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Henry Charles Lea: Jurisprudence and Civilization

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Abstract

During the same nineteenth century when the modern study of legal history got underway in Europe, from Savigny to the *Codex Iuris Canonici* of 1917, Henry Charles Lea (1825-1909), an ocean away and without a serious library in sight, undertook the study of several aspects of ecclesiastical and legal history that brought him into contact with canon law at virtually every turn. This talk will deal with Lea's encounter with canon law - in and out of historical study proper - in the young and library-thin America of the 1850s and 60s. That is, I will focus on Lea's early work - *Superstition and Force* (1866), *An Historical Sketch of Sacerdotal Celibacy* (1867), *Studies in Church History* (1869), and the beginning of his work on the various inquisitions. In the preface to the second edition of *Superstition and Force* (1870) Lea remarked that "The history of jurisprudence is the history of civilization." For Lea, that jurisprudence included canon law.

Keywords

Henry Charles Lea, American Medieval Studies, Philadelphia, Legal History, Ecclesiastical History, Canon Law

Keynote Address

Henry Charles Lea: Jurisprudence and Civilization

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The remark for which Henry Charles Lea (1825-1909) is probably best remembered is found in the Preface to the 1878 revised printing of his first book, *Superstition and Force*, originally published in 1866. Lea observed categorically and for the first time in American historical writing that “the history of jurisprudence is the history of civilization.” By “jurisprudence” Lea meant any of those systems of laws according to which past peoples lived. By “civilization” he meant both civilization writ large, and also what he later called “the inner life of a people,” that is, a collective identity over time only partially clarified and often obscured by political or military history.¹ Lea had expressed something like this idea much earlier, in a review article in the *North American Review* in 1859:

Apart from the exact sciences, there is no subject which is more interesting, or which more fully repays the student, than the history of jurisprudence. . . . more vast and instructive would be a history of the laws under which man has lived and died, each unit of the race struggling on his allotted path through joys and griefs fashioned for the most part by the invisible network of habits, customs, and statutes, which surround him on every side, and silently shape his daily actions. . . . centuries hence it will be to our statutes and reports that the curious historian will resort to find out what manner of men were the restless and energetic Yankees who could found a gigantic empire, but could hardly govern themselves.²

¹ Henry C. Lea, *Superstition and Force* (Philadelphia, 1878). As he wrote to W. E. H., Lecky in 1866, “We have had enough of annalists to chronicle political intrigues and military achievements; but that which constitutes the inner life of a people and from which are to be drawn the lessons of the past that will guide us in the future, has hitherto been too much neglected.” Cited in Edward Sculley Bradley, *Henry Charles Lea: A Biography* (Philadelphia, 1931), 122. Bradley’s is the standard biography. All correspondence and works owned by Lea are in the Henry Charles Lea Library, University of Pennsylvania, Philadelphia.

² Lea, review of Louis J. Koenigswarter, *Études Historiques sur les Développements de la Société Humaine*, *North American Review* 182, January 1859, 1-51, later incorporated in Lea’s *Superstition and Force* (Philadelphia, 1966). The book is superficial, and Lea’s own annotations in its margins soon ignore it – some of the pages on composition remain uncut – but it suggests the relation of law to fundamental human relationships: its full title is *Études historiques sur le développement de la société humaine*.

Lea, who grew up in the administrations of Van Buren and Jackson and lived through those of Grant and Cleveland, had hope, but no blind faith, in the implicit virtues of democratic leaders (as his political and reform works clearly reveal), nor in those “republican” monarchies like France, in terms of whose history Lea’s own memory reached from the last Bourbons to the Third Republic. Lea on Napoleon III and his ministers could be just as scathing as Lea on Bishop Hopkins or Bishop Purcell, or Lea on Grant or Cleveland – or Bismarck. Few of us may incline to be as categorical about the history of law as Mr. Lea, but none of us, I venture to say, regrets his having said it so loudly, categorically, and early in the history of American medieval studies.

But legal history is not the place where Lea started out as a historian. His youthful precocious and prodigious intellectual and publishing activity in both the natural sciences and literature was drastically curtailed after his physical (and, I think, psychological) breakdown in 1847. Then he was twenty-two years old, and for four years he had tried to maintain his vast, diverse, and time-consuming intellectual activities in natural science and literature after having joined the family publishing firm in 1843.³ This ambitious and impossible program led to his breakdown. Young Mr. Lea was restricted by his physician, Hugh Hodge, to work in his family publishing house – at the time called Carey and Lea, which he had entered in 1843 (and became a partner in 1851, sole owner in 1865, and retired in 1880). He was permitted desultory reading, in his case chiefly French court memoirs of the eighteenth century, apparently harmless and unlikely to overoccupy his mind.⁴ That is, he began with narrative, and for some time he continued with narrative: reading French history backwards through the seventeenth, sixteenth, and fifteenth centuries, Commines and Monstrelet, then through Froissart (acquired in the mid-1850s) and the chronicles of St. Denis through Villehardouin (acquired in 1858), buying himself an eclectic but increasingly specialized library in the process – often asking European publishers for a discount “to the trade,” since he was a publisher himself, and ending up with the tenth-century chronicle of Richer, which G. H. Pertz had edited and published in 1845.⁵

L’Achat des femmes. La vengeance et les compositions. Le Serment, les Ordalies, et le duel judiciaire. Lea corrected it using Thorpe’s *Ancient Laws of England* and Baluze, both of which he had acquired by 1858, and he criticizes Koenigswarter for relying on secondary sources and carelessly making egregious errors. On Lea’s political insecurity, note his 1868 comment in a letter to Charles Eliot Norton: “If I were not a firm believer in the gradual progress of humanity, I would sometimes lose all confidence in the capacity of man for self-governance.” (Bradley, 114).

³ On the Victorian breakdown, Janet Oppenheim, *“Shattered Nerves”: Doctors, Patients, and Depression in Victorian England* (New York, 1991). Similar conditions appear to have afflicted Francis Parkman and William James, not to mention Lea’s own brother, Matthew Carey Lea.

⁴ Besides the Bradley biography (which was family-commissioned), see Edward Peters, “Henry Charles Lea (1825-1909),” in *Medieval Scholarship: Biographical Studies on the Formation of a Discipline*, Vol. I: *History*, eds. Helen Damico and Joseph B. Zavadil (New York-London, 1995), 89-99. Lea’s interest in French court memoirs probably derived from his research for his 1846 essay on Gilles Ménage. As a young student Lea had read Caesar’s *Gallic Wars*, Sallust, and Cicero on Cataline. He also owned an impressive collection of classical historians.

⁵ Lea seems to have used the Pertz Latin text of Richer in the Latin-French facing pages of *Histoire de son temps / Richer: texte reproduit d’après l’édition originale donnée par G.-H. Pertz, avec traduction française, notice et commentaire par J. Guadet* (Paris, 1845). There is an informative description of Lea’s Library in the September, October, and November, 1878 issues of *Robinson’s Epitome of Literature*: “The Private Libraries of Philadelphia: The Library of Mr. Henry C. Lea”.

Such a course of reading, at first guided as best it could be by recourse to published bibliographies old or more recent (G.-F. de Bure, *Bibliographie instructive* of 1763) or historical surveys like Louis Le Gendre, *Nouvelle histoire de France* of 1718, brought Lea into the Middle Ages, and initially to a somewhat romanticized Middle Ages. His first attempt to write history produced a forty-page (and never published) historical account of the rise of the house of Capet until it seized the throne of Francia in 987.⁶ I think that he might have gone on with French history rather in the manner that Prescott was doing with Spain, Mexico and Peru, or perhaps with English history, which he thought badly needed to be written, if he hadn't come across the first two volumes of Francis Palgrave's *History of Normandy and England*, published in 1851 and 1857 respectively, the first of which dealt with the period from Charlemagne to the treaty of St. Clair sur Epte of 911, and the second to 987. Lea comments:⁷

Unrestricted by the narrow limits of his title, Sir Francis has surveyed the whole groundwork of European history, and from Calabria to Friesland, from the Ebro to the Vistula, the entire continent passes in review, England being the portion of which we see and hear least. The epoch is one of the most important in human annals; for then were laid the foundations of modern civilization, and scarcely any event of that period but has had its influence, direct or indirect, upon our own.⁸

This is something new – not a Romantic Middle Ages, nor Gothic or Romanesque (it is worth noting that Lea, like his father, was an art collector, but he collected no medieval art and although he built a number of buildings, they were not built in Gothic or Romanesque), nary a Virgin or a Dynamo in sight, and no regrets for a lost Greco-Roman antiquity. For Lea it is, after the Carolingian collapse, a savage and violent period, one in which the Church was forced by circumstance to articulate and assert an authority that it will never give up. Palgrave had greatly impressed Lea, not least because of his insistence that the historian must work directly from the sources and because of his insistence on the importance of legal history, and Lea quietly put his Capetian essay away, for he had taken up a new and much broader view of European history. His interest in legal history as anthropology may have been inspired by the lightweight and

⁶ Lea Library. Lea could dismiss political and military history by the late 1850s: "If History be indeed 'Philosophy teaching by example,' then her text should not be merely the scandalous intrigues of a court, or the desolating achievements of an army. The inner life of the people affords the most instructive lessons, and he who would attempt to study or to teach must seek to penetrate into these recesses." Review of Du Cange, NAR 89 (1859), 32-98, rpt. in *Minor Historical Writings*, 371-374. The full review became the essay "The Rise of the Temporal Power" in *Studies in Church History* (1869).

⁷ Palgrave rev. 304. On Prescott and his influence, Richard L. Kagan, "Prescott's Paradigm: American Historical Scholarship and the Decline of Spain," *American Historical Review* 101 (1996), 423-446; on Lea, 433-434.

⁸ Palgrave rev. 304. On medieval history in the U.S. Hans Rudolf Guggisberg, *Das europäische Mittelalter in amerikanischen Geschichtsdarstellungen des 19. und des frühen Jahrhunderts*, Basler Beiträge zur Geschichtswissenschafts Bd. 92 (Basel-Stuttgart, 1964); on Lea, 85-106, and idem, *Alte und Neue Welt in historischer Perspektiv* (Bern-Frankfurt, 1973), 110-112. Most surveys of American historiography in the nineteenth century do not consider Lea; e.g., David Levin, *History as Romantic Art: Bancroft, Prescott, Motley, and Parkman* (Stanford, 1959); Dorothy Ross, *The Origins of American Social Science* (Cambridge, 1991).

error-filled book of Louis Koenigswarter, and Palgrave showed how such work could be done. But Lea had not yet found his subject or given up his narrative style. Here is Lea summarizing Palgrave's account of the taking of Rouen and the battle of Fontenay-en-Puisaye on June 25, 841:

While the sons of Louis le Débonnaire were marching to the fatal field of Fontenay, where, according to tradition, a hundred thousand of the bravest soldiers of Europe fell in ignoble mutual strife, Osker and his fellow-pirates were urging their daring barks up the Seine, and took possession of Rouen. No resistance was offered; the city's defenders were busy in cutting one another's throats in far-off Burgundy; and the rich and smiling town was given up to the Northmen's indiscriminate rage for blood and plunder.⁹

Lea could, when needed, let out all the stops. It was the last time that Lea was to use this operatic narrative style, and he later criticized its use in the writing of others. Toward the end of his review he not only criticized Palgrave on several points of fact and interpretation, based on his close reading of contemporary sources (chiefly Flodoard and Richer), but he also criticized a certain way of writing history:

Vast is the influence of that indefinite entity which, for want of a better name, we call *style*. In Paris, those *abstracteurs de quintessence* [Lea knew and used Rabelais frequently], the *hommes de style*, are a power in the state, to be bribed or bullied, cajoled or threatened, according to the strength or weakness of the powers that be. The charming trifles of Addison, embalmed, like flies in amber, in the graceful ease of his transparent sentences, bid fair to live as long as the language. The compilations of Hume and Robertson, prejudiced, destitute of research, and utterly valueless as histories, preserve their place as English classics because they are easy to read and levy no tax upon the comprehension of the reader.¹⁰

Lea's mention of Addison is not offhand. As a young student, Lea had been made to write imitations of Addison as exercises for his tutor. In fact, Lea had a virtuoso command of a variety of English styles.¹¹ By now, however, Lea had begun to develop

⁹ Ibid 306.

¹⁰ Ibid. 326-7. Earlier in the review Lea had dismissed the histories of England by Hume and Lingard as "a standing disgrace to the English name." Although Lea was virtually a contemporary of James Anthony Froude (1818-1894), he does not mention him here or anywhere else. Cf. Rosemary Jann, *The Art and Science of Victorian History* (Columbus, 1985). On the other hand, Lea points out that the greatest English historians – Gibbon and Grote – chose to work on antiquity rather than on the history of England, in contrast to the numerous native historians who have written the history of France, Germany, Italy, and Denmark. He echoed this opinion (and displayed how far his knowledge of legal history had come) in his review of Karl Güterbock, *Bracton and His Relation to the Roman Law in The North American Review* in July, 1866, 284-286. On criticisms of Palgrave's style, P. B. M. Blaas, *Continuity and Anachronism: Parliamentary and Constitutional Development in Whig Historiography and in the Anti-Whig Reaction between 1890 and 1930* (The Hague-Boston-London, 1978), 76-78.

¹¹ The only known communication between Lea and his grandfather Mathew Carey (d. 1839) is a gift by Carey to the young Henry, of a copy of John Walker, *The Teacher's Assistant in English Composition: or*

the literary style that he considered appropriate for the kind of history which he was to write for the next half-century. He was determined to levy that particular tax on his readers. Today it is called academic prose.

Thus far: Lea's discovery of history, his turn away from political-military subjects and narrative, his other turn, thanks largely to Koenigswarter and Palgrave, toward the history of law, and his self-conscious invention of a new style of historical writing. Now I must get him to Church history and canon law.

But first, a reminder. It has been possible for students in the late twentieth and early twenty-first centuries) to take up the study of early European legal history (and for teachers to work it into their curricula) largely because since the time of Lea a number of scholars and institutions have made the substance and methodology of the subject widely accessible. To cite only a few in canon law alone, Stephan Kuttner and the Stephan Kuttner Institute in Munich and its director Peter Landau, ICMAC and the newsletter *Novellae*, the guides of Van Hove and Stickler, the *Dictionnaire du droit canonique*, the *Histoire du droit et des institutions de l'église en occident*, the long range influence of Walter Ullmann and his students, particularly Brian Tierney and the work of Kenneth Pennington and Anders Winroth, particularly the *History of Medieval Canon Law* (in collaboration with Wilfried Hartmann and others). The list is easily extendable. But my point is that the work of a group of nineteenth-century scholars, more or less contemporary with Lea, began the process that created legal history as a discipline and located it in the academy. Most of them were not available to Lea, or came to him late.

Lea had Savigny's history of Roman law (translated into English in 1829 – Lea's German seems to have been wobbly until the late 1870s, but he also had an Italian translation of Savigny), but consider how many great legal historians were close contemporaries of Lea (1825-1909): Hefele (1809-1893) whom Lea did not admire, Augustin Theiner (1804-1874), Richter (1808-1864), Wasserschleben (1812-1893), Maasen (1823-1900), Hergenrother (1824-1890), Von Sickingen (1826-1908), Schulte (1825-1880), Hinschius (1835-1898) who became a correspondent of Lea's, and Friedberg (1837-1910).¹² Their work crossed the Atlantic only gradually, and it took Lea some time to gain a reasonable command of it. Dana C. Munro reported a conversation with Lea about Lea's scholarly isolation and limited access to sources and contemporary scholarly aids:

His great difficulty was in acquiring the necessary bibliographical information, of which he ultimately gained a mastery which won the

Easy Rules in Writing Themes, and Composing Exercises, on subjects proper for The Improvement of Youth or Both Sexes at School (Carlisle, 1808). The inscription in Carey's elegant hand reads: "Presented to his Grandson Henry Charles Lea by M. Carey." Lea had, of course, written a restrained scientific prose in his articles on chemistry and conchology, perhaps more influential on his later style than his alleged "scientific" objectivity. On the picturesque "Middle Ages" in nineteenth-century America, some of its zaniest manifestations, and its defeat, chiefly by reviewers in the *AHR*, Robin Fleming, "Picturesque History and the Medieval in Nineteenth-Century America," *AHR* 100/4 (1995), 1061-1094, on literary style, 1088-1089.

¹² For Savigny and Roman law, Michael H. Hoefflich, *Roman and Civil Law and the Development of Anglo-American Jurisprudence in the Nineteenth Century* Athens, GA and London, 1997, esp. 74-77, 115-130, and the extensive references Lea makes elsewhere, notably in the review of Güterbock. Lea was also close to James Bryce, whose views on the nature of law were very close to those of Lea. Bryce spoke on the occasion of the reading of obituaries of Lea to the American Philosophical Society in 1911.

admiration even of Lord Acton. When Langlois' *Manuel de la Bibliographie Historique* was published, I took a copy to Mr. Lea. When he returned it a month later, he said, "If I had had such a book fifty years ago, it would have saved me ten years of my life."¹³

And we complain of the chaotic overabundance of Google! But I have gotten ahead of myself. Having discovered Palgrave and his generally rigorous standards for historiography, Lea also discovered W. E. H. Lecky, whose *The Rise and Influence of the Spirit of Rationalism in Europe* of 1865 and *The History of European Morals from Augustus to Charlemagne* of 1869 offered an intellectual framework for Lea's interests in legal history and later the history of the Church.¹⁴ Lecky's idea of progressive rationalism, often retarded, speeded up, or deflected, fit perfectly with Lea's concern over the apparently non-linear course of western history and opened up a small window for historicism. The two historians maintained a lively correspondence until Lecky's death in 1903. A second British influence came from Goldwin Smith, whom Lea met probably in the 1860s on one of Smith's tours of the United States. Regius Professor of Modern History at Oxford and for some time afterward professor of history at Cornell, Smith was, like Lea, a strong and vocal supporter of the Union cause in the Civil War and a Broad churchman whose religious and historical ideas were sympathetic to Lea (except for Smith's virulent anti-Semitism).¹⁵ Smith was also a stern anti-Catholic, and probably influenced, or at least reinforced Lea's ideas in this area as well. In Philadelphia, Lea was assisted in his research on the wager of battle by Joseph G. Rosengarten, the Philadelphia attorney and historian who had studied Roman law at Heidelberg and provided Lea with several treatises *De pugna for Superstition and Force* and later put Lea in contact with the archivist of Venice, Teodoro Toderini, and with Henry Horstman, the American consul in Munich. These three friends and their contacts in Europe formed part of the remarkable network of correspondents from all walks of life that Lea informally but regularly established for obtaining books and manuscripts, newspapers and pamphlets of interest from all corners of Europe.¹⁶

The legal and political climate of Philadelphia in the 1840s and 50s may very well have provided further assistance. In 1844 Horace Binney successfully argued against Daniel Webster an appeal before the U.S. Supreme Court in the case of Stephen Girard's will by citing Elizabethan ecclesiastical law on the nature of charitable trusts and, although he seems not to have realized it, canon law as well (*Vidal v. Girard's*

¹³ Cited by Bradley, 120.

¹⁴ There is an extensive Lea-Lecky correspondence in the Lea Library. On Lecky, see Donal McCartney, *W. E. H. Lecky, Historian and Politician, 1838-1903* (Dublin, 1994); Benedikt Stuchtey, *W. E. H. Lecky (1838-1903): Historisches Denken und politisches Urteil eines anglo-irischen Gelehrten* (Göttingen, 1997); Jeffrey Paul von Arx, *Progress and Pessimism: Religion, Politics, and History in Late Nineteenth-Century Britain* (Cambridge, MA, 1985).

¹⁵ There is an extensive correspondence in the Lea Library. Paul T. Phillips, *The Controversialist: An Intellectual Life of Goldwin Smith* (Westport, 2002) is a good study but does not mention Lea. There is an antislavery pamphlet ascribed to Smith that seems to fit into the exchange between Lea and Bishop Hopkins of Vermont: *Does the Bible sanction American Slavery?* (1863). On Smith and Roman Catholicism, John T. McGreevy, *Catholicism and American Freedom: A History* (New York, 2003), 99-104.

¹⁶ Bradley, 150-157. Goldwin Smith seems to have been instrumental in obtaining permission for Lea to borrow manuscripts from the Bodleian Library.

Executors, 43 U.S. 2 How. 127 [1844]). And Lea knew Binney. In the same year, the savage and destructive Nativist riots had rocked Philadelphia, and the nineteen-year-old Lea had found himself with a rifle in hand guarding St. Patrick's church as part of the mayor's hastily assembled citizen militia. The same riots destroyed St. Augustine's church and burned what was apparently a superb library that it contained.

Both Roman Catholicism and canon law had recently been very much in the air and in the courts in Pennsylvania and elsewhere during the legal conflicts over the trustee system in the American Roman Catholic Church.¹⁷ In the course of that dispute, which focused on conflicting definitions of the *ius patronatus* and the debated immunity of ecclesiastical affairs from civil courts in the U.S., both the supporters of trustees and their opponents cited canon law, often knowledgeably and directly from Gratian. It's worth pointing out that "medieval" canon law was still in effect in Lea's lifetime, since the new Code of Canon Law was not produced until 1917. That is, on any point of canon law, not only Gratian and the rest of the *Editio Romana* had to be searched out, but also the canons of the councils of Constance and Basel in the fifteenth century, that of Trent, papal decretals (printed chronologically in various *Bullaria*), rulings of the Holy Office, the rulings of dicasteries, and the decisions of the Holy Roman Rota, and no guide to all these was official. Some of the participants in the trustee debates, including Mathew Carey, Lea's grandfather, had been educated in Europe and knew the law from that experience. To some scholars the dispute was part of a larger movement concerning the identity of Roman Catholicism in the United States, which seems to have come very close to creating a United States Roman Catholic Church, a kind of congregational Catholicism owing respect, but not obedience, to the pope, adapting Roman Catholicism to the democratic principles of the United States, a matter of considerable debate before and after the Civil War.¹⁸ Ultimately, the opponents of the trustees won out. The visit of Archbishop Gaetano Bedini to the U.S. in 1853 put an end to the argument of adaptability, insisting that U.S. Catholicism must operate according to Roman-interpreted canon law.

Among the consequences locally was the so-called Hogan Schism, led by the expelled trustee-favoring priest William Hogan, whose later printed attacks on Romanism faded into traditional high-end anti-Catholic polemic.¹⁹ It was in the wake of the Hogan Schism that Lea's mother, Frances Carey Lea, left the Roman confession, most likely in 1822. One does not need to assume that the issue remained prominent in the family into Lea's adulthood, but the subject as a topic of public concern certainly stirred Philadelphians for several decades. And it raised into prominence the problem of Rome and the United States at a time – 1830-1870 - when events on the Continent and in Great Britain also brought Rome to transatlantic prominence.

Which brings me to the broader question of Lea and Roman Catholicism. Lea himself repeatedly disavowed any hostility to the Roman Church at the beginning of his

¹⁷ The subject is fully treated in Patrick W. Carey, *People, Priests, and Prelates: Ecclesiastical Democracy and the Tensions of Trusteeship* (Notre Dame, 1987).

¹⁸ The best account is Jay P. Dolan, *In Search of an American Catholicism: A History of Religion and Culture in Tension* (Oxford-New York, 2002).

¹⁹ William Hogan, *A Synopsis of Popery as It Was and as It Is* (Hartford, 1847). The volume also included Hogan's essay *Auricular Confession and Popish Nunneries*. Hogan complained about American ignorance of canon law (p. 8).

studies. His most emphatic statement on the subject is found in a letter to his French translator, Salomon Reinach in 1901:

I commenced my medieval studies without any preconception adverse to Catholicism, but I found the Church as a political system adverse to the interests of humanity. Against it as a religion I have nothing to say. My conception of the duty of the historian is that he shall seek the truth and state it without fear or favor.²⁰

This statement conceals, I think, as much as it reveals. It wants some unpacking if it is not to be considered disingenuous. What was Lea's idea of religion?²¹ First, Lea seems not, as E. A. Ryan agrees, particularly troubled by the family's Catholic history. His concerns were not those of the ousted trustees of 1829, nor those of the Nativists of 1844 nor those of the later Know-Nothings. With the Protestant Crusade chronicled by Ray Allen Billington and others, Lea steadfastly refused to have anything to do.²² He did not participate in conventional confessional wrangling and took very little part in the large and often learned debates over which faith had contributed more to the well-being of mankind, Protestantism or Catholicism.²³ He did not contribute to the literature alleging a warfare between science and theology. He was appalled by such demented mythologies as that of Lyman Beecher in 1835 which saw the Jesuits and the new Catholic immigrants to the U.S. as the advance wave of a Vatican offensive that planned to erect a new Patrimonium Petri in the Mississippi Valley and a new Vatican and a new Inquisition in St. Louis, echoes of which are evident in the popular novel by the universal anticleric Henry Boernstein, *The Mysteries of St. Louis*.²⁴

Lea's was a century in which the civil and institutional aspect of the Roman Catholic Church was particularly visible, active, and debated, all matters of increasing interest to a young Republican among Republicans – believing of all religions that they consisted of a few essential truths, best cultivated individually with minimal pastoral guidance, the inviolability of conscience, possessing no authority over temporal affairs and no particular civil privileges, benignly tolerant of different views on the part of others. And he believed that these represented not only the original purpose, but also a higher historical stage of the Christian religious life:

²⁰ Cited in Bradley, 263.

²¹ The best study is E. A. Ryan, S.J., "The Religion of Henry Charles Lea," in *Mélanges Joseph de Ghellinck* (Gembloux, 1951), 1043-1051.

²² Ray Allen Billington, *The Protestant Crusade 1800-1860: A Study of the Origins of American Nativism* (rpt. Chicago, 1964); Jenny Franchot, *Roads to Rome: The Antebellum Protestant Encounter with Catholicism* (Berkeley-Los Angeles, 1994), as well as the works by McGreevy and Dolan, cited above.

²³ E.g. in such works as the Catholic Jaime Balmes, *Protestantism and Catholicity Compared in Their Effects on the Civilization of Europe* (Baltimore, 1851), and Emile de Laveleye, *Protestantism and Catholicism in Their Bearing upon the Liberty and Prosperity of Nations* (London, 1875), or the books of Joseph F. Berg, favoring Protestantism. Such works are generally neglected items in nineteenth-century intellectual history. Lea owned a book by Laveleye on property and its primitive forms, rather of the same kind as Koenigswarter.

²⁴ Henry Boernstein, *The Mysteries of St. Louis*, tr. Friedrich Munch, eds. Steven Rowan and Elizabeth Sims (Chicago, 1990). Boernstein (1805-1892) was a universal anti-clerical entrepreneur in America and Europe, and his novel was based on Eugène Sue's earlier *Mysteries of Paris*.

Contented with the great primal truths of Christianity, which seem to me sufficient for both this world and the next, I leave the subtleties of theological speculation for those who enjoy them.... The great lesson I read in the Gospels is love and charity for all men and for all forms of worship which are not wrested to the restricting of human progress and the crippling of human intelligence.²⁵

In this sense Lea was more of a centrist than Prescott, for example, more than Motley, and far from the venomous critics recorded by Billington.

For Lea, no religion needed to possess temporal advantage, indeed, any that did would necessarily be corrupted by it – hence, his view of Catholicism as a “political system,” shaped by theology and canon law. This general view was greatly enhanced by the nineteenth-century process by which Roman Catholicism was transforming itself – mending fences and concordats with secular regimes (getting even Bismarck, as Lea once waspishly pointed out, to come humbly to Canossa when he needed Center Party votes!), encouraging new ties to Rome, emphasizing a hierarchical papal ultramontane organization, cultivating new forms of devotion, and pronouncing categorically on a wide variety of intellectual and other matters that affected individuals and communities in Europe and North America. To Lea these could not be essential aspects of any religion: “It is a dreary and disheartening thing to see men wrangle over the nonessentials of a religion, the first great lesson of which teaches them love and peace.”²⁶ Lea insisted on the difference between matters of discipline and matters of dogma, which he accused Catholic authorities and apologists of deliberately confusing to the pope’s advantage. Perhaps this last aspect is best seen in Lea’s review-article of 1868, “The Religious Reform Movement in Italy,” with its blunt assertion:

Not that the pure dogmas of Latin Christianity have in them anything of itself incompatible with social or national development, but that the ecclesiastical structure reared upon them is necessarily involved in internecine strife with the Italy of the present and the future, and one of the antagonists must inevitably succumb. Compromise is impossible, and it will eventually rest with the people to determine which shall be the victor, progress or reaction.²⁷

Next to this must be set Lea’s sense of Catholicism as a “religion”:

In this country we see the Catholic clergy adapting themselves without complaint to republican institutions, subjected to the laws of the land, enjoying no special immunities or privileges, busily devoted to the duties of the pastorate, propagating their faith by persuasiveness, earnestly engaged in the religious instruction and moral training of their flocks, and active in the charitable work of feeding the hungry and curing the sick. More than any

²⁵ Lea to Henry Hart Milman, 1863.

²⁶ Lea’s review of *The Roman Catholic Church and Free Thought*, NAR July, 1868, 723.

²⁷ *North American Review*, October, 1868, 51-76, at 52, rpt. in *Minor Historical Writings*, 267-287. The article shows the extent of Lea’s contacts in Italy and is probably the most concise illustration of his concept of Catholicism as a “political system.”

other denomination throughout the populous North, their labors lie among the poor and humble, and their ceaseless ministrations accomplish results which could be reached by no other instrumentality.

And then the point that Lea has used this paragraph so far to set up:

It is difficult to imagine these ardent and self-denying men as members of the same brotherhood, believers in the same faith, part of the same organization, as that which from the Vatican has armed the Antibes legion, and which proclaims eternal war against equality, freedom of conscience, liberal education, self-government, and, in short, all the forces which constitute progress and modern civilization.²⁸

Lea's comments in "The Religious Reform Movement in Italy" and his review of "Janus," *Pope and Council* in 1870 can only be considered in the context of American interest in and familiarity with the interlocking histories of liberal reform and unification in Italy (the Catholic orthodoxy of whose proponents Lea perhaps exaggerates) and the American perception of Pius IX and the Roman Church in the process of dealing with reform and unification. The late 1840s and 1850s were a period of enormous American interest in both processes, and, until November, 1848, of great enthusiasm for Pius IX as the spiritual leader of reform and unification, and as Pius's reputation as a liberal reforming pope declined, once again in America anti-popery and liberal criticism presented a solid bloc of opposition to the Roman Church and its leader.²⁹ In Italy the process may be traced not only to Lea's personal contacts there, but also in the memoirs of C. E. Lester and Margaret Fuller Ossoli and in the United States by the debates between Horace Greeley and Bishop John Hughes in New York and by other figures elsewhere. Lea himself:

No one can watch the rapid progress making by the Catholic organization in the United States, without feeling an interest in investigating the policy and tendencies of a Church which must wield a powerful influence in moulding the national character.³⁰

And all the evidence on the growth of Catholicism in the U.S. in the nineteenth century confirms Lea's assessment. Besides the events between 1848 and 1870 in Italy and France, Lea's own life spanned not only the early work of Ranke and the later work of Acton and Döllinger, but also *Mirari vos*, the condemnation of Lammenais, in 1832, *Qui pluribus* in 1846, *Quanta cura* and the Syllabus of Errors in 1864, the canonization of the inquisitor Pedro Arbues in 1867, the first Vatican Council in 1870, and *Lamentabili sane*

²⁸ Ibid. 53-54. Lea mentions contemporary Catholic life in the U.S. elsewhere, always praising both the character of devoted clergy (including nuns) and their charitable and morally admirable enterprises. In the essay "Key Notes from Rome" of 1890 Lea praised the Catholic laity's good faith and patriotism, and the national recognition and admiration of General Philip Sheridan, a Roman Catholic.

²⁹ Once again, the argument that American Catholics' first loyalty was to a foreign ruler circulated. Lea picked up on this in the essay "Key Notes from Rome," *Forum* 8 (1890), 622-637, rpt. in *Minor Historical Writings*, 300-312.

³⁰ Lea, review of Purcell-Vickers, 724.

exitu with its condemnation of Modernism in 1907. From *Quanta cura* Lea picked the term “infallible” as used by Pius IX of the Church, and used it to argue that the Roman Catholic Church had become committed to a policy of justifying all of its past actions because all of these actions had been performed by an “infallible” authority. The Church was growing in influence in the U.S. too, and it was exercising its authority in ways and areas that made Lea seriously apprehensive as he looked at Roman Catholicism in Europe and wondered about its role in the U.S..

And there we see both sides of Lea’s idea of Roman Catholicism, his own distinction between “religion” and “political system.” And they influenced his view of Latin Christianity in the ninth and tenth centuries, when popes and councils made decisions that could not be reversed and locked them into summas and volumes of canon law. Of the two professions, Lea criticized the theologians, the “schoolmen” more severely. Canon law for Lea seems to have had a scientific dimension that focused the thought of canonists on specific issues, while theology had no frontiers at all. And Lea got better at self-taught canon law. His early citations of papal documents come from collections in the *Patrologia Latina*, collections of councils like that of Hardouin, or individual works like those of Regino. Before long, however, Lea can identify specific legal texts and cite the adventures of a legal text from Regino to Burchard, to Ivo, to Gratian, and from Gregory IX and Innocent IV to Hostiensis and Panormitanus. His insistence on the separability of politics and religion also remind us that as Lea was reading and thinking his way through thousands of pages of sources dealing with fifteen hundred years, he was also reading through Catholic historical and dogmatic apologetics from the sixteenth century to his own present day. He touched on this point, too, elsewhere in his review of Purcell-Vickers:

Apart, however, from the truth exhibited in these pages, that Catholic sacerdotalism has always been opposed to human progress, there is a lesson to be learned from the Archbishop’s portion of the controversy. From his position in the Church we may safely conclude that he is a man of more than ordinary intellectual vigor, strengthened by careful training. Yet the result of that training, as here exhibited, shows how the reasoning faculties have been stunted, and how the habit of blindly receiving and dogmatically administering faith without examination has led him to consider arrogant assertion to be equivalent of truth. Even his moral sense becomes dulled, when the reputation or interests of the Church are at stake. As she is infallible, the facts which prove her fallibility must be got out of the way; and if garbling and misrepresentation are necessary to accomplish this, the fault lies with the facts, not with the Archbishop.³¹

Lea goes on note Purcell’s description of the 1864 Syllabus of Errors to the Catholics of his diocese and accuses Purcell of using the technique of *suppressio veri / suggestio falsi* to make the Syllabus palatable to American Catholics. This is not quite the Mr. Lea whose own religious opinions are said not to have been easily discernable or who held no animus toward Catholicism. It is time to see where that animus came from.

³¹ Ibid, 725.

Lea's familiarity with church history can be measured by his response to Henry Hart Milman's *History of Latin Christianity* of 1855, which he reviewed in the *NAR* in January, 1861, a review that extended into the long article "The Temporal Power of the Church" in his *Studies in Church History* of 1869. It is important in reading Lea to look at both earlier and revised editions of his works. As he became more expert, he added more material and demonstrated greater expertise, but we are looking at the 1850s and early 1860s. Then, he had no set form of annotation, often placed all the references in a note at the end of a paragraph, used signs rather than numbers for footnotes, cited sources by internal reference only, made no concession about the nature of sources or their language to his readers and often failed to distinguish material and formal sources of texts. But his knowledge was already immense. The reviews of these years also contain material ranging across many of the earliest and most wide-ranging human societies, a kind of overly ambitious comparative anthropology that Lea eventually gave up.

Later, Lea focuses more narrowly on western Europe. After praising Milman's achievement for seven pages, Lea goes on for another hundred pages detailing with abundant citation of materials: the emergence of the Church in the Roman Empire under the patronage and thumb of Constantine, the Frankish alliance and the idealized beneficial influence of Charlemagne, the False Decretals and expanded claims on behalf of clerical authority (Lea's villain in the piece), the authority of the papacy over the episcopal order, and "papal omnipotence." In all of this, Lea emphasizes *temporal* power; to him this was the first error. But he also admits that he can't see how it could have been avoided, particularly in the hazardous and barbaric ninth and tenth centuries, when the Church was compelled to defend itself and adopted positions that it would not change when it was in less danger in the eleventh and twelfth centuries.³² The two subsequent essays in *Studies in Church History*, on "Benefit of Clergy" and "Excommunication" are expansions of the theme of temporal power, when key spiritual privileges and sanctions reinforced it and the papacy assumed sole direction of it.

Between its appearance in 1861 and its reworking in *Studies in Church History* in 1869, the long Milman review, must be considered very closely in the context of Lea's publications between those dates. The long, immensely learned, contentious, and never-explained book called *An Historical Sketch of the History of Sacerdotal Celibacy in the Christian Church* appeared in 1867.³³ Lea stated in the Preface and later in a letter to Goldwin Smith that it had been "written several years since" and not intended for publication, which must mean during or toward the end of the Civil War. He had acquired the last volumes of the *Patrologia Latina* by 1866, and he later claimed that he had read all 217 volumes of text by 1867, and it looks as if he really did. Why had he done the enormous research and written the *Sketch* on this particular subject? There is a considerable disconnect between the essays in *Superstition and Force* and the *Sketch*.

³² Virtually all of the sources and historiography for the later ninth and tenth centuries painted an unrelentingly bleak picture, one which Lea, so critical elsewhere, largely accepted. For an example of one such tradition, Courtney M. Booker, *Past Convictions: The Penance of Louis the Pious and the Decline of the Carolingians* (Philadelphia, 2009).

³³ For the historiography, Edward Peters, "History, Historians, and Clerical Celibacy," in Michael Frassetto, ed., *Medieval Purity and Piety: Essays on Medieval Clerical Celibacy and Religious Reform* (NY-London, 1998), 3-21. Cf. Garry Wills, *Papal Sin: Structures of Deceit* (New York, 2000), 122-131. Wills's book provides an interesting contemporary Roman Catholic perspective on a number of issues that concerned Lea, Döllinger, Acton, and others.

The problem of clerical celibacy was a matter of considerable debate in the nineteenth century, and in the U.S it was polemical rather than historical. As Lea clarified his understanding of the history of Latin Christianity in the 1850s and 60s he saw the key to its later history in the Church's confusion of its spiritual and public roles, one aspect of which was the separation of a privileged and sacrosanct clerical order, which he termed *sacerdotalism* of which celibacy was a fundamental component. Others were closely related – temporal power, benefit of clergy, the rise of papal authority, and the spiritual and temporal consequences of the sanction of excommunication. And he deliberately excludes monasticism from his purview because it is not in the world.

Since the Latin Christian Church had acquired, exercised, and retained such authority not only in the Middle Ages, but down through history to Lea's present, and now in Lea's America, Lea decided to use his new historical tools to clarify matters that had hitherto been largely the objects of polemic. Hence his insistence on his own even-handedness, his presentation of "facts," and his professed refusal to offer opinions. He was making a historical case that he would continue to make for the rest of his life, because he was convinced that the combination of ecclesiastical features he had identified had greatly crippled the one institution – the Church – that could have otherwise improved the human condition far more than it had. Lea was unsettled in his world – politically and culturally – and his account of Church history is in part his accounting for why the world was not a better place for humanity than it was in 1870. Lea was no great admirer of the Reformation, in which, as he saw it, more human fallibility attempted to correct the shortcomings of the Latin Church and usually failed. His description of the Kirk Sessions of Scotland sounds very much like his description of the Spanish Inquisition or the nineteenth-century Curia.

The companion work to *Sacerdotal Celibacy* is the 1896 three-volume work *A History of Auricular Confession and Indulgences*, also a rigorous, source-based investigation of a topic hitherto prominent only in polemic. In one sense, the far better-known volumes on the inquisitions are pendants to the large arguments on the temporal power of the Church and its most effective mechanisms. It is to the earlier works that we should look for the first articulation of Lea's ideas of sacerdotalism and papal authority. The later works reveal a substantial familiarity with canon law on Lea's part, and not merely with Book 5 of the *Liber Extra* and its inquisitorial procedural variants, but also with clerical status, benefit of clergy, the efficacy of sacraments, lay absolution, the insanity defense, usury, occult compensation, marriage, and ecclesiastical property. What Lea did was to argue a large meta-thesis about the spiritual condition of the mid-nineteenth century and the course of European history by producing a group of meticulously researched and text-supported studies of contested points: sacerdotalism, celibacy, confession, benefit of clergy, excommunication, papal authority, indulgences and then made himself a public intellectual in holding up Spain as a fearsome example during its conflict with the U.S. at the turn of the twentieth century as explicable in historical terms and a warning to the empire-building "restless and energetic Yankees."

I'm afraid that I haven't described as tranquil and even-handed a Mr. Lea as he and most of his memorialists have suggested, and I have not been helped by conventional surveys of American historiography. But I've tried to locate him in his own life and time – and worries. His achievement remains astonishing: the library was and is an American treasure. It enabled him to correct even Milman and Döllinger on details of early Church

history and to scold his friend Lord Acton's idea of the moral obligations of the historian. His texts, with only a little editorial cleaning up, still rank with the best professional academic historiography on his subjects, and they remain in print. His insistence that the Latin Church was the great driving force in European history eventually forced Church history into the mainstream of historiography and out of closed confessional and polemical ghettos. And his dismissal of kings and generals, crowns, drums, and trumpets, made way for the law and its history to shape a new version of the European past. And it still seems today that the history of jurisprudence, in Lea's sense, is indeed the history of civilization.