Transcript

00:00:14 Speaker 1

Hello and welcome to conventions, a podcast about the history of constitutions brought to you by the Quill project at Pembroke College, Oxford.

00:00:21 Speaker 1

My name is Grace Mallon and I'm your host.

00:00:24 Speaker 1

Legal history is a daunting topic for many scholars with an interest in the past, especially if they lack formal training in the law.

00:00:32 Speaker 1

But legal treatises, court records, and other remnants of historical legal systems can offer a broad and deep well of source material to the enterprising researcher.

00:00:43 Speaker 1

A constellation of digital humanities projects. The Quill project among them are attempting to make these sources more easily accessible and to help historians explore the full range of insights that these records can offer.

00:00:55 Speaker 1

In this episode I'm talking to Doctor Jim and Buski, digital historian, in residence at the Washington Library in Mount Vernon, Virginia, about his extensive work in digital legal history.

00:01:07 Speaker 1

In particular, we discussed the 1828 catalogue project, which reconstructs Thomas Jefferson vision for American legal education.

00:01:15 Speaker 1

And the Scottish Court of Session Project, which reveals in rich detail, the social and political world of Scotland and the Scottish Atlantic in the 18th century.

00:01:27 Speaker 1

So Jim, you're a digital historian by trade these days, and I think you were a postdoc in digital history at UVA after you finished your doctorate there, right?

00:01:39 Speaker 3

That's correct, yes.

00:01:40 Speaker 1

So, so how did you get involved with digital research methods in history?

00:01:46 Speaker 3

It's a great question. It actually goes back to the early days of my graduate programme when I came to UVA to do my doctorate.

00:01:55 Speaker 3

You know it won't.

00:01:56 Speaker 3

Be a big surprise to a lot of your listeners who are in the academic world that the academic job market is absolutely terrible.

00:02:03 Speaker 3

And by and large, it's really bad, and it's been bad for a long time, but it's been bad, especially for the sainted.

00:02:14 Speaker 3

Tenure track position.

00:02:16 Speaker 3

And I had been warned about that before I came back to school. I did my MA at my alma mater at Miami University in Ohio, and so even when I started my first year at UVA, I had a clear sense that if I was going to be successful even though I wanted to be a college professor, if I was going to stand a chance on any kind of market and I had to diversify my skill set.

00:02:38 Speaker 3

And as it happens and kind of ironically, given my position now, one of the first side jobs I had as a first year graduate student at UVA was at the papers of George Washington Project, which is housed at UVA and they were using some new tools at the time too as a content management.

00:02:58 Speaker 3

System to organise the papers and organise the transcriptions and things like that, so that was kind of my first four way into digital humanities, and I subsequently moved on from there to Virginia Humanities, which is a humanities foundation here based in Charlotte.

00:03:12 Speaker 3

Phil, where I worked with Super do on projects called people of the Founding era which created a prosopography database.

00:03:20 Speaker 3

If all of the people mentioned in the footnotes and the text of the founding fathers transcription projects, which is really cool, it's a was a monumental effort and monumental.

00:03:32 Speaker 3

Team effort and we can probably talk about the collaborative nature of DH over the course of our conversation, and I worked with Sue on another project which became the founding fathers online project. I worked on a variation of that which was to help identify the.

00:03:48 Speaker 3

The copy text that would be transcribed by the editors of the Washington and other papers and so that there could be a preliminary transcription done and placed online to the benefit of users around the world.

00:04:01 Speaker 3

So I kind of cut my teeth on that and worked on some digital mapping projects with Max Edelson called maps.

00:04:09 Speaker 3

In the later years of my graduate programme, before I moved on to UVA law in my post doc.

00:04:15 Speaker 1

That is so cool to hear because having been working on my doctorate on sort of this founding era stuff, I've been using a lot of those tools and projects that that you were working on and that sort of other digital historians and other documentary editors have been working on, and I cannot tell you just how useful.

00:04:37 Speaker 1

That's true.

00:04:37 Speaker 1

Off is, you know, even even when you're able to get to the library. It's useful, but during the during the period of COVID lockdown, it has been completely invaluable to have those kinds of digital resources available.

00:04:51 Speaker 1

So but but you've also, as you as you were saying, you've spent time at UVA before I'm one of the one of the projects that you worked on that.

00:04:58 Speaker 1

I was struck.

00:04:59 Speaker 1

By when I was Googling you to prepare for this podcast and there was the 1828 catalogue project.

00:05:07 Speaker 1

Which is a project that reconstructs the catalogue of UVA original law library. So I work in constitutional history and something I spend a lot of time thinking about is what kinds of legal texts people used to read and how that would affect how they thought about constitutionalism, how they thought about the law.

00:05:28 Speaker 1

So, but I sort of want to ask you as someone who is involved with the party, why is it so useful for historians to do this kind of work? What can this project tell us about the legal and intellectual history of Thomas Jefferson's time?

00:05:40 Speaker 3

It's a great question and I just played a small part in the project and it's it's part of an ongoing project that's been in progress for the last 40 years or so, and so I'll tell you what I mean there.

00:05:52 Speaker 3

There's the non digital side, and then there's the digital side that I was involved in, so you know roughly 4 decades ago the UVA.

00:06:00 Speaker 3

Law librarian and the team then decided that they wanted to try to reconstruct the legal library as it existed at University of Virginia. When, what, when, what?

00:06:13 Speaker 3

When Jefferson founded the university in the late 18 mid 1820s.

00:06:20 Speaker 3

Of course, Jefferson being Jefferson, they had meticulous lists. They know exactly what he ordered. They know exactly what books were in the original library.

00:06:28 Speaker 3

They know exactly what order they were in, but a lot of those books had been either lost. They were destroyed in a fire in the late 18 now.

00:06:36 Speaker 3

90S, although some do survive and we actually have a few in the collection over at UVA. All of those that survive.

00:06:43 Speaker 3

But anyway, the idea was to reconstruct that library by purchasing duplicate texts, so that's been going on for a while, and that's been a kind of a standing goal where I came involved was when I began my postdoctoral fellowship.

00:06:56 Speaker 3

In 2016 at UVA Law Library, working with Doctor Lauren Moulds and my predecessor actually in that post Doc was Doctor Randy Flarity, whose idea it really was to kind of create a digital version of the 1828 catalogue and the thinking wise, is that you could digitise these book.

00:07:17 Speaker 3

Put them together in a compelling way in an interface that would allow people to explore them.

00:07:23 Speaker 3

So that you could have access to them and actually read.

00:07:26 Speaker 3

You know threadwork cooks.

00:07:29 Speaker 3

Institutes of Law, Sir William Blackstone and his common law.

00:07:34 Speaker 3

You know, Mansfield, all of these guys. Harrington Sidney Algernon people.

00:07:38 Speaker 3

That so that you could look at, you know the original library and that would be a neat thing. But also think about what the implications of that collection were for the study of law and Jefferson age and what was Jefferson trying to attempt by creating this particular library?

00:07:58 Speaker 3

Because he had some very specific ideas about what the law was, particularly in the American contexts, and how students should study it. You know he.

00:08:09 Speaker 3

The University of Virginia was founded. What's the quote?

00:08:12 Speaker 3

What did he say? Something like to seek the truth wherever it may find, but he had some pretty ideas, specific ideas about where you had to go to find the law, and that was one of the few places where he was like there will be no deviation whatsoever.

00:08:26 Speaker 3

For Jefferson, it was a very specific order and it really is entangled with early American.

00:08:32 Speaker 3

History writ large. So there's a couple things going on here one.

00:08:37 Speaker 3

Is that Jefferson really thought that Sir Edward Cook was the Premier English lawyer and that his legal writings espoused the kind of.

00:08:49 Speaker 3

Legal identity that Americans should aspire to when they declare independence, and they create their Republic. And so Sir Edward Cook is most famously known as being on the one hand, the Attorney general for Elizabeth first, but then he sits on court of King's Bench in court of Common Pleas. So he.

00:09:07 Speaker 3

He is working very actively in the late 16th early 17th century. He's writing English law at the exact moment that the colonies are being settled to. The English colonies are being settled and it's that law that settlers and colonists bring to this part of the world as they're trying to recreate as best they can.

00:09:27 Speaker 3

English society in North America.

00:09:30 Speaker 3

Uhm, and then you Fast forward then to the era of the American Revolution in 1750.

00:09:38 Speaker 3

For many of you, many folks out there who will remember that the 1750s. It's the it's not a good time to be a wig.

00:09:46 Speaker 3

Yeah, like Swedwood cook the wigs go out of power and the Tories come back in with a ferocity, and so you see, people in ascendancy, like Lord Mansfield, who's on the court of King's Bench in this.

00:09:57 Speaker 3

Period, Sir William Blackstone, who's writing the common law of England, or he's writing about the common law of England. And of course the ministry is full of like minded men.

00:10:08 Speaker 3

And when Jefferson is involved in the revolution, he's and later in the Republic he's looking at this history and thinking all.

00:10:16 Speaker 3

Right?

00:10:17 Speaker 3

There's a decisive moment when the Americans broke from the English legal past.

00:10:23 Speaker 3

And we need to purge essentially everything else out of our law if we're going to be a successful Republic.

00:10:30 Speaker 3

And one of the things that happens early in the revolution, when this colonies begin to transform themselves into states is they begin to pass.

00:10:38 Speaker 3

What are called reception statutes and these reception statutes say, OK, the law that we're going to adopt for our new states is the law that existed at the time of the reign of James the 1st in 1707.

00:10:51 Speaker 3

When Jamestown was founded like that's the moment when English law, in our minds, what is at its purest expression, and that everything else that came after it has been our law or our interpretation of the law. And we're going to just get rid of.

00:11:06 Speaker 3

Everything else, especially the stuff that came during George III, we're going to get rid of that stuff and.

00:11:10 Speaker 3

We're just.

00:11:10 Speaker 3

Going to dump it and Jefferson continues that mindset throughout the rest of his life into the founding of UVA he.

00:11:20 Speaker 3

I love one of the quotes he has is he's watching the development of American law and he says something like there's so much honey ISM in Mansfield that people are seduced by his words and his in his.

00:11:33 Speaker 3

His legal rhetoric and ideology that they're they're unknowingly becoming Tories, and this is particularly during the War of 1812, and he's like why are all these New Englanders and New Yorkers like siding with the British?

00:11:45 Speaker 3

It seems and he's like, oh, it's Mansfield and Blackstone, they've, they've they've just been reading those, those guys and they're just corrupted by monarchical principles.

00:11:54 Speaker 3

So what Jefferson wants to do?

00:11:57 Speaker 3

Is he wants to try to create a legal education at UVA that is on the one hand tide to the lessons of Sir Edward Cook.

00:12:06 Speaker 3

He's like this guy wrote these very dense books. Sometimes the footnotes are longer than the actual text, but you've got to read it because this is. This is the guy who knew what was going on.

00:12:18 Speaker 3

He recognises that Blackstone.

00:12:24 Speaker 3

His commentaries on English common law are very, I guess, simplistic is not the right word but condensed and more easily digestible.

00:12:33 Speaker 3

So and he recognises the fact that a lot of lawyers are going to read this, but he's like all right. Listen, you have to read Sir Edward Cook first.

00:12:40 Speaker 3

So then you can figure out what Blackstone got wrong and he didn't want students at UVA Touch Black Zone until they had picked up and slogged through Mr Edward Cook.

00:12:53 Speaker 3

So that's that's one part of it. Like he, he really thinks that if the American Republic is going to be successful, you have to get rich.

00:13:01 Speaker 3

Head of much of this post cook English law as possible, and you especially have to get rid of Blackstone.

00:13:10 Speaker 3

You have to get rid of Mansfield he it's really funny reading his correspondence and Randy Flair and I wrote a chapter about this for a book on the founding of Jefferson University.

00:13:21 Speaker 3

He almost kind of obsesses with it over the course of his life. Like they he keeps fighting the revolution. These two men must be destroyed.

00:13:30 Speaker 3

He'll and it's the rock he's going to die on. And then you know, essentially he does. 'cause he creates UV.

00:13:36 Speaker 3

OK.

00:13:36 Speaker 1

I come from a legal, family and American historians know so much more about Edward Cook than any of my relatives who were educated in the English common law.

00:13:48 Speaker 1

Any any American historian of the revolutionary era. So so in a sense. Jefferson Jefferson Project really paid off because Americans.

00:13:56 Speaker 1

You tend to know and think a lot about Edward Cook in a way that that even Brits probably don't.

00:14:02 Speaker 3

If Jefferson had a founding father, I think it would be Edward Cook. I think really that's the case and one of the things that drives him now.

00:14:10 Speaker 3

That's in addition to students continuing to study black sand in Mansfield as he really doesn't like it when American judges are citing.

00:14:19 Speaker 3

Cases from the reign of George III onward.

00:14:21 Speaker 3

He's like we gotta, we gotta stop teaching as best we can. Blackstone in Mansfield, but we've got to stop citing these guys as he says at one point we have to stop citing cases from the reign of George the third.

00:14:34 Speaker 3

And you know, in some ways it's personal too, because John Marshall, who's his cousin and nemesis, cites Mansfield.

00:14:43 Speaker 3

On several occasions and it drives Jefferson nuts.

00:14:46 Speaker 3

He's trying to, in a sense, re purify the law for the American Republic.

00:14:52 Speaker 1

So you've been on the English common law, but your research sort of more broadly has quite the Scottish focus, which struck me as well during my Google because I've I've probably told you my my family.

00:15:07 Speaker 1

Background is Scottish and was going on about it, but I don't know very much about Scottish history, which I think is probably true of a lot of people in my position who grew up in the UK but outside Scotland. Scottish history is sort of a famously neglected topic even at the university level in.

00:15:24 Speaker 1

In England, certainly so. How did you get interested in Scottish history?

00:15:27 Speaker 3

Yeah, it's a great question and it goes back again to the early days of my graduate studies. I was looking for a dissertation topic.

00:15:35 Speaker 3

And Speaking of English history, my wife has a PhD in English, tutored history, and so in 2008.

00:15:43 Speaker 3

Before I went back to my programme she was going over for her first big research trip. You know, going to queue at the National Archives and other places to look at Henry the eighth.

00:15:55 Speaker 3

Materials and whatnot.

00:15:57 Speaker 3

And so we went up to Ed.

00:15:59 Speaker 3

Which we neither of us had been to, and we took the tour of the castle as one does, and for those who've been there, you'll know that if you go down.

00:16:07 Speaker 3

In the dungeon.

00:16:08 Speaker 3

The interpretation there is done in the manner of when American sailors were captured off the coast of Scotland and imprisoned in.

00:16:18 Speaker 3

The castle at Edinburgh and on the door. The original wooden door that's there. Somebody carved a stars and stripes flag and I thought.

00:16:29 Speaker 3

Well, that's pretty cool, so maybe there's a topic there and I began to route around, and unfortunately there wasn't much material to work with.

00:16:37 Speaker 3

'cause if you're going to write a dissertation, which is essentially a book, you've got to have a lot of stuff.

00:16:41 Speaker 3

To base it on, but there wasn't a whole.

00:16:43 Speaker 3

Lot, at least, not not in the way that I wanted, but and over the course of that I began to read about John Witherspoon.

00:16:51 Speaker 3

Who was from Paisley? He emigrated in 1768 and became the president of what is now Princeton University.

00:16:59 Speaker 3

He was a big active proponent of immigration from Scotland in that period, and I thought, OK, this is interesting. And then I began to read people who are pushing back against that argument that no, we should.

00:17:11 Speaker 3

Stop immigration and that there's all these people coming.

00:17:14 Speaker 3

And it may lead to the depopulation of Scotland and their Ford could imperil the British Empire at a very critical moment. And I thought all right.

00:17:26 Speaker 3

This is good. Let's see where this goes and a lot of people had written about immigration before, but not in a way that satisfied me, not in a way that I thought.

00:17:33 Speaker 3

Put it in conversation with the American Revolution with the larger imperial crisis and within the wider context of the evolution of the British Empire in the.

00:17:45 Speaker 3

18th century, particularly the British American Empire, but also in a way that took Scottish history seriously as an integral part.

00:17:54 Speaker 3

Of that process, I think you put it on the head rightly and a lot of my colleagues who are proper Scottish historians talk about this all the time where Scottish history is seen as provincial.

00:18:05 Speaker 3

And as you know, kind of a historical consequence of Scotland being a quote unquote junior partner in the Union.

00:18:14 Speaker 3

And therefore, yeah, we can talk about Scotland. But really, it's where it's London. It's where it's happening. That's not really true, I think is.

00:18:23 Speaker 3

My colleagues are arguing as the history shows, Scotland is a critical component, not only of Great Britain and then the history bears that out, but also of the British Atlantic world in the 18th and 19th century. And you could make the case very easily that Scotland makes the empire run.

00:18:43 Speaker 3

By virtue of the people they send to the ministry in London, but also the people they send out into the empire who are doing the things that make empire work.

00:18:53 Speaker 1

Yeah, back in in my undergraduate days here in Oxford, then I had to take quite a bit of British mediaeval history and.

00:19:02 Speaker 1

It was, it was funny it was.

00:19:03 Speaker 1

Kind of a.

00:19:04 Speaker 1

Trope that you'd have your, you know you'd have all of your proper history.

00:19:08 Speaker 1

You know, each week you'd write an essay and you have all of your proper history. You know you'd have your sort of we're going to talk about the, you know, the the wars of the roses, and we're going to talk about, you know this political thing. We're going to talk about this other thing and you'd have a week where you could choose.

00:19:21 Speaker 1

The question that was either on Scotland or on Wales and that would be.

00:19:28 Speaker 1

You know, rather like, you'd have your week where you would cover women in this 300 year period you would have your Scotland week, and so absolutely. I think it's.

00:19:38 Speaker 1

It it is, it is often treated in that in that way the topic that I that sort of caught my interest about about your broader body of work is a digital project that you've relatively recently I believe, as I've sort of come to a conclusion well.

00:19:56 Speaker 3

I wouldn't say conclusion.

00:19:57 Speaker 3

I would say we're we've we've completed one phase and we're.

00:20:01 Speaker 3

Trying to find funding to complete the next.

00:20:04 Speaker 1

And that this.

00:20:05 Speaker 1

Project which is not at a conclusion but is is in search of funding. Hi everyone, it's in search of funding is the.

00:20:11 Speaker 3

Yes, if anyone from the Scottish Government would like to participate in the digitization of Scotland cultural heritage. Grace has my email.

00:20:21 Speaker 1

This is this is the Scottish Court of Session project, so Jim before we sort of delve deeper into it, could you give us a brief overview introduction to the Scottish Court of Session project?

00:20:33 Speaker 3

So the Scottish Court of Session project is again based out of UVA Law Library and it was the principal project that I worked on as a postdoc. It was actually why I was brought on board.

00:20:44 Speaker 3

And that has another strange story to it, and so we're going to cover many. We're going to be like an onion, and we're going to start peeling back some layers here, and we're going to get we're going to get real deep pretty quickly.

00:20:56 Speaker 3

Also, about 40 years ago, because Oh my gosh, yeah, 40 years ago was the 80s and that means I'm OK. 40 years 40 years ago.

00:21:06 Speaker 3

The law librarian. In addition to working to collect or duplicate editions of Jefferson Text, went on a buying spree and over the course of that buying spree, the law librarian managed to acquire 58 linear feet of Scottish Court of Session Records from a roughly 1750 to 18.

00:21:27 Speaker 3

32 thereabouts now. 58 linear feet is you can imagine 58 bankers boxes full of material, massive amounts of stuff.

00:21:37 Speaker 3

And there was some preliminary attempts to kind of catalogue then no one quite understood what they were as my understanding or the tradition goes is that the assistant librarians were quite unhappy that their boss had bought these, and so they more or less languished.

00:21:51 Speaker 3

With with some attempt to catalogue them, but more or less languished for about 3035 years, until once again. Randy Flarity, who's the kind of hero of the story. I think at this point.

00:22:02 Speaker 3

And my colleagues over there at UVA Law Library were looking at them and they thought, well, this might actually be an interesting digital project and so they I was finishing up my PhD.

00:22:14 Speaker 3

My work as we'll talk about a bit is on Scotland and America, and they asked me to come up one day and look at him.

00:22:22 Speaker 3

And just see what I thought because I think they were looking for some justification to invest more time and energy in the project. And immediately I opened one up and it was a court case.

00:22:35 Speaker 3

In which a tenant was fighting with his landlord over rent, which plays a big role in my story.

00:22:42 Speaker 3

And I thought, Yep, we've got something good here.

00:22:45 Speaker 3

So the project itself is 1. An attempt to digitise these records and I'm sure we'll talk about what these things are.

00:22:52 Speaker 3

Here in a second.

00:22:55 Speaker 3

So digitise them on the one hand, but then also.

00:22:58 Speaker 3

Erect them into a digital archive that isn't simply.

00:23:02 Speaker 3

A digital archive that offers you access to the papers. It is a digital archive that attempts to interpret this material as well.

00:23:10 Speaker 3

So that it gives you context to help you understand what these documents are. But it also tries to create frameworks that encourage you to use them in certain ways.

00:23:19 Speaker 3

And these frameworks are all based off of our knowledge of historiography or the past books written by historians about the past. And so in what conversations are taking place amongst historians.

00:23:31 Speaker 3

What kind of questions interest them? So we've got a baseline digital archive with all the bells and whistles you might expect.

00:23:40 Speaker 3

Outlining what documents are and what are the important parts of each document, like names and titles and things like that.

00:23:49 Speaker 3

But then we've also organised things into what we call curated themes that are based on our reading of our colleagues work, and so you'll see a curated theme like women in the law because.

00:24:00 Speaker 3

Scottish women

00:24:02 Speaker 3

Enjoyed greater legal power than their counterparts in England or America at the time, and there's some great work being done by colleagues like Rebecca Mason on the 17th century, but not as much.

00:24:15 Speaker 3

At least we've seen on the 18th century, and so can we organise these in ways that will inspire people to ask questions about women in the law.

00:24:22 Speaker 3

Scottish Virginia is one, of course, because of the deep ties between Virginia and Glasgow and other places in Scotland in the 18th century. And so there are a number of those kinds of curated themes.

00:24:36 Speaker 3

And it was also an attempt to see how far we could actually push.

00:24:41 Speaker 3

The digital tools we were using to help us interpret but also help us catalogue these documents and we can probably talk about that as well.

00:24:51 Speaker 1

That sounds absolutely wonderful and I love the idea of, you know, helping people to understand what they've actually got there and where these documents might fit into the stories people are currently telling about Scottish history.

00:25:06 Speaker 1

Or or the arguments that historians are currently having about Scottish history as as the case may be.

00:25:13 Speaker 1

And so the first question that I had, I really want to get into like, OK, what? What can these records actually tell us?

00:25:19 Speaker 1

And I'm going to come on to that in a second, but the first thing I need to ask you, because this is a podcast about constitutional history and I don't understand. I'm just going to come clean again. This is this is this is the American educates.

00:25:32 Speaker 1

The bread about Britain and, as is so often the case, but.

00:25:39 Speaker 1

Something that I don't fully understand is is how Scotland legal system fits into the broader constitutional framework of Britain, the British and the British Empire in, let's say the 18th century. Could you give us a quick like overview of of what the Scottish Court of Session?

00:25:58 Speaker 1

Is and what role it plays within the Scottish legal system and the British constitutional system?

00:26:05 Speaker 3

Well, Grace I wouldn't feel bad because I had to do a lot of work to understand this question myself, because and for ways it'll become clearer later if we talk about my book project a little bit. But it was essential to understanding these record.

00:26:17 Speaker 3

Kids and helping us think about how we could best present them to a wider audience. So in short, the Court of Session is Scotland's Supreme Civil Court and.

00:26:29 Speaker 3

Now there's the court of Judiciary, which handles criminal cases, but the supreme Civil Court is the Court of session and you may have visited if you've gone to Edinburgh, the court, as it existed in the time that I'm dealing with actually sat in the old Parliament hall in Edinburgh. So right across from St. Giles Cathedral you can actually go in and see it. You have to.

00:26:49 Speaker 3

Pass through some security and whatnot, but you walk in and there's this marvellous Great Hall.

00:26:55 Speaker 3

And you look up above and these magnificent wooden beams sourced from the forests of Fife. And that's where the courts at at least part of the court sat in the 18th century.

00:27:04 Speaker 3

You can see the Alcoa was where the judges would have sat because unlike American courts or English courts today where there's like an actual you know 4 walls and it's kind of an enclosed space.

00:27:15 Speaker 3

These at least part of the Court's business was done in kind of a very public way in a very noisy and crowded way, so.

00:27:22 Speaker 3

The Court of Session, the Supreme Civil Court and what's important to know about the Scottish legal system is that.

00:27:28 Speaker 3

It was preserved because of the Treaty of 1707, which creates the British Union that was one of the provisions.

00:27:35 Speaker 3

One of the key articles that said that Scotland will retain its own legal system, whereas England is common law. Scotland is statute law or as civil law, excuse me. And so the statute.

00:27:49 Speaker 3

Is the controlling factor in any court case by and large, whereas as we know in a common Law Society, the judicial precedent really matters a whole lot.

00:28:00 Speaker 3

So there's a key distinction there, so Scotland is cinched in a sense.

00:28:04 Speaker 3

Retains its legal integrity.

00:28:08 Speaker 3

British law and.

00:28:10 Speaker 3

That still is kind of unclear to me about what exactly is British law outside of the borders. Is the controlling factor.

00:28:18 Speaker 3

But internally, Scotland retains that legal identity and there are separate Scottish institutions set up to match English institutions like there's a Scottish Board of Customs that mirrors the English Board of Customs Scottish Admiralty courts that mirror English Admiralty courts. And so you see those kind of.

00:28:39 Speaker 3

Co mingling in there in that sense, but.

00:28:41 Speaker 3

By large Scotland is able to control its own internal affairs in that sense, in the sense that they still have their court system.

00:28:49 Speaker 3

And then of course, if anything goes to appeal, it goes to the House of Lords in the 18th century.

00:28:56 Speaker 3

Down in down in London, so it's fascinating and I think it took us a long time to really realise how important it was that Scotland retained its legal system and how that shaped the Court of Session in the area that we're dealing with.

00:29:11 Speaker 1

And just to sort of follow on from that, then what's the significance of this independence ish of the Scottish legal system within the British Empire?

00:29:23 Speaker 1

You're obviously dealing with and will come obviously on more onto your your research in a second, but.

00:29:29 Speaker 1

Why does it? Why?

00:29:29 Speaker 1

Is Scotland going to be important?

00:29:31 Speaker 1

In this broader sort of Atlantic Imperial story.

00:29:37 Speaker 3

The position I come to based on my work on this project is that even though.

00:29:45 Speaker 3

Scotland, the Court of Sessions jurisdictions stop at Scotland borders. Its reach extends far beyond that into the empire because litigants from North America, you know the colonies. Eventually the states in Canada, the Caribbean, India, different places.

00:30:07 Speaker 3

Pursuing litigation in the Court of Session, either directly or they're hiring proxies or attorneys in Edinburgh to do that work for them.

00:30:15 Speaker 3

And so in many ways the empire comes to the Court of Session by virtue of Scotland being a critical component of that empire.

00:30:25 Speaker 3

One of the things that I really interested to me is how American loyalists, in the aftermath of the American Revolution, or Americans in general, who have some kind of business ties to Scotland, are trying to.

00:30:37 Speaker 3

To resolve some kind of problem that crops up as a consequence of the war, you know, businesses break up properties, confiscated families are broken apart.

00:30:50 Speaker 3

Things of that nature and this has consequences. Long after 1783. I mean, I'm working on a case right now.

00:30:57 Speaker 3

That I hope.

00:30:58 Speaker 3

Eventually I have find time to write about that was in the 1820s. It was about a case of a family who was from Aberdeen and one of the patriarchs died in Aberdeen and it turns into an inheritance dispute that encompasses.

00:31:15 Speaker 3

Members of the family in places like New York and Ohio in the 1820s.

00:31:21 Speaker 3

And it's fascinating. You just I. I never expected to find that kind of stuff when I started this project.

00:31:26 Speaker 3

You know, I knew it was we were going to find a lot of stuff about, you know internal Scots matters, but the fact that you see the empire coming back into the court in Edinburgh, I think has been.

00:31:38 Speaker 3

One of the more rewarding and most fascinating things, and is one of the things that, besides using these materials to reconstruct social and political and economic histories of Scotland, you can use them to write newer histories of the empire in the 18th and 19th century as well.

00:31:55 Speaker 1

It's it's really interesting to hear you talk about the sort of the the aftershocks as it were of the Revolutionary War.

00:32:03 Speaker 1

Because I see all of this coming out of like my state records that I'm that I'm reading. You know, for decades and decades and decades afterwards that trying to resolve all of these property confiscation issues. These families.

00:32:16 Speaker 1

Issues and to see that on the other side of the Atlantic as well in Scotland is particularly fascinating, and I really did want to get into with you this question about you know what can we find these records and part of that comes out of for me. Like last year I was teaching a course about always teaching a couple of seminars from Masters course.

00:32:37 Speaker 1

Gender history and in the colonial period and one of the books that we were reading together was.

00:32:44 Speaker 1

Ann Marie Planes book colonial intimacy's. It's about marriage and sort of relations between settlers and Native Americans in the colonial period and it's heavily based on court records. And so my students were a little.

00:32:57 Speaker 1

But taken aback by the fact that she was drawing all of this from from these records, that at the outset can look a little bit intimidating, right?

00:33:06 Speaker 1

It can be like OK, this is very formulaic. Many of the actors involved in the courtroom are going to be men, white men, and you know, it looks like not the kind of record.

00:33:18 Speaker 1

That is going to necessarily help us to, you know, take an updated look essentially at the British Empire at colonialism.

00:33:30 Speaker 1

But obviously, as someone who's using some of these records myself, I do realise how fruitful there. So I want to ask ask you what do you think people are going to find in the Court of Session records? What you know? What excites you about what we can find out from these records?

00:33:46 Speaker 3

Yeah, it's a gosh where to start. I mean, because there's so much and I'll start this way as a way into it and justice by briefly kind of talking about what these records are like physically.

00:33:57 Speaker 3

And so they're called session papers, and they're so called because the court operates in sessions on the calendar. And so you know, these papers are given in to the Court of Session, so not the cleverest name but there. There we are. But the important part for our purposes is that they're printed.

00:34:17 Speaker 3

In in 1710, the court mandates that everything, and I mean everything, including evidence.

00:34:25 Speaker 3

Has to be given into the court in print and the idea behind that is that it would eliminate the errors that would crop up when a clerk or clerk as you would say over there are hand copying manuscript papers, and so the implications of that is that you could eliminate those errors. But then you could also print multiple copies.

00:34:45 Speaker 3

And you could print them faster.

00:34:47 Speaker 3

And it actually leads to higher volume of the Court's work, because now you can. Now you can do your business at an expedited rate in some sense, but also kind of overwhelming. I would imagine for the judges.

00:34:59 Speaker 3

So the session papers you would see about 20 copies or so printed. We think the legal counsels of both parties would get a copy.

00:35:09 Speaker 3

The judges on the court would get a copy. Some law professors at Glasgow and Edinburgh would get a copy.

00:35:15 Speaker 3

And all of these papers.

00:35:20 Speaker 3

Would be organised into various collections and here is a really great distinction between the Court of Session and its counterpart, the Court of King's Bench in England, whereas.

00:35:33 Speaker 3

Because precedent mattered so much to a common Law Society like England, the clerks at the Court of King's Bench in England creates a very robust institutional archive of all the court documents, which are largely manuscript up to a point in the mid.

00:35:51 Speaker 3

18th century because.

00:35:53 Speaker 3

They have to know what came before in order to make the law that.

00:35:57 Speaker 3

Will be.

00:35:58 Speaker 3

And colleague of yours and Paula Halliday is a wonderful article called Authority in the Archives which is all about how those clerks did that.

00:36:07 Speaker 3

When you're dealing with a civil Law Society like Scotland, where the statute is the controlling device and precedent matters little, there's less emphasis on creating that kind of archive nevertheless.

00:36:18 Speaker 3

Professional institutions like the Faculty of Advocates and the writer to the Signet, which are the two big legal organisations in Scotland. They create institutional archives of these papers.

00:36:30 Speaker 3

And then individual lawyers create their own highly personal, highly curated collections.

00:36:36 Speaker 3

Men like James Boswell, William Craig, Lord Craig, various people. It's fun to read Boswell's journals because he is.

00:36:46 Speaker 3

At one point, curating his father's collection of session papers, his father was Lord Affleck. It's not spelled like Aflac, but it, but it is, and he's like, well, I'm going to keep this one and throw this one out. And so they are. They're creating these highly personal collections that represent cases they think are important more.

00:37:06 Speaker 3

Broadly, but also cases that were really important to them, so these are printed documents. And as you say, like all legal documents, they can be a long slog to read through because they are formulaic. You know lawyers are very good then as now.

00:37:23 Speaker 3

Trying to get you to agree with their position and in order to do that, they take you on a journey in which they are going to lay out every.

00:37:34 Speaker 3

A plot point, as it were in a case and piece of evidence that conforms to their interpretation of their clients position, and especially in the case with lawyers in the 18th century, trying to use some kind of rhetorical emotion to convince the judges to their side and.

00:37:54 Speaker 3

Yes, there are oral pleadings in the Court of Session. But really the work is done in these papers.

00:37:59 Speaker 3

So that means unfortunately, you just can't simply skim through this stuff and find what you want. You have to be willing to sit down and start to read, but when you do that you find marvellous things. I've already been talking about American loyalists who come to the Court of Session trying to.

00:38:16 Speaker 3

Defend or reclaim something that they had lost or won during the Revolutionary War you find.

00:38:24 Speaker 3

Loads of depositions by common people you know, quote unquote common people ordinary people who have become involved by virtue of their relationship to a layered or a landowner in some kind of land dispute. And so you get depositions that give you a person name there.

00:38:44 Speaker 3

Approximate age and their location and their profession and you can use those to begin to write social histories of a particular settlement or a particular person lands in that period, and you can find.

00:39:01 Speaker 3

What can't you find?

00:39:03 Speaker 3

As I said, they you know they print evidence right? And so.

00:39:08 Speaker 3

Some of my favourite things are like there's a logbook from a ship.

00:39:14 Speaker 3

That that's plying the waters between Scotland and Honduras in the late 18th, early 19th century and looking for mahogany. And they're trading in mahogany.

00:39:24 Speaker 3

And I can't remember for liking what the case is about. You know, if it's involving a ship, it was probably insurance.

00:39:30 Speaker 3

Most likely, but in the logbook you see, evidence of enslaved labour and you see the number of enslaved people who are on that ship working.

00:39:38 Speaker 3

On the ship in that trade.

00:39:41 Speaker 3

And we see slavery pop up quite a bit, which is really, I think.

00:39:47 Speaker 3

Important in its own right, but particularly in this moment when Scotland.

00:39:51 Speaker 3

Yeah, as well as the whole UK, but Scotland in particular has really taken a serious look at its own involvement in the transatlantic slave trade, and so these court documents can help flesh out some of those.

00:40:02 Speaker 3

You see copious letters. That's the other amazing thing is, sometimes you will just get.

00:40:08 Speaker 3

Reams of letters that have been printed between either you know merchants or in one instance, there's a case where you're essentially watching a marriage fall apart over the course of a correspondence, and it's kind of sad, really, but.

00:40:22 Speaker 3

You see it happen and you've got maps you know hand coloured maps that are quite wonderful, showing different divisions of land or public works or things like that.

00:40:33 Speaker 3

So in addition to getting a narrative of what's going on in the case, sometimes you'll get this really amazing evidence that you can then use, not necessarily for even for the court case, right?

00:40:46 Speaker 3

But four if you want, and I'll give you a concrete.

00:40:48 Speaker 3

Example, so I'm working on my book right now which is about Scottish immigration, and right now I'm writing about the Isle of.

00:40:54 Speaker 3

Guy and.

00:40:56 Speaker 3

The Isle of Skye is controlled really by two major clans in the 18th century, the clouds and the McDonald's.

00:41:05 Speaker 3

Sir Alexander McDonald. The second Sir Alexander McDonald by the late 18th century. It's not a particularly nice fellow.

00:41:15 Speaker 3

And so as a part of trying to flesh out his story, I was searching through our session papers collection just to see if he popped up in litigation.

00:41:23 Speaker 3

And sure enough, he did, and he was involved in a legal dispute that affected his younger brother in the 1750s, in which.

00:41:31 Speaker 3

Their attorney had purchased on his younger brother's behalf lands, and strath, to the tune of £7300, which is about £1.6 million in 2020 might. So an enormous sum of money.

00:41:46 Speaker 3

And I hadn't seen any evidence of that transaction in the work I've done this far, but more importantly and so that'll be a nice little tidbit to put in my book.

00:41:55 Speaker 3

But more importantly, it gave me insight into that attorney who's helping them because it turns out that this man, John McKenzie, of Delvin.

00:42:02 Speaker 3

Is kind of like a Nexus of.

00:42:08 Speaker 3

All of these major island lairds and clan chiefs in the 18th century, and he lives a very long time from the 1730s to the mid 1770s.

00:42:18 Speaker 3

And he is either mentoring these men or he is helping them with their legal business, or in this case, he steps in and fronts the money for this purchase, which tells us something about his ability to draw money on credit, but also. And I kept seeing this guy pop up in other documents, and I've got letters where he's advised.

00:42:38 Speaker 3

But I never really understood the significance of him.

00:42:41 Speaker 3

Until very recently, in finding that piece of evidence, and I don't really care about the case that much, but finding that evidence and finding out the fact.

00:42:48 Speaker 3

That I now know how much he was paid annually for his services and that he was willing to go to bat as one of the tutors or trustees of the young younger brothers.

00:43:00 Speaker 3

The state tells me a lot about the relationships that.

00:43:04 Speaker 3

They are.

00:43:05 Speaker 3

Operating on Sky and how Sky is connected to Edinburgh and how those kinds of transactions are, reshaping skies landscape in ways that eventually contribute to the kind of immigration we see in

the 1760s and 1770s. So you know, it's not all about, you know what's the statute and how does this work?

00:43:24 Speaker 3

And there's plenty of that out there. I mean, lawyers will enjoy this immensely, but for people like me who study the revolution who are interested in what people are doing and how they experience the revolution.

00:43:36 Speaker 3

This is great.

00:43:37 Speaker 3

I mean.

00:43:39 Speaker 3

It was, it was a. It was a nice moment. One of those let's let's go ahead and punch the sky 'cause things worked out today.

00:43:46 Speaker 1

So quickly, now that we've covered a lot of this digital digital history, I did want to ask you because you are, you are at Monte Cello at ICS and getting a little bit of time off. I hope from your day job to do some writing or research and writing or book stuff.

00:44:06 Speaker 1

Do you want to tell us a little bit more about the book project?

00:44:11 Speaker 3

Sure, I would be delighted to, so I'm writing a book that's based on my dissertation, which is about the massive immigration from Scotland to the colonies in the 1760s and 1770s up until the opening moments of the American Revolution, and it's really about it's a story of.

00:44:31 Speaker 3

How that immigration creates a kind of political and economic and constitutional crisis.

00:44:39 Speaker 3

That is, entangled with the American revolutionary moment and is asking the questions that some of the participants were asking of what is what harm can come to the empire.

00:44:51 Speaker 3

What harm can come to Scotland in particular if these people are allowed to leave, why are they leaving and what are the implications?

00:44:58 Speaker 3

For that.

00:45:00 Speaker 3

If they resettle in the colonies at a very precarious moment.

00:45:04 Speaker 3

And as I think I mentioned earlier, there has been a lot written about immigration from a Scottish context, most American historians, and with the exception of people like Bernard Bailyn back in the 80s and then Canadian historians in particular. With those exceptions, most folks have ignored this migration moment.

00:45:25 Speaker 3

And the ways that it's been written about before are simply about the people themselves, their plight. They're coming over the resettlement in places like North Carolina.

00:45:34 Speaker 3

And New York and whatnot. And I think that's all really important. But what occurred to me as I was doing my work and actually as a consequence of doing my work on the Court of Session project?

00:45:46 Speaker 3

Was that?

00:45:48 Speaker 3

We weren't taking those fears that people were having seriously and we should take them seriously because they took them seriously.

00:45:57 Speaker 3

Some of it was rhetoric, but a lot of it was not. They really thought at one point that this migration would destabilise part of the British Empire, part of the British Atlantic world.

00:46:09 Speaker 3

And it would destabilise Scotland and it would would weaken Scotland's social structure. It would weaken its political and economic clout, but also more importantly for their purposes it would.

00:46:23 Speaker 3

Embolden the Americans, as they might say, so I wanted to tell that story, and I wanted to tell that story from the perspective of those individuals who.

00:46:33 Speaker 3

Immigrating because they thought they had to and or who were benefiting from immigration in the colonies or who were encouraging it and but also those who were investigating it and trying to stop it and ultimately use it to the British government's advantage when the war breaks out. And so it tries to strike a nice balance.

00:46:53 Speaker 3

Between telling the story of the people who felt they had to leave, but also the elites who tried to.

00:46:57 Speaker 3

Stop it and how that's all bound up in.

00:47:02 Speaker 3

The revolutionary moment.

00:47:04 Speaker 1

The other thing that I wanted to talk to you about very briefly was that you are a seasoned podcaster.

00:47:13 Speaker 1

I won't say in your own right, because that would make it sound like I was making a comparison between us. You are a seasoned podcaster and you've been doing a lot of important podcasting.

00:47:22 Speaker 1

Recently and I wanted to ask you to talk a little bit about your sort of two, two major podcasting ventures that you've been taking on recently.

00:47:33 Speaker 3

Well, that's very nice, you Grace I. I still feel like a complete fraud, but I will. I will take the compliment and.

00:47:41 Speaker 3

I will say that I'm just I'm continually learning because I have great colleagues like yourself, but Abby Mullen at George Mason University and Jeanette Patrick and Liz Covart and whatnot and Spencer McBride, who who are all supremely helpful in my journey to do whatever I am doing now. But we've got two things going on at the Washington Library. One is our flagship podcast.

00:48:02 Speaker 3

Called conversations at the Washington Library, which you very kindly came on recently.

00:48:07 Speaker 3

And that is a simply a conversational style podcast in which we talk about.

00:48:13 Speaker 3

Cool things about early American history. And so you came on to talk about intergovernmental relations, which are critically important to the early American Republic.

00:48:21 Speaker 3

Our last episode that just came out two weeks ago is called. It's called. It's based on a book called Star Territory by Gordon Fraser who's actually at the University of Manchester.

00:48:33 Speaker 3

It's a fascinating look at how early Americans, including Cherokee Black Americans and women and what not.

00:48:42 Speaker 3

Tried to master the cosmos in ways that would allow them to project power on Earth.

00:48:48 Speaker 3

Ah, just.

00:48:51 Speaker 3

And I I love space, and so that was great. I really I really enjoyed that one. So we have a good time. We talk about, you, know books that come out digital projects, things like that.

00:48:59 Speaker 3

Occasionally I'll take the chairs prerogative and I'll have someone from Scotland come on and talk about something that's tangentially related to America, but you know, but I I will try to mention Washington at least once so that he it kind of justifies it.

00:49:14 Speaker 3

But the.

00:49:16 Speaker 3

The really cool thing that we've done recently is our eight Part podcast series called Intertwined. The enslaved community at George Washington's Mount Vernon.

00:49:26 Speaker 3

And intertwined tells the story of the more than 577 men, women, and children that George and Martha Washington enslaved at Mount Vernon over the course of their lives.

00:49:35 Speaker 3

And what happens to Mount Vernon after their deaths? And of course, what happens to the enslaved community after their deaths, and how slavery is interpreted at the plantation in the modern era and?

00:49:46 Speaker 3

It's based on an exhibit that was long at Mount Vernon, called Lives Bound together, which you can actually still see a virtual tour.

00:49:53 Speaker 3

And so we took inspiration from that. But Jeanette, Patrick and I, my Co. Writer and Co. Creator. We wanted to make it its own thing, and so we developed this series as a narrative to tell.

00:50:07 Speaker 3

This story of the ways in which.

00:50:10 Speaker 3

The Washingtons the enslaved community, the slavery itself they were all interconnected with each other, and you cannot separate them either in life or in death.

00:50:19 Speaker 3

Or you know, into the modern era. And we also wanted to take advantage of the latest scholarship that had come out since lives bound together had launched in 2016. There's been a lot of great stuff.

00:50:30 Speaker 3

Written about all of these topics and we wanted to see if we could use a narrative podcast to advance the conversation.

00:50:39 Speaker 3

Uh, in ways that historians would recognise and in ways that would educate the public about the past. So those are both out.

00:50:49 Speaker 3

Now, of course, conversations at the Washington Library is ongoing. Intertwined is in its final form, although we'll probably release.

00:50:59 Speaker 3

Some bonus material here and there, but you can find both by going to georgewashingtonpodcast.com.

00:51:06 Speaker 1

Brilliant, I'm glad I wanted to give you the opportunity to talk a little bit about those 'cause I know they've been making intertwined especially has been making a splash recently and so happy listening to everyone who's looking for something new. After of course, listening to this episode.

00:51:25 Speaker 1

Thank you for listening to conventions, a podcast about the history of constitutions brought to you by the Quill project at Pembroke College, Oxford.

00:51:33 Speaker 1

I'm Grace Mallon. And I've been talking to Jim and Bosky of the Washington Library about his work on digital legal history.

00:51:40 Speaker 1

You can find UVA 1828 catalogue project at archives.law.virginia.edu/<spelling>catalogue</spelling>.

00:51:48 Speaker 1

And the Scottish Court of Session project at scottlaw.virginia.edu.