Book Review

Roger K. Newman, ed., *The Yale Biographical Dictionary of American Law*. New Haven: Yale University Press, 2009, pp. xiii + 662, $65.00.

Reviewed by John Henry Schlegel

[T]hese legal portraits in miniature
deserve a place on every legal bookshelf.

Kathleen M. Sullivan[1]

...a standard reference volume that every library
will buy and no student will ever consult.

Trysh Travis[2]

About fifteen years ago publishers began to undertake a great number of projects designed to produce reference works. Some were called dictionaries; others, encyclopedias; and still others, companions. Cambridge extended its series of books of long essays bound together called histories. I participated in several of these projects[3] and enjoyed doing so. How I managed to miss participating in this one is a bit of mystery to me. However, missing a weekend

John Henry Schlegel is Roger and Karen Jones Faculty Scholar and Professor of Law, State University of New York at Buffalo. This piece is offered in memory of Florence Swanson, my elementary school's librarian, who taught me to love books, love libraries, and appreciate the great value of librarians, such as those I have worked with for now thirty-five years at the Charles B. Sears Law Library, who really know their collection.

1. Book blurb on dust jacket of The Yale Biographical Dictionary of American Law. Ms. Sullivan is Stanley Morrison Professor and former Dean, Stanford Law School.

2. E-mail to author, July 1, 2009, commenting on my assignment to review The Yale Biographical Dictionary of American Law. Ms. Travis is an Assistant Professor at the Center for Women's Studies and Gender Research of the University of Florida.

3. John Henry Schlegel, Academics *in* 1 The Oxford International Encyclopedia of Legal History 11-18 (Stanley N. Katz, ed., Oxford University Press 2009); John Henry Schlegel, Law and Economic Change During the Short Twentieth Century *in* 3 The Cambridge History of Law In America 563-612 (Christopher Tomlins & Michael Grossberg, eds., Cambridge University Press 2008); John Henry Schlegel, Critical Legal Studies *in* The Oxford Companion to American Law 202-04 (Kermit L. Hall ed., Oxford University Press 2002); John Henry Schlegel, Legal Realism *in* The Oxford Companion to American Law 501-03 (Kermit L. Hall ed., Oxford University Press 2002); John Henry Schlegel, Legal Realism *in* International Encyclopedia of the Social and Behavioral Sciences 8667-70 (Neil J. Smelzer & Paul B. Baltes, eds., Elsevier 2001).

of light lifting at the computer has allowed me the luxury of commenting on this genre in the guise of producing a book review, a better than even trade.

Reference works such as *The Yale Biographical Dictionary of American Law* are peculiar enterprises. At the beginning each is quite clearly a labor of love for the editor. And the result of that love is often a quite excellent volume, due in large measure I am sure, to the hard work of the many contributors. I doubt that most contributors produce an entry for the honorarium, much less for the public notice. As best as I can tell, no academic reads the resulting product except for editors of subsequent similar projects when trolling for additional gullible participants. And surely by the end of the project most editors come close to qualifying for sainthood. To them, the experience must feel mighty similar to the one identified in the old saw about becoming a department chair or associate dean. Doing such is like being a proctologist; one comes to see one's friends from a new and particularly unflattering angle.

The genre that is the modern reference work has a long and overall distinguished tradition in English letters and with it the practice of levying on friends, and later academic experts, for contributions. The *Encyclopedia Britannica*, now in its fifteenth edition, dates back to 1768. *The Oxford English Dictionary* project, showing the difficulty of relying on volunteers, was begun in 1860, began to appear in print in 1888, and was not finished until 1933. *Grove's Dictionary of Music and Musicians* began to appear in print in 1878; the final, fourth volume of what turned out to be its first edition appeared in 1899. Its current edition consists of twenty-seven volumes. The *Dictionary of American Biography*, published in twenty volumes between 1926 and 1937, then republished in 10 fatter volumes with eventually twelve supplements, has been known as *American National Biography* since 1999 and consists of twenty-four volumes. Interestingly, all of these works are now available in some electronic form.

I suppose that the growth of reference work projects says something about the publishing business in the late twentieth century. As university budgets came under pressure, library budgets began to shrink. At the same time, in many fields, especially science and engineering, the number of periodicals increased and the cost of these periodicals exploded. As a result, university libraries decreased their purchases of monographs, and the contraction of the market for such books became a serious worry for newly minted assistant professors everywhere. In coping with these financial pressures, library directors seemed to see the continuation, and maybe even an expansion, of the purchase of reference works to be a way of keeping available up-to-date scholarship in the humanities and social sciences.

If I am right in my supposition, moving resources into the production of reference works was a good strategy for publishers. It has worked for a while. However, I rather doubt that this model for academic publishing is likely to have much more life, given the explosion of the Internet and the proliferation of the inexpensive laptop computer. Consider the following.

I recently spent a sabbatical at one of America's largest "public research" universities. Because of the nature of the project I was working on, the absence of the helpful law library staff I am used to having at my disposal, and, heaven forefend, various parking problems, I spent quite a few evenings in that university's main library working the stacks. I initially marveled at the electrically powered compact shelving, at least until I learned that my weak memory for both the direction of the alphabet and the progression of the ordinal numbering system meant that I often ended up moving shelves for no good reason. After the novelty wore off, I was dumbfounded that in this library, not known for the depth of its collection, almost nothing I wanted was either missing from the shelves or misfiled, the great plagues that drive my relationship with my own university's main library. And yet, the building was full of students.

In time I noticed that almost all of these students were working on their own laptops. Most of the books visible on the study tables were textbooks. Indeed, I almost seemed to be the only person in the stacks. At first I was bewildered. If the students were not using the books in the library, why were they there, especially since mating rituals seemed to take place elsewhere on, and I assume off, campus in places where I would be both uncomfortable and unwelcome. When I expressed my bewilderment to a librarian at the circulation desk, I was told that, except for the two or so weeks before term papers were due, most books could be found on the shelves, and, when not, absent volumes had likely been taken out by a graduate student and would be cheerfully recalled. Evidently there were no graduate students working in twentieth century economic history.

Soon after, my aged brain clicked on. The building had been equipped for wireless access. To the extent that students were doing research, it was online research, perhaps in the many electronic resources that the university library subscribed to, but just as likely using Google for access to the great miscellaneous pile of alleged facts to be found on the Net. It was this shift in the use of libraries that publishers could not have foreseen fifteen years ago. Kathleen Sullivan may be right about the composition of serious legal bookshelves, though I fear that for such purposes she dooms *The Yale Biographical Dictionary* she blurbs to the role of an appropriately expensive graduation gift for aspiring academics. However, in terms of actual use, Trysh Travis is much closer to predicting this book's future. Students today avoid bookshelves, even the shelves full of reference works, just as they avoid 8:00 A.M. classes.

Talking with recent undergraduates suggests that my understanding of their activities is correct. Online research is more convenient; it can be done anywhere that is wired or wireless. It is fast, so it can be fit into any nook or cranny of an otherwise busy life occupied with internships and other resume-building activities, as well as with employment of diversified types. And it is time and place independent, not limited to the hours when libraries, not always conveniently located, are open. Moreover, such electronic resources are good enough, modestly presorted for relevance as they are through the

magic of search engines. While some students admit that online research is not the best possible research, such research surely meets the mini-max criteria –the minimum of effort for the maximum of payoff–that endlessly busy undergraduates see as necessary when managing their lives.[4]

While I did not spend enough time in this other university's law school to comment on the research practices of its students, my description of undergraduate research practices surely fits my experience with law students here at Buffalo. They are endlessly busy. Library time is scarce. Laptops in classrooms allow multi-tasking to fit other bits of life in the spaces when the rules–what will be on the test–are not being directly discussed. And this is not a new phenomenon. Ten years ago when I last taught Secured Transactions, I forced my students to learn the structure of the common security agreement, as well as to make a first stab at learning how to use legal forms, by assigning the project of drafting such an agreement to cover a fact situation of their choice. Students could work with any form they wished. Inevitably, most chose an online form that could be downloaded from Lexis or Westlaw, however antique that form might have been, and even though there were far superior forms available in the stacks, an observation I made endlessly, to rolling eyes I suspect.

At this point I shall avoid the choice to pander to my readers by arguing that the world has gone to hell in a hand basket compared to when I went to school. Every generation of students manages to figure out how it wishes to live, given the constraints that economic and social circumstances place on getting an education. I'm sure mine did, and that our elders thought that we were endangering our lives and our country's well being by slighting this or that which necessarily ought to have been given serious attention. The shift from collegiate education being a mark of upper-middle class status to being the minimum necessary qualification for entry into the middle class and from professional education being a nice, but unnecessary part of upper-middle class life to being the minimum necessary for entry into such a life, has had a profound impact on higher education that, even today, few academics wish to acknowledge. I'm simply glad that I did not have to negotiate the academic world that my children have experienced and in particular that my resources helped to insulate them from the financial pressures that most of their classmates experienced.

However, that said, I must necessarily recognize that I am an historian, a person attuned to monitoring change. So, I still find it interesting to examine the differences in the range of knowledge that today's students are likely to acquire from their sources of information, as against what they might learn from using as finely constructed a reference work as *The Yale Biographical Dictionary of*

4. *See*, John Henry Schlegel, Unfortunately, White-Collar is the Default Setting: Boys and Higher Education, 53 Buffalo L. Rev. 1035-58 (2005); John Henry Schlegel, Those Weren't "The Good Old Days," Just the Old Days, 32 Law & Soc. Inquiry 841-68 (2007) (both commenting on changes in higher education in the past 35 years).

American Law[5]—both a true statement and one I surely could not deny given that it is full of the work of good friends. To do so, I opened the book to a random entry and filled two pages of a writing pad with the names of the individuals discussed in the succeeding entries—Ulysses S. Grant to Manley O. Hudson, should anyone care. I then pulled up my trusty Google web browser, as well as that bane of all knowledge, Wikipedia, though not to compare the quality of the entries. I know that the book would win such a comparison hands down. Rather, I wished to see which biographical subjects would be missed. The results are modestly interesting.

Of the fifty-six entries I checked, thirty-eight or just over two-thirds had their own Wikipedia pages. Of the rest, Google turned up in its first two pages of results[6] one extensive biography, seven brief biographies, two citations to book length biographies and one citation to the biography in the very *Yale Biographical Dictionary* against which I was measuring Google's results. Of those for whom no biography could easily be found, four were lawyers—one, William D. Guthrie, very prominent, and the other three were academics—most notably Henry M. Hart, Jr. My guess is that these results are probably representative, because all of the individuals who had no Wikipedia page were either lawyers or academics.

Were some of the biographies that I found simply awful? Yes, but some were really very good. So, if academics wish that the sources of the research that their students use are significantly better than awful, then it is time to remember the long-standing rule from golf. Play the ball where it lies. Or as the *Wizard of Id* comic strip character, Sir Rodney, once said to his diminutive majesty, the King of Id, "We are stuck with the peasants we have sire." The production of better, preferably free online resources is essential if the oft-lamented quality of student research has even the faintest chance of being improved.

Now, what does all of this tell us about *The Yale Biographical Dictionary of American Law*? Two things I think. First and foremost, if Yale Press really wanted this book to help citizens, or more narrowly undergraduates, or even more narrowly law students, or most narrowly lawyers see that, as Roger Newman, the project's editor, says, "To understand law, one must understand its leading figures" (xii), then it should have been issued electronically, perhaps as part of some package of electronic resources available in libraries nationwide. That was the case with the *Oxford International Encyclopedia of Legal History* and will soon be the case with the *Cambridge History of Law in America*. That the Yale dictionary is not so available is unfortunate because the lack of an electronic format wastes the immense talent and erudition harnessed to the project. Second, the extension of the controversial Google project to digitize great swaths

5. I wish to gripe about the failure of the obligatory list of contributors to indicate the entry or entries that each produced. A serious scholar might just browse an entry when the pairing of author and subject was unusual or otherwise interesting.

6. This limit was my estimate of the amount of work one might expect a time-pressed undergraduate to do.

of published books is probably a good thing. Given the enormous cost of producing a book such as this, a Wikipedia-like format might be significantly more sensible for academics to pursue. Indeed, publishers approached by academics of an encyclopedic mind might consider pushing, if not shoving such people in the direction of low cost electronic publication. After all, for both the editors and the contributors, such a project has to be done for the love of the subject, not as part of seeking fame or fortune.