judges to connive at the frauds of the clergy," and placed the writing of the essay to the time "when I was a student of the law, now half a century ago" (RS, 7:190). For more on the essay, see the annotation to entry 873.

[68] TJ enclosed the entries, based on the admiralty reports of Christopher Robinson, the first four volumes of which were published from 1799 to 1804, in a letter of 18 Nov. 1804 to James Madison (DLC).

a list of numerous "specimens of Hume's political principles" quoted from his *History of England,* a work that Jefferson purchased while a student but whose acquiescence in passive obedience and support for the Stuarts had made him a sharp critic. Holding Hume up for scorn for observations such as "it is seldom that the people gain any thing by revolutions," the LeCB concludes by quoting from a speech made in 1824 in the House of Commons that invoked Burke to warn that if such principles were to be accepted, "I believe we shall all come to think, at last, with mr Hume, that an absolute monarchy is not so bad a thing as we supposed."

Jefferson's notebooks mark stages in his life, and a comparison of their content and tenor reveals much about their writer's personal and intellectual development. He began his Garden Book in the spring of 1766, only months after the death of his beloved sister Jane in the preceding autumn.[69] The two had spent many pleasant hours together in the gardens of Shadwell, and it is no stretch of the imagination to see the Garden Book as providing him an emotional connection with her. He had begun his Literary Commonplace Book, it is likely, in 1758 while boarding and studying with Rev. James Maury, whose impressive library offered the young Jefferson his first real exposure to literature. If that date is correct, he would have been barely fifteen years old, at an age which Wilson comments made the notebook "more to Jefferson than a literary sampler and . . . in some respects a deeply personal notebook with direct connections to the emotional events and preoccupations of his formative years."[70] Not coincidentally, he discontinued his note-taking for the LCB at roughly the same time that he began his legal career, instead devoting his time to the Legal and Equity Commonplace Books. Wilson sees the LCB as revealing his "inner life as no other document is able to do—its fantasies, its posturing, its varying attempts to find, in the situations and utterances of imaginative characters, suitable images for the self." If we find in his literary note-taking an acceptance of what Wilson calls "the futility of strength without wisdom," the Legal Commonplace Book reveals a different response to the "dark side of humanity."[71] In it we find him confidently seeking and adopting the tools that a lawyer might use as a reformist philosopher, politician, and legislator in the creation of a republic structured by law.

[69] Edwin Morris Betts, ed., *Thomas Jefferson's Garden Book, 1766-1824: With Relevant Extracts from His Other Writings* (Philadelphia, 1944).

[70] Wilson, *Jefferson's Literary Commonplace Book*, 15-16.

[71] Ibid., 19-20.