

# Journal of Comparative Urban Law and Policy

---

Volume 4  
Issue 1 *Festschrift II in Honor of Julian Conrad  
Juergensmeyer on the Occasion of His  
Retirement: International Perspectives on Urban  
Law & Policy*

---

Article 30

2020

## When Past is Prologue: The Values of Historic Resources for Cities

Ryan Rowberry  
*Georgia State University College of Law, rowberry@gsu.edu*

Follow this and additional works at: <https://readingroom.law.gsu.edu/jculp>



Part of the [Comparative and Foreign Law Commons](#), [Environmental Law Commons](#), [Land Use Law Commons](#), and the [Urban Studies Commons](#)

---

### Recommended Citation

Rowberry, Ryan (2020) "When Past is Prologue: The Values of Historic Resources for Cities," *Journal of Comparative Urban Law and Policy*. Vol. 4 : Iss. 1 , Article 30, 563-585.  
Available at: <https://readingroom.law.gsu.edu/jculp/vol4/iss1/30>

This Article is brought to you for free and open access by Reading Room. It has been accepted for inclusion in *Journal of Comparative Urban Law and Policy* by an authorized editor of Reading Room. For more information, please contact [gfowke@gsu.edu](mailto:gfowke@gsu.edu).

## WHEN PAST IS PROLOGUE: THE VALUES OF HISTORIC RESOURCES FOR CITIES

Ryan Rowberry\*

### INTRODUCTION

Julian Conrad Juergensmeyer is a wise, wandering pilgrim of sorts, and it is worthwhile to consider the lessons contained in his miraculous journey with the law.<sup>1</sup> If you ask land use lawyers today, some might casually say that Julian invented zoning. Others believe that he litigated the 1926 case *Village of Euclid v. Ambler Realty Co.* in which the U.S. Supreme Court upheld zoning's constitutionality.<sup>2</sup> Still others might accurately testify that he is the 'George Washington' of infrastructure finance, particularly impact fees—fees imposed by local governments on developers to cover capital costs related to infrastructure for new development (e.g. sewers, water, schools).<sup>3</sup> Environmental lawyers might swell the reverent chorus, citing to Juergensmeyer's 1966 class on Pollution Control at Indiana University (Bloomington)—one of the earliest environmental law courses taught in the United States. Truly, Julian's legal influence and scholarly reach has achieved nearly mythical status. Every myth, however, is built

---

\*Ryan Rowberry, Associate Dean for Academic Affairs, Associate Professor of Law, Co-Director, Center for the Comparative Study of Metropolitan Growth, Georgia State University College of Law

<sup>1</sup> More than one student at GSU Law has remarked that Julian is Gandalf, but beardless.

<sup>2</sup> *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926). While *Euclid* may have “constitutionalized” the practice of local governments using law to create different zones for different uses, separating industrial, undesirable, or noxious uses from residential areas through decree or rule is probably as old as urban life itself. For example, in 1371, King Edward III forbade the slaughtering of cattle and other beasts within the city of London because some butchers had “slain large beasts within the said city, and have thrown the blood and the entrails thereof in divers places. . . from which abominations and stench, and the air infected thereby, sicknesses, and very many other maladies have befallen our officers aforesaid, and other persons dwelling there.” *Memorials of London and London Life in the XIIIth, XIVth, and XVth Centuries A.D. 1276-1419*, trans and ed. Henry Thomas Riley (1868) pp. 356-358.

<sup>3</sup> Julian has assisted in drafting or consulting on the use (or misuse) of impact fee ordinances in 26 states. And he has authored numerous books and articles on the subject. A few of these are: Arthur Nelson, James Nicholas, and Julian Juergensmeyer, *Impact Fees: Principles and Practice of Proportionate-Share Development* (2017); Arthur Nelson, Liza Bowles, James Nicholas, and Julian Juergensmeyer, *A Guide to Impact Fees and Housing Affordability* (2008); Arthur Nelson, James Nicholas, and Julian Juergensmeyer, “Critical Elements of Development Impact-Fee Programs,” *Journal of Urban Planning and Development* vol. 116 (1990), pp. 34-47.

upon the foundation stones of past truths, which are often more interesting than the myth itself.

As a boy Julian was raised in a small Appalachian town in the coal mining area of southern West Virginia where any purchase of positive law was likely seconded to common custom and decency.<sup>4</sup> For university and subsequent legal training, he migrated over the mountain range to Durham, North Carolina, and attended Duke University.<sup>5</sup> Following a few years of legal practice, Julian entered the legal academy in Indiana, but soon embarked on a series of foreign escapades that shaped much of the rest of his professional career. Julian continued his legal training and research in France in the late 1960s. In the early 1970s, mimicking Marco Polo, Julian served an emperor, albeit on a different continent.<sup>6</sup> Haile Selassie's ambitious plans to modernize Ethiopia in the early 1970s included Juergensmeyer, who helped refashion Ethiopian environmental and water codes.<sup>7</sup> Julian became fascinated with Ethiopian culture—the veritable museum of centuries-old Coptic Christian manuscript art residing on the walls of his home standing as a mute, colorful, symbolic witness to the incredible rich and complex Christian culture that flourished in the horn of Africa for centuries.<sup>8</sup> Revolution in Ethiopia forced Julian to cut short his stay in Africa and return to the United States, but not before spending a memorable journey through what was then Rhodesia and 24 hours in a jail in apartheid South Africa with his eldest son, Conrad, a toddler. These formative years in Europe and Africa instilled in Julian a legal *wanderlust* that has yet to be satiated. He has served as a visiting professor on five continents

---

<sup>4</sup> I remember fondly one occasion in which Julian and I were eating in a restaurant together. As we washed our hands in the bathroom after a delicious steak dinner, Julian was delighted to find that the restaurant was using 20-Mule Team Borax for hand cleanser. He mentioned using this scouring powder as a boy in West Virginia and marveled at its exfoliating powers. As a novice to this grainy white powder, I felt like my hands had been gnawed by tiny bits of sandpaper. But I have to admit, they were clean.

<sup>5</sup> It is one of life's delicious ironies that Julian's daughter, Krissy, decided to attend graduate school at Duke's archrival, the University of North Carolina in Chapel Hill—or “Chapel Hole” in Julian's parlance.

<sup>6</sup> Marco Polo served in the courts of the great Kublai Khan in the 13<sup>th</sup> century—See Marco Polo, *The Travels (Description of the World)*, revised translation Thomas Wright (1996); For contemporaries of Marco Polo who also visited the Mongol Empire: William of Rubruck, John de Carpini, Friar Odoric, and Rabbi Benjamin Tudela see *Contemporaries of Marco Polo*, ed. Manuel Komroff (1989).

<sup>7</sup> Haile Selassie is not the emperor's given name but a moniker meaning “Might of the Trinity”.

<sup>8</sup> For a cursory overview of how medieval Coptic Christian legal codes from Egypt influenced the Ethiopian legal system see Ryan Rowberry and John Khalil, “A Brief History of Coptic Personal Status Law,” 3 *Berkeley J. Middle E. & Islamic L.* 81 (2010), pp. 104-117.

and spearheaded the exchange of law faculty and students between several countries for decades.<sup>9</sup>

Throughout his 55-year academic legal career, Julian has been a vociferous champion for capturing value—the value of sound land use policies; the value of development rights and permissions; the value of preserving the environment; the value of interdisciplinary scholarship between urban planners and lawyers; the value of comparative legal study leading to cross-cultural friendships. Yet, during Julian’s career, values within the law and around the world have changed dramatically.<sup>10</sup> Rhodesia no longer exists. Ethiopia has no emperor, and apartheid has crumbled. Communist-era Poland is entering its third decade as a democracy. And for the first time in recorded history, the majority of humans on earth have forsaken the farm for the city.<sup>11</sup> It seems fitting, then, during this time of global pandemic, when urban life has slowed and the world takes deep breaths, to spend a few moments reflecting on what values historic resources hold for city dwellers now and in the future.<sup>12</sup>

---

<sup>9</sup> Julian has served as a Visiting Professor in the following countries: United States, Brazil, France, Turkey, Denmark, Poland, Canada, Cuba, Ethiopia, Belgium, Spain, and Germany.

<sup>10</sup> Only within the last decade have ‘values-based’ planning methodologies become legal drivers for preservation actions in cities around the globe. Furthermore, under Julian’s leadership, GSU Law’s Center for the Comparative Study of Metropolitan Growth recently assisted the United Nations compile urban case studies on the effectiveness of planning law in several countries. See United Nations Human Settlement Program (UN Habitat), *Effectiveness of Planning Law in Land-Rich Developed Countries*, Urban Legal Case Studies, vol. 10, ed. Samuel Njuguna, (2020).

<sup>11</sup> See National Science Foundation, Advisory Committee for Environmental Research and Education, *Sustainable Urban Systems: Articulating a Long-term Convergence Research Agenda*, (Jan. 2018), p. 8. Available at: <https://www.nsf.gov/ere/ereweb/ac-ere/sustainable-urban-systems.pdf>

<sup>12</sup> Historic resources, often called ‘cultural heritage’ may have several meanings. The United Nations Educational, Scientific and Cultural Organization (UNESCO) separates historic resources into two main categories: tangible cultural heritage (e.g. paintings, monuments, and archaeological sites) and intangible cultural heritage (e.g. rituals and performing arts). *Tangible Cultural Heritage*, UNESCO, <https://en.unesco.org/fieldoffice/cairo/culture> (last visited June 30, 2020) (“Cultural heritage is the legacy of physical artefacts and intangible attributes of a group or society that are inherited from past generations, maintained in the present and bestowed for the benefit of future generations.”). From an even wider perspective, cultural heritage may be viewed as a concept that encompasses the history and tradition of places, societies, and civilizations, all relating to a group’s culture, or “set of practices and behaviors defined by customs, habits, language, and geography.” A. David Napier, “Culture and Health,” *The Lancet*, vol. 384, Issue 9954 (Nov. 1, 2014), pp. 1607, 1609. Available at [http://dx.doi.org/10.1016/S0140-6736\(14\)61603-2](http://dx.doi.org/10.1016/S0140-6736(14)61603-2).

## I. URBAN CRADLES OF MODERN LAW

From a legal history perspective, cities provide the perfect prism through which to view the value of our shared legal past. Cities have long spurred legal innovation and exchange. Indeed, we owe the incubation of our modern legal systems to cities.

Like many good stories, this one begins with the re-discovery of ancient knowledge. In the late eleventh century, an Italian liberal arts scholar in Bologna named Irnerius who specialized in Latin legal texts came across a battered, intriguing manuscript, probably in a monastery.<sup>13</sup> This manuscript contained a partial copy of the *Digest*, an enormous compilation of highly sophisticated Roman Law jurisprudence assembled under the command of Emperor Justinian in Constantinople in 534 A.D.<sup>14</sup> The *Digest* was not a systematically arranged treatise of legal principles. Rather, it consisted of “the opinions of Roman jurists concerning thousands of legal propositions” relating to all branches of law aside from the law of nations.<sup>15</sup> Irnerius began to write commentaries and glosses on the *Digest* and set himself up as a teacher of law in Bologna around 1080.<sup>16</sup> Three additional Roman law texts compiled under Justinian were also quickly re-discovered. These four books—*Digest*, *Code*, *Institutes*, and the *Novels*—have come to form the *Corpus Juris Civilis*, the fundamental texts of the Civil Law legal systems present in the world today.

Eager to learn about these newly resuscitated Roman legal concepts, students from all over Europe flocked to Bologna to copy, gloss, analyze, and synthesize legal texts in scholastic fashion. By 1140, Bologna had become “Europe’s first and foremost center of legal studies,”<sup>17</sup> and its claim as Europe’s undisputed ‘legal studies nucleus’ was strengthened in the mid-twelfth century by the emergence of canon law as an autonomous discipline separated from theology. The impetus for the study of canon law as an independent discipline was also based on a text, the *Concordia Discordantium Canonum* (usually called the *Decretum Gratiani*) because its creation is ascribed to an ambitious Italian cleric named Gratian.<sup>18</sup> The *Decretum*, likely inspired and influenced by the Roman law revival happening in Bologna, is itself a gigantic collection of texts related to the

---

<sup>13</sup> See James Brundage, *The Medieval Origins of the Legal Profession* (2008) pp. 81-82; Harold Berman, *Law and Revolution: The Formation of the Western Legal Tradition* (1983) pp. 121-122.

<sup>14</sup> See *Id.*

<sup>15</sup> See Berman, *Law and Revolution*, p. 128.

<sup>16</sup> Brundage, *The Medieval Origins*, p. 82.

<sup>17</sup> *Id.* at 83.

<sup>18</sup> *Id.* at 96-97.

governance of Latin Christendom—church councils, penitentials, papal letters, Roman law edicts, Germanic capitularies, writings of church fathers, and papal letters.<sup>19</sup> These disparate texts were analyzed and systematized in a way that aims to “resolve inconsistent canons that were, so to speak, out of tune with one another and to bring them back into melodious harmony.”<sup>20</sup> The *Decretum’s* novel, scholastic approach to structuring and synthesizing Latin Christendom’s voluminous body of rules thus became the perfect teacher’s handbook. We find a cleric, Paucapalea, teaching canon law in Bologna in the middle of the twelfth century.<sup>21</sup>

While Bologna was the undoubted epicenter of Roman and canon law, the city’s legal influence rapidly spread outward to other urban locations. In wider twelfth-century Italy we find schools of Roman and canon law in Ravenna, Mantua, Piacenza, and Pavia. In nearby France, studies of the “two laws” were being held in Montpellier, Clermont, and Paris in the 1160s.<sup>22</sup> And Vacarius, a twelfth-century Lombard jurist who had studied at Bologna, taught Roman and canon law in England in the 1160s, perhaps at Oxford or Northampton.<sup>23</sup> Transalpine schools of canon law can be found in Cologne and Mainz also by the 1160s.<sup>24</sup>

However, the reception and transmission of Roman law in Germany did not proceed apace with that of canon law. One possible reason why Roman law was not received in Germany until the fifteenth century also revolves around a city: the cathedral city of Magdeburg. Located in the German state of Saxony-Anhalt today, Magdeburg was one of the most important cities in medieval Saxony. Early thirteenth century Saxony included many borderlands that were being settled and cleared by various Germanic tribes, including the land around the Lippe River (near Detmold) from where Julian’s ancestors emigrated to the United States in the nineteenth century.<sup>25</sup> Medieval Magdeburg was the center for traditional Saxon

---

<sup>19</sup> *Id.* at 97.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* at 106.

<sup>22</sup> *Id.* at 90-92.

<sup>23</sup> *Id.* at 92-94. In a delightful case from 1359, three rogue friars from the Church of the Holy Cross near the Tower of London stole several books, along with other items, from their mother church. One of these pilfered books was a copy of Justinian’s *Institutes*. See, *Memorials of London and London Life*, pp. 303-304.

<sup>24</sup> *Id.* at 109-110.

<sup>25</sup> See *The Saxon Mirror: A Sachsenspiegel of the Fourteenth Century*, trans. Maria Dobozy (1999) p. 2; The rise of the Princely House of Lippe (named after the river that flowed through the land) occurred at around the same time as Eike’s *Sachsenspiegel*, see Joseph Kleine, *Das Haus Lippe: Von den Ursprüngen bis zur Gegenwart*, Deutsche Fürstenhäuser, Heft 40 (2012), pp. 6-9.

jurisprudence, being “well known for its college of *Schöffen* [well-respected lay judges; doomsmen], to whose decisions many judges resorted in difficult cases.”<sup>26</sup> Shortly after 1220 Count Hoyer of Falkenstein commissioned a legally-schooled layman, Eike von Repgow, to compile a *custumal* (a document containing the customs and inherited legal rules of a society) in his vernacular German rather than in Latin, which was typical for contemporary writings.

The precise reasons for the Count’s highly unusual request for a Germanic *custumal* are obscure.<sup>27</sup> But it is clear that “the purpose of his [Eike’s] vernacular project” was to be used as “a reference tool for everyone.”<sup>28</sup> The Count and Eike may have felt that traditional oral practices and memory were no longer sufficient to train doomsmen, or that Germanic custom was changing too rapidly and needed to be preserved in script.<sup>29</sup> Or maybe Magdeburg’s location near clearance lands that were attracting colonists from different German-speaking regions, each with their own customs and dialect, inspired the Count to provide some sort of practical, vernacular “handbook” for the Magdeburg *Schöffen* to rely on as new, multicultural, multilingual settlements spread in Saxon lands.<sup>30</sup>

---

<sup>26</sup> See *The Saxon Mirror*, p. 2.

<sup>27</sup> The rediscovery of Justinian’s codifications and compilations of Roman law as well as the creation of Gratian’s *Decretum* may have helped inspire a late twelfth century movement toward recording customary laws in Latin. Around 1180 Ralph Fitz-Neal wrote his *Dialogue of the Exchequer* (*Dialogus de Scaccario*), a didactic, practical administrative manual describing the court-like functions of England’s financial office, The Exchequer. And in 1187 we find the *Treatise on the Laws and Customs of England* (*Tractatus de Legibus et Consuetudinibus Regni Angliae*) erroneously ascribed to Ranulph de Glanville, a justice in the twelfth-century royal courts in England. One truly remarkable feature of the *Sachsenspiegel* is that “Eike’s lawbook marks the first such instructional prose text to appear in the vernacular.” *The Saxon Mirror*, p. 7. By comparison, the earliest legal text in Middle English dates from circa 1300, but it is a translation of statutes and laws originally written in Latin and Anglo-Norman. This statute book was probably created for Godstow Nunnery, roughly a 10 minute-walk across Port Meadow from Oxford. See, *A Middle English Statute Book: Part I Statuta Antiqua*, ed. Claire Fennell, Middle English Texts vol. 44 (2011), pp. xi-xxii. One the earliest French vernacular law compilations dates from around 1270 and contains customary law texts from Paris, Tours, and Orleans, which had been influenced somewhat by Roman and canon law. See, *The Etablissements de Saint Louis*, trans. F.R.P. Akehurst (1996), pp. xlii-xliv.

<sup>28</sup> *The Saxon Mirror*, p. 3.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at 16, 24. “When Eike wrote the *Sachsenspiegel*, Saxony east of the Elbe River experienced unique conditions because it was still being actively colonized. Colonization created new rules and privileges concerning the peasants’ ownership and inheritance of real property and the size of their landholdings. The purpose of these advantages was to entice settlers from the western German territories to the new clearance lands.”

In any event, unlike Roman law's reliance on abstract conceptual frameworks, codes, and cases, Eike's Germanic customary, the *Sachsenspiegel* (Saxon Mirror), is a "theoretical and a practical guide primarily compiled from the actual [Germanic] practice of law."<sup>31</sup> That is, it outlines and describes legal procedures that were "experienced as formal spoken language accompanied by prescribed gesture."<sup>32</sup> Remarkably, these words and legal gestures (along with contemporary clothing, reliquaries, and court benches) can be viewed together through ingenious picture glosses illuminating the entire work.<sup>33</sup> The *Sachsenspiegel* thus offers in word and illustration tantalizing reflections of two broad types of lived Germanic customary practice: (1) *Landrecht* (territorial or rural law) that applies to rural, peasant life; and (2) *Lehnrecht* (feudal law) that "delineates the legal customs governing relations and feudal land tenure among the nobility in Saxony."<sup>34</sup> Eike's *Sachsenspiegel*, a broad, basic, practical "reference tool" of Germanic customary law, became a "flexible guide that [other Germanic areas] could adapt to their own needs."<sup>35</sup>

By any measure, the transmission and reception of the *Sachsenspiegel* was an astounding success, particularly in cities. By 1290 (within 60 years of its creation and use in Magdeburg) the *Sachsenspiegel* was being modified to suit local legal customs in Cologne, Hamburg, Breslau (Wrocław), Krakow, Marienburg (Malbork), and Augsburg.<sup>36</sup> Such swift embrace throughout German-speaking cities and the surrounding hinterlands that supported them "ensured that all Germans could participate in the entire judicial process because they guaranteed

---

<sup>31</sup> *Id.* at 7. Rather than using strictly legal rules or concepts, the *Sachsenspiegel* rests "upon the interrelatedness of language, religion, literature, morality, and aesthetics" as it recreates the structure of medieval Saxon society." *Id.* at 12.

<sup>32</sup> *Id.* at 12.

<sup>33</sup> *Id.* at 32. Picture glosses seem to begin appearing in *Sachsenspiegel* texts around 1290. Only four illuminated *Sachsenspiegel* codices are extant, each of which is named after the city in which it resides—Oldenburg, Heidelberg, Wolfenbüttel, and Dresden. All four of these illuminated codices have been digitized and are available online. Wolfenbüttel is online at : <http://www.sachsenspiegel-online.de/cms/>. The Dresden *Sachsenspiegel* is online at: <https://digital.slub-dresden.de/werkansicht/df/6439/1/>; Heidelberg's digitized copy of its illuminated *Sachsenspiegel* is available at: <https://digi.ub.uni-heidelberg.de/diglit/cpg164>; Palatino press has also created a printed facsimile edition of the Heidelberg *Sachsenspiegel* complete with outstanding picture glosses, see *The Heidelberg Sachsenspiegel: A Facsimile of the Complete Manuscript* (2017); The Oldenburg *Sachsenspiegel* is online at: <https://digital.lb-oldenburg.de/ihd/id/192428>.

<sup>34</sup> *The Saxon Mirror*, p. 6.

<sup>35</sup> *Id.* at 12.

<sup>36</sup> *Id.* at 30.



the use of vernacular in the courts.”<sup>37</sup> Indeed, the linguistic impact of the *Sachsenspiegel* remains vibrant, as Germans “still use a German-based vocabulary to conduct their legal affairs, whereas English speakers must resort to French lexical stock” which is, of course, a Latin derivative.<sup>38</sup>

Like their Germanic cousins, English cities were critical to the creation and propagation of their own brand of customary law—a legal system we call the Common Law. One of the finest indications of this is the opening lines of Richard Fitz Neal’s groundbreaking administrative treatise written circa 1180, *The Dialogue of the Exchequer (Dialogus de Scaccario)*.<sup>39</sup> In his opening lines, Fitz-Neal, King Henry II’s royal treasurer, relates that he was sitting at a tower window next to the Thames when a man engaged him in conversation about the customs and laws of the Exchequer, England’s royal financial department.<sup>40</sup> The tower in which Richard was perched was likely the Tower of London, an imposing, white, tower-fortress started by William the Conqueror nearly a century before, as sheriffs sometimes rendered their annual shrieval accounts here. Fitz-Neals’ tower may also have been associated with the royal palace at Westminster, where county financial accounts were also occasionally audited.<sup>41</sup> In either scenario, the backdrop for Richard’s 12<sup>th</sup> century ‘How-to’ guide to Exchequer accounting practices and procedures is London—England’s greatest city. Indeed, the sophisticated and idiosyncratic legal procedures outlined in the *Dialogus* reveal a highly-centralized financial system predicated on the control and regulation of a kingdom through sheriffs who were based in urban locations in each shire of the realm.<sup>42</sup>

---

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> Emilie Amt and S.D. Church (eds) *Dialogus de Scaccario and Constitutio Domus Regis* [The Dialogue of the Exchequer and the Establishment of the Royal Household (2007)]; Richard Fitz-Neal was the Treasurer under King Henry II and later became Bishop of London.

<sup>40</sup> *Id.* at 3.

<sup>41</sup> William II (1087-1100), often called William Rufus because of his red hair, built Westminster Hall, the oldest surviving piece of the Anglo-Norman royal palace complex at Westminster. Today, Westminster Hall is surrounded by the Houses of Parliament, and anyone can walk through it and marvel at the amazing medieval hammer-beam roof and imagine the courts of England sitting here as they did for centuries.

<sup>42</sup> Each urban area in a shire, usually called a borough, bought the privilege to run their own legal affairs from the king. Beginning in the late twelfth and early thirteenth centuries we find many English boroughs recording their own peculiar legal customs and procedures. See Mary Bateson, *Borough Customs*, vol. 1, Selden Society vol. 18 (1904); Mary Bateson, *Borough Customs*, vol. 2, Selden Society vol. 21 (1906).

London is also the backdrop for the Common Law's first primer: *Glanvill*.<sup>43</sup> The *Treatise on the Laws and Customs of the Realm of England Commonly Called Glanvill* is exactly what its name claims: a treatise on the laws and customs of the realm of England written sometime between 1187-1189 by a man (or men) with vast legal expertise in the king's courts at or near London.<sup>44</sup> At its essence, *Glanvill* is a practical discourse on the forms of procedure in the king's court.<sup>45</sup> This "working out of the interrelationship and consequences of legal norms" within a secular legal context in late twelfth century England is one of its great achievements.<sup>46</sup> This emphasis on procedure—the practice of law—is similar in many ways to its later cousin, the *Sachsenspiegel*, as it offers a reflection of customary secular law largely devoid of Roman and canon law influence.

*Glanvill's* younger but more important sibling, however, attempted to marry the customary practices of the Common Law Courts near London with the juristic, abstract typologies used in Roman and canon law at Bologna. *Bracton: De Legibus et Consuetudinibus Angliae* [Bracton: On the Laws and Customs of England], was authored by a series of royal judges in the early-to-middle thirteenth century, one of whom was named Henry de Bratton.<sup>47</sup> Like the *Decretum* or *Digest*, *Bracton* is an immense collection of cases (*causae*) and judgements arranged according to Roman law classifications.<sup>48</sup> The authors of *Bracton*, like the decretalists throughout Latin Christendom, sought to harmonize conflicting judgements. When

---

<sup>43</sup> *The Treatise on the Laws and Customs of the Realm of England Commonly Called Glanvill (Tractatus De Legibus et Consuetudinibus Regni Anglie qui Glanvilla Vocatur)* (ed. G.D.G. Hall) (2002) (reprint edition).

<sup>44</sup> The work is commonly called *Glanvill* after Ranulf de Glanvill, Justiciar to Henry II in the 1180s. But its author(s) is more than likely a royal clerk(s) who attended court during the 1180s and 1190s.

<sup>45</sup> John Hudson, *The Oxford History of the Laws of England: C. 900-1216*, ed. J.H. Baker, Vol. II (2012) p. 872. The organizing principle of *Glanvill* seems to be the royal writs that initiated a legal action in the royal courts.

<sup>46</sup> See John Hudson, 'From the *Leges* to *Glanvill*: Legal Expertise and Legal Reasoning', in *English Law Before Magna Carta*, eds. Stefan Jurasinski, Lisi Oliver and Andrew Rabin (2010), 221-249.

<sup>47</sup> For a thorough analysis of the marked influence of Roman and canon law on *Bracton* see Thomas McSweeney, *Priests of the Law: Roman Law and the Making of the Common Law's First Professionals* (Oxford) (2019). An online version of *Bracton* is available at: <http://amesfoundation.law.harvard.edu/Bracton/>

<sup>48</sup> *Bracton* drew from an immense collection of 2,000 cases decided in the king's courts between 1217 and 1240. This collection was dubbed by the great English legal Historian, F. W. Maitland, as *Bracton's Note Book*. The *Note Book* fills 574 manuscript pages, and the modern edition of this text runs to 1,442 pages. *Bracton* contains references to over 500 of these cases from the *Note Book*. See McSweeney, *Priests of the Law*, p. 146, 165.

one reads *Bracton*, one finds that references from the English royal courts and the *Decretum* “sit comfortably, side-by-side, with citations to the opinions of classical Roman jurists found in the *Digest*.”<sup>49</sup> These English judges wanted to be known as jurists like their Roman and canon law brethren at Bologna and Paris. They “wanted to show that [English law] was a constituent part of the universal law [Roman and canon law] of the Latin West.”<sup>50</sup> The problem, however, was that customary English legal concepts and procedure, particularly law related to holding land (possession vs. ownership) did not fit comfortably into abstract Romano-canonical legal concepts.<sup>51</sup> Nevertheless, the achievement of these medieval English royal judges in London is remarkable. *Bracton* was copied extensively and served as the foundation text for all later Common Law treatises. Many of the lawyers involved in the founding of the United States of America, such as Thomas Jefferson and John Adams, were steeped in *Bracton*.<sup>52</sup> But perhaps most importantly, *Bracton* established that Common Law judges are the law’s “living oracles” rather than the academic jurists of Civil law systems.<sup>53</sup>

Whether its London or Bologna, Constantinople or Magdeburg, cities formed the cradle for many of the world’s modern legal systems. Where disparate races, creeds, colors, languages, religions, and cultures come together, law surfaces. Cities provided this legal incubator at the advent of the second millennium, and they will continue to cradle legal change at the beginning of the third. The COVID-19 pandemic that has shuttered cities worldwide along with the global urban protests against racism in the wake of George Floyd’s horrific killing testify that cities play a critical role in legal change now and in the future.

---

<sup>49</sup> *Id.* at 178.

<sup>50</sup> *Id.* at 240.

<sup>51</sup> *Id.* at 114-135.

<sup>52</sup> For Jefferson’s knowledge of *Bracton* see *The Writings of Thomas Jefferson*, vol. VI, ed. H.A. Washington, (1861) pp. 225-230; For Adams’ knowledge of *Bracton* see John Adams, *The Works of John Adams, Second President of the United States: with a Life of the Author, Notes and Illustrations*, by His Grandson Charles Francis Adams (1856) Vol. IX, Letter to Jonathan Mason 21 August 1776. The papers of John Adams may be searched online at: <https://oll.libertyfund.org/titles/adams-the-works-of-john-adams-vol-9-letters-and-state-papers-1799-1811>.

<sup>53</sup> McSweeney, *Priests of the Law*, p. 243.

## II. HISTORIC RESOURCES AS URBAN ECONOMIC ENGINES

Cities did not somehow emerge fully formed; they developed gradually, usually in oscillating, uneven lurches of development over time.<sup>54</sup> Currently, over half of the world's population currently lives in urban areas, and this number is increasing exponentially.<sup>55</sup> By the year 2050, more than two-thirds of the world's population (66–70%) will live in cities.<sup>56</sup> To place the importance of cities to a nation's economic health in context, roughly 80% of the U.S. population currently lives in cities, and these urban areas generate 85% of the national GDP.<sup>57</sup> Most major global cities are located near bodies of water, and in 2007 an estimated 634 million people worldwide lived in areas less than thirty feet above sea level,<sup>58</sup> with nearly half of the U.S. population (44.8% or ~160 million people) residing in coastal regions dominated by large cities.<sup>59</sup>

Exacerbated by climate change, however, sea levels are rising rapidly.<sup>60</sup> This poses a significant, immediate threat to coastal or riverine cities and the historic resources (e.g. paintings, monuments, archaeological sites) that makes

---

<sup>54</sup>An excellent introductory survey on the oscillating development of cities and towns in the United Kingdom is Michael Aston, *Interpreting the Landscape: Landscape Archaeology and Local History* (1985).

<sup>55</sup> See National Science Foundation, *Sustainable Urban Systems*, p. 8.

<sup>56</sup> *Id.* at 4, 8.; See also UNESCO, *Historic Urban Landscapes Guidebook* (2016) p. 4. Available at: <http://historicurbanlandscape.com/themes/196/userfiles/download/2016/6/7/wirey5prpznidqx.pdf>;

<sup>57</sup> See National Science Foundation, *Sustainable Urban Systems*, p. 8.

<sup>58</sup> Nell Greenfieldboyce, *Study: 634 Million People at Risk from Rising Seas*, NPR (Mar. 28, 2007), available at <https://www.npr.org/templates/story/story.php?storyId=9162438..>

<sup>59</sup> U.S. Census Bureau, *Population Rising in Coastal Counties—Data Key to Hurricane Response*, U.S. Census Bureau, (Sept. 2017), available at <https://www.census.gov/library/stories/2017/08/hurricane-season.html>.

<sup>60</sup> R.S. Nerem et al, "Climate-change-driven accelerated sea-level rise detected in the altimeter era," *Proceedings of the National Academy of Sciences of the United States of America* (Feb. 12, 2018), available at <https://www.pnas.org/content/115/9/2022>; Brandon Miller, *Satellite observations show sea levels rising, and climate change is accelerating it*, CNN (Mar. 13, 2018), available at <https://www.cnn.com/2018/02/12/world/sea-level-rise-accelerating/index.html>; See also Michael Kimmelman, *The Dutch Have Solutions to Rising Seas. The World is Watching.*, N.Y. TIMES (June 15, 2017), available at <https://www.nytimes.com/interactive/2017/06/15/world/europe/climate-change-rotterdam.html>.

them unique.<sup>61</sup> The inundation of historic New Orleans after Hurricane Katrina in 2005, for instance, left the city uninhabitable for months.<sup>62</sup> At that time, Hurricane Katrina was the third most expensive natural disaster in modern world history, and the governor of the Bank of England, Mark Carney, presciently warned that climate change would have a “catastrophic impact” on the world’s financial systems unless banks and insurers realistically assessed and disclosed their vulnerabilities.<sup>63</sup> Of course, Hurricane Katrina is merely one example of the rising incidence of natural disasters affecting historic cities. It is impossible to forget the mass casualties and widespread devastation of historic coastal communities in southeast Asian nations caused by the 2004 tsunami in the Indian Ocean, or the palpable fear engendered by the 2011 tsunami that crippled and exposed nuclear reactors in the ancient city of Fukushima, Japan.

Historic resources are a vital part of the economic and physical infrastructure of every city. Indeed, a simple walk around any city reminds us that urban areas are vibrant, living-landscape palimpsests of our past—pockets of which have been preserved, rehabilitated, or revitalized. Cultural heritage comprises a significant, core aspect of all cities, and historic preservation’s “matrix of laws, incentives, [and] policies . . . has become a fundamental tool for strengthening communities.”<sup>64</sup> Research into the economic benefits of cultural heritage has shown that protecting historic resources directly benefits urban economic growth and neighborhood stability.<sup>65</sup> The United States Department of the Interior—which oversees management and conservation of federal lands and natural resources (including historic resources)—has implemented a Federal Historic Preservation Tax Incentives (HTC) program to encourage restoration, rehabilitation, and re-use of historic buildings.<sup>66</sup> This program provides: (1) a 20% income tax credit

---

<sup>61</sup> See, Ryan Rowberry, “Avoiding Atlantis: Protecting Urban Cultural Heritage from Disaster,” in *How Cities Will Save the World*, Ray Brescia & John Marshall eds. (2016), pp. 49-50. “...[L]ike many residents of modern coastal cities, Alexandrians believed their city to be immune from the natural catastrophes that ultimately consumed it.”)

<sup>62</sup> John Travis Marshall and Ryan Max Rowberry, *Urban Wreckage and Resiliency: Articulating a Practical Framework for Preserving, Reconstructing, and Building Cities*, Idaho Law Review, vol. 50 (2014), p. 50.

<sup>63</sup> Richard Partington, “Mark Carney warns of climate change threat to financial system,” *The Guardian* (Apr. 6, 2018).

<sup>64</sup> Donovan R. Rypkema et al., *Measuring Economic Impacts of Historic Preservation: A Report to the Advisory Council on Historic Preservation by PlaceEconomics* (2d ed. 2013).

<sup>65</sup> See e.g., Brian Mikelbank, “Residential Historic Preservation and Neighborhood Stability,” *Journal of Urban Regeneration and Renewal*, vol. 11 (2018), p. 371.

<sup>66</sup> U.S. National Park Service, *Tax Incentives for Preserving Historic Properties*, available at <https://www.nps.gov/tps/tax-incentives.htm>.

available for rehabilitating historic, income-producing buildings, (2) a 10% tax credit for rehabilitating non-historic, non-residential buildings placed in service before 1936, and (3) tax benefits for historic preservation easements.<sup>67</sup> Since 1978, the HTC program has created more than 2.7 million jobs, produced more than \$167 billion in income, generated over \$45 billion in taxes, and has preserved nearly 44,000 historic properties.<sup>68</sup> In 2012, the federal historic preservation tax credit accounted for approximately 58,000 new jobs, generated \$3.4 billion in gross domestic product (GDP), and produced more than \$2.5 billion in income.<sup>69</sup> Many of the 744 certified rehabilitated buildings that leveraged this credit in 2012 were “abandoned or underutilized, and all were in need of substantial rehabilitation to return them to, or for their continued, economic viability.”<sup>70</sup> These figures continue to increase. In 2016 alone, the National Park Service certified 1,039 completed historic rehabilitation projects, representing \$5.85 billion in estimated rehabilitation costs that qualified for the 20% federal tax credit.<sup>71</sup> In 2016, this HTC program also created more than 100,000 new jobs and generated more than \$4 million in income.<sup>72</sup> And in 2018, the HTC program generated \$7.7 billion in rehabilitation investment—75% of which was “located in economically distressed areas.”<sup>73</sup> Historic preservation, therefore, can be a tremendously powerful tool to assist in cities’ economic revitalization and recovery as they reopen following the COVID-19 pandemic.

In addition to the federal government, many states have developed historic preservation tax incentives and programs that in many ways mirror the federal HTC program.<sup>74</sup> Research regarding the economic benefits of historic resource

---

<sup>67</sup> *Id.*; See also, Sara Bronin and Ryan Rowberry, *Historic Preservation Law in a Nutshell* (2nd ed. 2018) p. 441.

<sup>68</sup> U.S. National Park Service, *Annual Report on the Economic Impact of the Federal Historic Tax Credit for FY 2018* (2019), p. 1; available at <https://www.nps.gov/tps/tax-incentives/taxdocs/economic-impact-2018.pdf>

<sup>69</sup> U.S. National Park Service, *Annual Report on the Economic Impact of the Federal Historic Tax Credit for FY 2012* (2013), pp. 1, 3-5.

<sup>70</sup> *Id.* at 1; Marshall and Rowberry, “*Articulating a Framework*,” p. 72.

<sup>71</sup> U.S. National Park Service, *Annual Report on the Economic Impact of the Federal Historic Tax Credit for FY 2016* (2017) p. 1.

<sup>72</sup> *Id.* at 6.

<sup>73</sup> U.S. National Park Service, *Annual Report on the Economic Impact of the Federal Historic Tax Credit for FY 2018* (2019), p. 1; available at <https://www.nps.gov/tps/tax-incentives/taxdocs/economic-impact-2018.pdf>

<sup>74</sup> These states include Arkansas, Colorado, Connecticut, Delaware, Georgia, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, Montana, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma,

preservation in states and localities also reveals that it is a potent economic driver. In Georgia, for example, heritage tourism sustains 117,000 jobs, generates roughly \$204 million in wages, and levies \$210 million in local taxes on an annual basis.<sup>75</sup> For the decade 2000–2010, the rehabilitation of historic resources in Georgia (usually buildings) resulted in 10,168 local jobs and over \$420 million in income for Georgia workers and proprietors.<sup>76</sup> Analyses of the economic impacts of historic resource preservation for Utah, Connecticut, Delaware, and Florida tell similar stories: historic resources create local jobs; revitalize older neighborhoods; enhance local sustainability measures; add needed affordable housing; boost local taxes; and provide a powerful and unique source of local revenue.<sup>77</sup> The preservation of historic resources, therefore, is a key artery in the economic heartbeat of nations, metropolises, cities, and communities.

### III. HISTORIC RESOURCES AND URBAN HEALTH

Like stalagmites, the characteristics of a culture—sensibilities, world-view, spirituality, language, myths and stories, literature, mores—accrete slowly. This incremental development of shared culture tethers generations past, present, and future with powerful bonds of “memory, continuity, and identity” that have far-reaching, positive effects on society, including urban populations.<sup>78</sup> Research is also beginning to show that, like healthy buildings, cultural heritage has a demonstrable, positive effect on public health.<sup>79</sup> Intergovernmental entities,

---

Pennsylvania, South Carolina, Utah, Vermont, Virginia, and West Virginia, and Illinois, which has an incentive program that is not statewide. See National Trust for Historic Preservation, *State Tax Credits for Historic Preservation* (2013), pp. 1, 4-9.

<sup>75</sup> See Donovan Rypkema and Caroline Cheong, *Good News in Tough Times: Historic Preservation and the Georgia Economy* (2010), p. 2.

<sup>76</sup> *Id.* at 4.

<sup>77</sup> See Donovan Rypkema et al., *Profits Through Preservation: The Economic Impact of Historic Preservation in Utah* (2013); Donovan Rypkema and Caroline Cheong, *Investment in Connecticut: The Economic Benefits of Historic Preservation* (2011); Donovan Rypkema and Caroline Cheong, *The Delaware Historic Preservation Tax Credit Program: Good for the Economy, Good for the Environment, Good for Delaware's Future* (2010); Timothy McClendon et al., *Economic Impacts of Historic Preservation in Florida: Update, 2010* (2010).

<sup>78</sup> Tom Mayes, *Why Do Old Places Matter? How Historic Places Affect our Identity—and our Wellbeing*, National Trust for Historic Preservation, (2014) pp. 1-2.

<sup>79</sup> Researchers at Harvard School for Public Health ([www.forhealth.org](http://www.forhealth.org)) have found that by doubling ventilation rates in buildings—costing employers an extra \$10-\$40 per person per year—the health benefits for each employee represented between “\$6,000--\$7,000 dollars per person per year, not including the co-benefits to health from diminished absenteeism and the avoidance of other so-called sick-building symptoms such as headaches and fatigue.” Oset Babür, “Cognitive

including UNESCO and the World Health Organization (WHO), realize there is a connection between culture and health<sup>80</sup> and have established a commission to research the best approach for identifying and measuring cultural factors that affect health and well-being.<sup>81</sup>

Historic resources provide urban dwellers with powerful psychological benefits. Anthropologists researching the connection between heritage and health, for example, have discovered that people’s memories are attached to places.<sup>82</sup> Researchers in the United Kingdom expanded on this concept and found that people experience wellbeing, contentment, and belonging more from places than from objects.<sup>83</sup>

“Using in-depth fMRI (Functional Magnetic Resonance Imaging), researchers examined how the brain reacts when presented with places of personal significance. They discovered that an area of our brain associated with positive emotion displayed a significantly larger response to such meaningful places than to common/everyday places—which indicates that meaningful places can generate feelings of wellbeing and joy.”<sup>84</sup>

The National Park Service has also found that National Heritage Areas, many of which include urban areas, “foster pride of place,” improve local quality of life, and

---

Benefits of Healthy Buildings,” *Harvard Magazine* (May–June 2017), pp. 1, 16; For a recent literature review of the positive impacts of historic resources on public health see, Paul Tacon and Sarah Baker, “New and Emerging Challenges to Heritage and Well-Being: A Critical Review,” *Heritage*, vol. 2 (2019), pp. 1300-1315.

<sup>80</sup> UNESCO, *WHO and UNESCO experts explore the linkages between culture, health and well-being*, (Mar. 19, 2017), available at <https://ich.unesco.org/en/news/who-and-unesco-experts-explore-the-linkages-between-culture-health-and-well-being-00224>.

<sup>81</sup> A. David Napier et. al., *Culture Matters: Using a Cultural Contexts of Health Approach to Enhance Policy-Making*, Policy Brief, No. 1, World Health Organization (2017).

<sup>82</sup> T.M. Luhrmann, “How Places Let Us Feel the Past”, *New York Times* (May 25, 2015) “...[I]t can be so hard to shed possessions, because each knickknack, every book, carries the trace of a particular where and when and with whom, and we can feel that when we toss the object, part of who we are goes with it.”

<sup>83</sup> See Caroline Davies, “Wellbeing enhanced more by places than objects, study finds” *The Guardian* (Oct. 12, 2017).

<sup>84</sup> Press Release, Univ. of Surrey, “Nostalgia of special places plays an important part to well-being,” (Oct. 23, 2017).



strengthen sense of place and community via engagement in conservation activities.<sup>85</sup> Moreover, the University of Florida as well as the City of San Antonio (Texas) Office of Historic Preservation recently concluded that preserving cultural and historic landmarks enhances residents' and tourists' lives by improving their sense of place and belonging.<sup>86</sup>

This 'sense of place' linked to historic resources has profound effects on mental health and the ability of people to cope effectively with change—traits that are desperately needed to rebound from the various economic and personal challenges of the COVID-19 pandemic. Cultural health research published in the United Kingdom's leading medical journal, *The Lancet*, found that when people feel mentally and emotionally connected to a place, it gives them a sense of identity and perspective which helps them view their problems and challenges within a broader social context.<sup>87</sup> Other pioneering British studies have found that adults and teenagers who live in areas with higher concentrations of historic buildings are more likely to have a stronger sense of place.<sup>88</sup> This reinforced sense of place increases self-esteem and identity, which in turn leads to stronger, more civically engaged communities.<sup>89</sup> Scholars have also discovered a positive, significant link between the historic environment and social capital—the bonds that connect groups and individuals.<sup>90</sup> Adults and teenagers who visited historic properties or cited to a local building or monument as being unique or special are likely to have a higher level of social capital, an important element in individual health as well as strong, resilient communities.<sup>91</sup> Similarly, research from the U.S. National Trust for

---

<sup>85</sup> U.S. National Park Service, *National Heritage Areas: Heritage Areas 101*, available at: <https://www.nps.gov/articles/what-is-a-national-heritage-area.htm>

<sup>86</sup> Press Release, "Historic Preservation Enhances Quality of Life of Floridians, UF Study Finds," University of Florida Levin College of Law (Dec. 20, 2006); *See also* Donovan Rypkema et. al., *Historic Preservation Essential to the Economy and Quality of Life in San Antonio* (2015).

<sup>87</sup> A. David Napier, "Culture and Health," *The Lancet*, vol. 384, Issue 9954 (Nov. 1, 2014), p. 1627. Available at [http://dx.doi.org/10.1016/S0140-6736\(14\)61603-2](http://dx.doi.org/10.1016/S0140-6736(14)61603-2).

<sup>88</sup> David Bradley et al., *Assessing the Importance and Value of Historic Buildings to Young People: Final Report to English Heritage* (2011) p. 51; David Bradley et al., *Sense of Place and Social Capital and the Historic Built Environment: Report of Research for English Heritage* (2009) p. 2.

<sup>89</sup> *See* Bradley et al, *Sense of Place*, p. 8; Andrew Power and Karen Smyth, "Heritage, Health, and Place: The Legacies of Local Community-Based Heritage Conservation on Social Wellbeing," *Health & Place*, vol. 39 (2016), pp. 160-167.

<sup>90</sup> Bradley et al., *Sense of Place*, at 3, 8; Power and Smyth, "Heritage, Health, and Place," at 165-166.

<sup>91</sup> *Id.*

Historic Preservation reveals that a strong emotional connection to personally-significant places can help children and adults relax, self-reflect, and re-evaluate stresses and concerns.<sup>92</sup> A raft of European case studies are further evidence that heritage preservation projects involving the public enhance social cohesion, inclusion, confidence, civil pride and tolerance, empower communities, and increase opportunities for learning and skill development, particularly when these projects are used to foster intercultural dialogue in communities.<sup>93</sup>

These findings about the importance of historic resources on the mental health and resiliency of individuals and communities echo the results of research in other fields that display the positive power of connecting present generations with the past. Psychologists are discovering that children who know about their family's history (good and bad) are more resilient because they can better moderate the effects of stress.<sup>94</sup> And U.S. military academies have learned that "teaching recruits about the history of their service increases their camaraderie and ability to bond more closely with their unit."<sup>95</sup>

Historic resources may also have a direct effect on the future of medicine. Antibiotic-resistant microbes are requiring scientists to constantly look for innovative treatments for ailments that have become immune to the current suite of antibiotics. A recent report by the United Nations states that "antibiotic-resistant infections claim at least 700,000 lives every year."<sup>96</sup> In 2017, a team of medievalists, microbiologists, medicinal chemists, parasitologists, pharmacists, and data scientists hypothesized that studying medical history and the methods employed by early medieval doctors to treat disease could help 're-learn' new treatments for long-standing ailments.<sup>97</sup> Using an Old English medicinal

---

<sup>92</sup> National Trust for Historic Preservation, *Places that Make us Research Report* (2011) pp. 1, 26.

<sup>93</sup> Cornelia Dümcke & Mikhail Gnedovsky, "The Social and Economic Value of Cultural Heritage: Literature Review," *European Expert Network on Culture* (July 2013) pp. 139-140. <http://www.interarts.net/descargas/interarts2557.pdf>.

<sup>94</sup> See, e.g., Tage Rai, *Mental Resilience and Narratives: Physiological Stress Responses to Media Coverage of 9/11 2*, Alfred P. Sloan Center for Myth and Ritual in American Life, Emory University, Working Paper No. 51, (2006); Amber Lazarus, *Relationships Among Indicators of Child and Family Resilience and Adjustment Following the September 11, 2001 Tragedy* Alfred P. Sloan Center for Myth and Ritual in American Life, Emory University, Working Paper No. 36, (2004) p. 12.

<sup>95</sup> Bruce Feiler, "The Stories That Bind Us," *New York Times* (Mar. 15, 2013).

<sup>96</sup> Franz Lidz, "Nature's Pharmacy," *Smithsonian Magazine*, vol. 50, no. 9 (Jan-Feb 2020), p. 46.

<sup>97</sup> See, Erin Connolly, "Medieval Medical Books Could Hold the Recipe for New Antibiotics," *The Conversation* (April 17, 2017) available at: <https://theconversation.com/medieval-medical-books-could-hold-the-recipe-for-new-antibiotics-74490>.

compendium known as *Bald's Leechbook* along with a 15<sup>th</sup>-century Middle English translation of the text, this team of researchers redeveloped a 1,000-year-old antibiotic salve.<sup>98</sup> This salve successfully killed strains of methicillin-resistant *Staphylococcus aureus* (MRSA), which were resistant to modern antibiotics.<sup>99</sup> Similarly, following the folk tales of a druidic 'healing soil' in northern Ireland, researchers from Swansea University in Wales discovered a "previously unknown strain of *Streptomyces*, a genus of phylum Actinobacteria, which has produced about two-thirds of all currently prescribed antibiotics."<sup>100</sup> This particular strain of *Streptomyces* disrupts "several disease-causing pathogens that have become impervious to conventional antibiotics"<sup>101</sup> Who knows what other antibiotics might be deciphered from ancient texts in museums and libraries or discovered by an urban university's willingness to engage in ethnopharmacology?

Critical medicinal breakthroughs might also be found in historic resources lying underneath the soil. Archaeological finds hold many clues that help medical researchers understand disease formation, conditions, transmission, and even possible cures. According to archaeologist Dr. Mark Spigelman of the University College London, we do not have *new* diseases today, "we have got variations of old diseases."<sup>102</sup> Thus, paleopathology—the study of traces of disease on human and animal remains—provides clues to combatting modern diseases such as syphilis, malaria, arthritis, influenza, and tuberculosis, which "needs an urban environment to survive."<sup>103</sup> An international team of archaeologists and researchers has been excavating and examining ancient bones from Jericho, one of the world's earliest cities. They discovered that ancient citizens of Jericho were widely ravaged by tuberculosis. By mapping the DNA of these inhabitants researchers hope to find

---

<sup>98</sup> *Id.*

<sup>99</sup> *Id.* Staph and MRSA infections cause multiple severe and chronic infections.

<sup>100</sup> Franz Lidz, "Nature's Pharmacy," pp. 45-46; Traditional oral memories of the Pueblo people are also helping archaeologists understand ancient American migration patterns, and possible disease transmission routes, that have long puzzled scientists. See, Krista Langlois, "Following Ancient Footsteps," *High Country News*, vol. 49, no. 17 (Oct. 2017).

<sup>101</sup> Franz Lidz, *Nature's Pharmacy*, p. 46.

<sup>102</sup> Hema K., "When History Helps Health," *MIMS* (6 September 2016) available at: <https://today.mims.com/medical-archaeology--when-history-helps-health>

<sup>103</sup> Robin McKie, "Archaeology: Ancient Bones Could Help Combat TB," *The Guardian* (12 July 2008) available at : <https://www.theguardian.com/science/2008/jul/13/medicalresearch.health>; For an excellent overview of how paleopathology works see, Olivier Dutour, "Paleopathology of Human Infections: Old Bones, Antique Books, Ancient and Modern Molecules," *Microbiology Spectrum*, Vol. 4, Issue 4 (2016). Available at: <https://www.asmscience.org/content/journal/microbiolspec/10.1128/microbiolspec.PoH-0014-2015>.

links to the “propensity for the disease” and in the process, “develop treatments for tuberculosis”<sup>104</sup> Furthermore, a Canadian archaeologist is using her knowledge of vitamin-D deficient bones from ancient European skeletons to develop a specialized type of dental X-ray that may help dentists spot vitamin D deficiencies in modern children—the root cause of rickets and other structural maladies.<sup>105</sup> Pioneering research on the preserved brain matter in an Iron Age skull may also be instrumental in helping doctors better understand the formation of debilitating brain plaques.<sup>106</sup> Particularly in cities, therefore, mindlessly bulldozing the past without analyzing the history first may mean burying a more healthy future.

Cities have also long played an important role in promoting travel that is beneficial to public health. In medieval Europe, millions of pilgrims would undertake physically rigorous journeys in search of spiritual, psychological, and physical aid.<sup>107</sup> Some of these culturally significant routes cross international boundaries, winding their way through various large and small urban settlements. The *Via Francigene* (the route from Canterbury to Rome)<sup>108</sup> and the *Camino de Santiago* (which snakes through northern Spain to St. James’ Basilica in Compostela) continue to thrive with walking and cycling pilgrims to this day.<sup>109</sup> Similar to our ancestors, who extolled the salubrious healing effects of pilgrimage in their memoirs,<sup>110</sup> studies of pilgrims walking the *Camino de Santiago* have found that participants have gained increased cardiovascular health, musculo-skeletal strength, caloric burn, sense of purpose, clarity, and mental resilience.<sup>111</sup>

---

<sup>104</sup> Robin McKie, “Archaeology”:

<https://www.theguardian.com/science/2008/jul/13/medicalresearch.health>.

<sup>105</sup> Megan Brickley, “How Cutting-Edge Archaeology Can Improve Public Health” *Sapiens* (18 July 2018) available at: <https://www.sapiens.org/archaeology/rickets-vitamin-d-deficiency/>

<sup>106</sup> Petzold A. et al, “Protein Aggregate Formation Permits Millennium-old Brain Preservation” *J. R. Soc. Interface* 17 (2019).

<sup>107</sup> One of the standard works on the many reasons that medieval people undertook pilgrimages is Jonathan Sumption, *Pilgrimage*, (1975).

<sup>108</sup> See <https://www.viefrancigene.org/en/>; For a list of the 38 cultural routes recognized by the Council of Europe see <https://www.coe.int/en/web/cultural-routes>.

<sup>109</sup> Pilgrims traversing the *Camino* traditionally ended their route at the Basilica of St. James in Compostela where it is rumored that St. James is buried. See <http://santiago-compostela.net/>

<sup>110</sup> Two memorable itineraries of European pilgrims visiting Jerusalem are, Theoderich’s *Guide to the Holy Land* written around 1172 and the journals of Friar Felix of Germany in 1480. For Theoderich see Theoderich, *Guide to the Holy Land*, trans. Aubrey Stewart, 2<sup>nd</sup> ed. (1986). For Friar Felix see, H.F.M. Prescott, *Friar Felix at Large: A 15<sup>th</sup> Century Pilgrimage to the Holy Land* (1950).

<sup>111</sup> See Rafael Rubio and Valeriano Sosa, “El Camino de Santiago in the Service of Cardiovascular Rehabilitation,” *Revista Espanola de Cardiologia* vol. 61, Issue 4 (April 2008), pp. 435-436;

Of course, not all historically significant routes need cross international boundaries. The same positive health effects from historic routes may be found within countries, and even within cities themselves.<sup>112</sup> Switzerland, for instance, has developed a highly sophisticated network of over 300 cultural and historic trails that interweave urban spaces and hinterlands.<sup>113</sup> On a grander geographic scale, under the National Trails System Act of 1968, the U.S. Congress has established 19 National Historic Trails across the United States.<sup>114</sup> All of these National Historic Trails are linked to urban areas. Some trails begin and end in cities, like the 54-mile Selma to Montgomery National Historic Trail that tells the story of the voting-rights march for African American citizens.<sup>115</sup> Others, like the Captain John Smith Chesapeake National Historic Water Trail, allow modern kayakers to retrace Smith's various boat journeys on the Chesapeake Bay as he interacted with pockets of urban dwelling Native Americans between 1607-1609.<sup>116</sup> Much longer in scope,

---

Harris, M. Brennan (2019) "The Physiological Effects of Walking Pilgrimage," *International Journal of Religious Tourism and Pilgrimage*: Vol. 7: Iss. 1, Article 9; Tatjana Schnell and Sarah Pali, "Pilgrimage Today: the Meaning-Making Potential of Ritual," *Mental Health, Religion & Culture*, vol. 16: Issue 9 (2013), pp. 887-902.

<sup>112</sup> Most cities in the United States contain wholly urban heritage trails or "walks" that guide the public around older sections of town while relating some of the city's history. The most famous urban heritage trail is probably that which winds along the National Mall and the numerous national monuments in Washington, D.C.

<sup>113</sup> See Bundesamt für Umwelt, Wald und Landschaft, *Bulletin IVS: Inventar Historischer Verkehrswege der Schweiz*, vol. 90/1 (1990); A. Antonetti, "Wanderwege und Historische Wege in der Schweiz, Memorandum to Steven Elkinton, Program Leader, National Trails System Programming, (15 Sept. 1994) (on file with the author); Inventar Historische Verkehrswege, *Revue: Römerwege* (1992); Inventar Historische Verkehrswege, *Revue: Saumpfäde* (1994); Inventar Historische Verkehrswege, *Revue: Historische Wege am Wasser* (1991); For a listing and a map of cultural and historic trails in Switzerland see <https://www.viastoria.ch/kulturwegeschweiz/>.

<sup>114</sup> National Trails System Act (1968) 16 U.S.C. §§ 1241-1251; For a list and a map containing these 19 National Historic Trails see, Congressional Research Service, "The National Trails System: A Brief Overview (Feb. 2020), pp. 2-4; The National Parks Service website for the National Trails System is available at: <https://www.nps.gov/subjects/nationaltrailssystem/index.htm>; For information on the legal background of the National Trails System see Steve Elkinton, "How the National Trails System Came to Be," *Pathways Across America*, Winter 1998, pp. 3-9; Steven Elkinton, *The National Trails: A Grand Experiment* (2008); For excellent background information on 14 of the 19 National Historic Trails see John Thompson, *America's Historic Trails* (2006); For information on National Trails and public/private partnerships, see Thomas Downs, "The National Trails System: A Model Partnership Approach to Natural Resources Management," *The Environmental Law Reporter*, vol. 30 (Feb. 2000).

<sup>115</sup> See <https://www.nps.gov/semo/learn/historyculture/index.htm>.

<sup>116</sup> See <https://www.nps.gov/cajo/index.htm>.

but still peppered with urban sites is the Mormon Pioneer National Historic Trail.<sup>117</sup> This 1,300 mile route stretching from Nauvoo, Illinois to Salt Lake City, Utah commemorates the path traveled by Mormons *fleeing the United States* because of religious persecution in the 1840s.<sup>118</sup> Tens of thousands of Mormon teenagers and adults gather together every year on different sections of the Mormon Trail to reenact this exodus using the same pioneer equipment: covered wagons, handcarts, horses, oxen, and (eventually) blistered and bloody feet. This ritual reenactment, like so many other pilgrimages, challenges and refines participants on physical, psychological, and spiritual levels—all of which develops a deeper sense of knowledge, belonging, empathy, memory, and gratitude.<sup>119</sup>

## CONCLUSION

Historic resources hold countless values for cities today and in the future. This article has merely touched on three of them: (1) the historical role of cities as incubators for legal formation and change; (2) historic resources as a powerful economic driver for cities; (3) historic resources aiding public health in myriad ways—mental and emotional resilience, critical medicinal discoveries, and increased physical health and stamina through wandering ancient routes. Indeed, Julian is about to embark on his own form of pilgrimage. While many believe his journey will be a relaxing trek to his home in Amelia Island, Florida for a well-deserved, quiet retirement, I suspect Julian is planning a grander journey.

Unbeknownst to many Julian's paternal ancestors came from the Principality of Lippe in Germany. The area of Lippe, named after the eponymous river that runs through it, is first mentioned in the historical record in 1123.<sup>120</sup> Lippe emerged over the course of the next century, primarily through the outstanding personality and activity of Bernhard II of Lippe (1140-1224) who rose in

---

<sup>117</sup> See <https://www.nps.gov/mopi/index.htm>; Julian, as the consummate connoisseur of culture, has even learned the 'secret seagull flap' that is commemorated by a seagull statue on Temple Square in Salt Lake City.

<sup>118</sup> For an analysis of Missouri's Extermination Order targeting Mormons and their appeals to the President Martin Van Buren for protection from religious persecution (which he ignored for political reasons), see Ryan Rowberry, "Short History of the Rule of Law in the United States (1954-2016)," *Studia Juridica*, vol. 79 (2019) p. 14.

<sup>119</sup> On the beneficial health effects of participating in a pilgrimage, see *Pilgrimage and Healing*, Jill Dubisch and Michael Winkelmann eds., (2005).

<sup>120</sup> Joseph Kleine, *Das Haus Lippe*, p. 6.

prominence as a knight in the household of Henry the Lion, Duke of Saxony.<sup>121</sup> In 1528 Simon V (1471-1536) became *Graf* (Count) of Lippe. The Reformation then swept through Lippe, and Simon V, allowed his subjects to choose their religion while he remained Catholic.<sup>122</sup> In 1789 the territory of Lippe was elevated by the Holy Roman Emperor to a *Fürstentum* (Principality)—a region or sovereign nation headed by a prince.<sup>123</sup> And it was under Leopold I's son, Leopold II (1796-1851), that revolution among the Lipper regarding democratizing government functions likely led Julian's branch of the Juergensmeyers to relocate to the United States.<sup>124</sup> With the death of *Fürst* Alexander (1831-1905) who had no children, the ancestral line of Lippe was extinguished and a struggle for the throne of Lippe ensued.<sup>125</sup> Through arbitration (*Schiedsgericht*) it was decided that Leopold, the son of *Graf* Ernst of Biesterfeld, should ascend the throne.<sup>126</sup> Following World War II, the independence of the Principality of Lippe was dissolved. Lippe was absorbed into the current German state of North-Rhine Westphalia in 1947, and Lippe's medieval crest—the red rose—was added to the state's coat of arms.<sup>127</sup> Despite Lippe's integration into North-Rhine Westphalia, the current *Fürst* of Lippe, Stephan, continues to live with his wife and three children in the family castle at Detmold, from which he practices law.<sup>128</sup>

Even if Julian could claim to be the rightful *Fürst* of Lippe, it would not advance his legacy in my estimation beyond what he fashioned as an inquisitive commoner from the mountains of West Virginia. Having been privileged to work closely with Julian for the last decade, I have learned important lessons that have deeply impacted my life and career. First, he taught me that for law to be useful it must be practical. Law is made for people, not people for the law. When law fails, is inefficient, or ignored, it is usually because it does not closely correspond to the cultural mores of the people it is supposed to guide. Second, urban law and policy are only as realistic as their financing. Well-crafted city plans are more often

---

<sup>121</sup> *Id.* at 6-10. Bernhard II commissioned the building of Falkenburg castle in 1195, the first seat of the House of Lippe.

<sup>122</sup> *Id.* at 12-13.

<sup>123</sup> *Id.* at 18-19.

<sup>124</sup> *Id.* at 19-20.

<sup>125</sup> *Id.* at 20-21.

<sup>126</sup> *Id.*

<sup>127</sup> *Id.* at 23. For an early illustration of the five-petaled Lippe Rose from 1221, see p. 37.

<sup>128</sup> *Id.* at 26.

stillborn for lack of funding than for lack of thought. Finally and most importantly, Julian taught me that kindness and compassion transcend all laws, languages, and cultures. Through our work at the Center for the Comparative Study of Metropolitan Growth and our travels together in Africa, Asia, Europe, and North America, I have witnessed first-hand how Julian's warmth and wit have added inestimable value and joy to people from around the world. Julian's enduring example of love and friendship is what I will always remember about my mentor, colleague, and close friend. That, and the time he nearly got dysentery in Hong Kong.