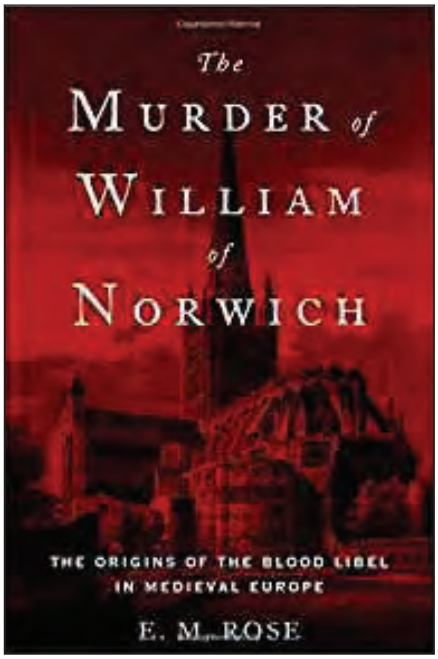


The Murder of William of Norwich: The Origins of the Blood Libel in Medieval Europe

By E. M. Rose

Oxford University Press, New York, NY, 2015.

394 pages, $29.95 (cloth), $16.95 (paper).

Reviewed by Jon M. Sands

From what religious darkness, from what communal hate, from what intolerant social circumstances could the blood libel spawn? E. M. Rose argues that the blood libel, an anti-Semitic accusation that Jews killed Christian children in order to use their blood for rituals and in mockery and hatred of Christ, arose in medieval England in 1140. It started with an unsolved death of a teenaged tanner's apprentice named William, followed by the efforts of a fervent monk in a nearby priory to turn the apprentice into a religious martyr and saint; a knight returned from the crusades who, debt ridden, murdered a Jewish banker; a clever bishop defending the knight by casting blame on the Jewish community; and Christian leaders stoking the slanders to exploit passions and prejudices. The turmoil of the 12th century, the anxiety and upheavals that followed failed crusades, and a general crisis of medieval Christian society led to the blood libel becoming widely believed and spurring acts of murderous revenge against Jews and Jewish communities.

William the tanner's apprentice was found hanged in a wood outside of Norwich, then the second largest city in England and a bustling commercial center. His distraught parents pointed to the small Jewish community as being responsible, and Rose sees this as the beginning of the blood libel. Of course, the blood libel likely was circulating before, but it became notorious through the efforts of Thomas of Monmouth, a monk from Wales, who seized upon the unsolved death to write a vivid and horrifying account of how local Jews had abducted, tortured, and ritually murdered the youth. The monk promoted the charge for 20 years and wrote a tract about it. This tract, argues Rose, made William of Norwich into Saint Norwich. More important, it became the foundational text for the ritual murder accusation.

This local accusation gained prominence in a murder trial that occurred in 1150, when a local knight, Simon de Novers, was accused of arranging to have his Jewish banker, to whom he owed debts, killed. The knight had gone on the Second Crusade, seeking spiritual and monetary rewards. Crusading was expensive, requiring arms and retinues, and knights and royalty often borrowed heavily from Jewish bankers. The Second Crusade was a failure, and those knights who returned did so not with booty but with crushing debts. Simon de Novers sought to erase his debt by murdering the Jewish banker to whom he owed money. Rose wonders if he bragged about it too loudly, but somehow his role became known. The outraged Jewish community appealed to the king for justice, and the knight was placed on trial.

At the trial, the local bishop, William Turbe, defended the knight. The bishop was homegrown, raised from childhood in the monastery attached to the Norwich cathedral. He was aware of the blood libel, and he used it to his advantage. Turbe argued that it was the Jewish community that should be on trial for the murder of the young boy. He used biblical texts and legends such as that of the perpetual wandering Jew, and he played upon the religious and social prejudices of the community as to purported bizarre Jewish rituals. The community, supposes Rose, sympathized with the knight, who struck a blow for the young victim, William, when he killed the banker. The king dismissed the charges. Perhaps the king had other reasons, such as loyalty to the lords or a desire to appease the church, or he merely took notice of the community's mood. The result, though, was more than a guilty knight going free; an upsurge occurred in the veneration of William. Miracles were reported. In due time and with the publicity provided by the local church, the young victim achieved sainthood. More important, the broad outlines of the blood libel became established, creating a justification to attack the Jewish community as a whole.

Rose then tracks the upsurge in blood libel accusations. The accusations had an imaginatively grotesque appeal. They also had pragmatic consequences. Accusations of child ritual murders occurred in 1168, 1171, 1180, and beyond, with some frequency. A child victim was found, and the Jewish community was blamed. The accusations detailed by Rose were the ones of notoriety, recorded because of the size of the affected Jewish community or the king or duke making the charges. They were not confined to England but leaped over to France and the Low Countries. And they did not occur by happenstance; Rose skillfully connects the accusations with various debt crises experienced by the upper royalty. The accusations could and did result in trials, with scores of innocent Jews being burned at the stake or butchered in reprisals. More often, an accusation would lead to debts being forgiven by a frightened Jewish community, or loans extended. In some cases, Jews were expelled from communities or even countries, leading to a windfall of confiscated property.

Rose presents a compelling case. Her accounts of the crimes and trials occurring almost a millennium ago are vivid. She places the actions within the context of

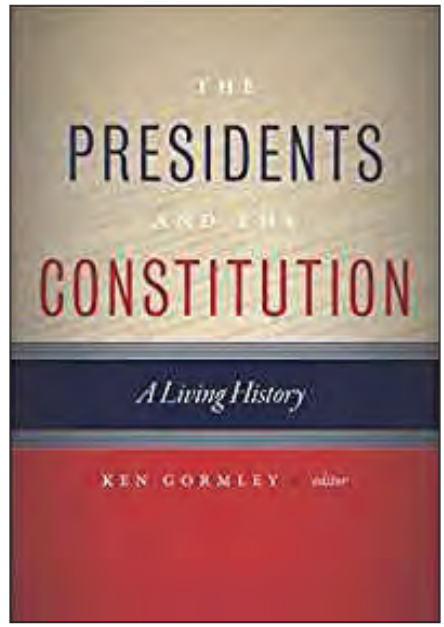
the age, explaining the social and religious background and the hierarchy of society, making the connections based on what must have been dusty research in ancient libraries and archives. Rose also makes use of the iconography of the times, showing how Jews were portrayed and known. She describes the economics of the medieval state and society. Of course, she explains the position of the Jews in medieval Europe.

And yet, for all the research, the connections she makes still rest on circumstantial evidence, such as dates and chronologies, sometimes with suppositions. We will never really know whether, as she posits, the blood libel was picked up by a traveling lord attending a relic's ceremony and put to his own dark use, or whether it was just spreading from market to market, an insidious alternative fact to be put to hateful uses.

The blood libel continued for centuries and continues still. Accusations appear in accounts from medieval, Reformation, and modern Europe, and in England, France, Spain, Italy, Germany, Poland, Hungary, Greece, and Russia. They have appeared in some communities in the United States, and, since the 19th century, in Islamic countries as well. We also know, Rose writes, that "no charge has withstood historical scrutiny." Churches have denounced such allegations. Christian emperors and kings, Turkish sultans, and naturally Jews themselves have likewise denounced such accusations. "Yet some notion of the blood libel accusation has endured to the present." The slur, the libel, courses in the sewers of anti-Semitic thought.

The Murder of William of Norwich is a compelling and lucid work of historical detection. Rose sums up: "The story that began with a monk, a knight, a bishop, and a banker metamorphosed into what one might call a master narrative that became the basis of expulsions and murders, tortures and mass conversions. It provided the outline of a story that could be reimagined and repurposed in every generation. Financially advantageous, politically useful, ethnically and socially bonding, the ritual murder accusation united community, reinforced borders, and reassured medieval Christian believers about God's salvific plan. It was—and is—a powerful story that retains its capacity to fascinate, provoke, disgust, and repel." ⊙

Jon M. Sands is the federal public defender for the District of Arizona.



The Presidents and the Constitution: A Living History

Edited by Ken Gormley

New York University Press, New York, NY, 2016.

701 pages, $45.00.

Reviewed by Louis Fisher

In preparing this overview of presidential power, Ken Gormley invited 37 scholars to analyze the contributions of each president, resulting in separate essays on each, from George Washington to Barack Obama. Several authors wrote two essays. Gormley, in addition to writing the introduction and conclusion, wrote the essay on Bill Clinton. I did the essay on John Adams and co-authored the one on Thomas Jefferson. As Gormley notes in the introduction, the Constitution "dedicates surprisingly little space to defining the duties or powers of the president; instead, it leaves the contours of that high office to be sketched out in real time, as history plays itself out over distinctive eras in American life."

Much is therefore left to the capacity and willingness of Congress and the judiciary to check presidential excesses. At times the public has pushed back against presidential initiatives. Woodrow Wilson went far afield with his rhetoric in *Constitutional Government in the United States* (1908): "If he leads the nation, his party can hardly resist him. His office is anything he has the sagacity and force to make it. … The president is at liberty, both in law and conscience, to be as big a man as he can." Many presidents have been brought in line after overstepping constitutional boundaries.

President Washington learned that lesson after issuing his Neutrality Proclamation in 1793. Richard Ellis' essay on Washington explains in some detail the problems that Washington encountered, eventually forcing him to go to Congress to seek statutory support the following year with the Neutrality Act. As the essay notes, Washington offered to leave it to "the wisdom of Congress to correct, improve, or enforce" the policy announced in his proclamation. The essay does not discuss the main obstacle that stopped Washington. Jurors, rebelling against the idea of convicting someone for a crime established by a proclamation, advised Washington that they would acquit anyone prosecuted under the proclamation. To them, criminal law in the United States could be made only by Congress, not by the president. Washington got the message. He ordered an end to prosecutions and sought statutory authority from Congress. Jurors understood the Constitution better than Washington and his eminent cabinet did. That cabinet included Treasury Secretary Alexander Hamilton, Secretary of State Thomas Jefferson, Secretary of War Henry Knox, and Attorney General Edmund Randolph.

The essay on Jefferson by Cliff Sloan, myself, and Moshe Spinowitz explains his inconsistent views about presidential power with regard to the Louisiana Purchase. Initially he believed the agreement required a constitutional amendment. Napoleon Bonaparte then offered to nearly double the size of the land offered, which would exceed the $2 million that Congress had appropriated. Jefferson strongly supported the new offer, but knew it could not be accomplished through presidential action alone. He would need additional funds from Congress and Senate agreement to the treaty, both of which he received.

Jefferson and Congress were able to use their powers to check the judiciary, which had fully supported prosecutions under the Alien and Sedition Acts. Jefferson used his pardon power to discharge every person prosecuted and punished under the sedition law. Congress passed legislation stating that the Sedition Act was "unconstitutional, null, and void" and provided funds to reimburse those who had been fined under the statute. As the essay on Jefferson explains, the Supreme Court in *New York Times v. Sulli-*

van (1964) acknowledged that the Sedition Act had been rejected not by a court of law but by the "court of history."

The significance of *Marbury v. Madison* (1803) carries forth to the present day. Does a Supreme Court decision on a constitutional issue represent the "final word"? The essay on Jefferson calls attention to his position that the Supreme Court was not superior to the elected branches in deciding constitutional issues. Jefferson's interpretation has gained support over the years. When Congress attempted to regulate child-labor legislation through its commerce power and its taxing power, the resulting statutes were held unconstitutional by the Supreme Court in 1918 and 1922, the first by a 5-4 vote, the second by an 8-1 majority. When Congress persisted in 1938 by passing child-labor legislation under the commerce power, the Supreme Court in *United States v. Darby* (1941) not only upheld the statute unanimously but apologized for its 1918 decision, which it said had no support in the Constitution.

William Pederson's essay on Lincoln explores Lincoln's use of executive power after the Civil War began, when he took a number of initiatives while Congress was out of session, including suspending the writ of habeas corpus and calling out the militia, powers expressly vested in Congress by Article I. When Congress returned, he did not defend his actions as justified under some theory of exclusive, emergency, or inherent power, which presidents have been prone to do after World War II. The essay does not mention that when Congress returned to session, Lincoln, in a public address on July 4, 1861, acknowledged that many of his actions involved the exercise of the Article I powers and for that reason he needed Congress to consider and pass legislation ratifying what he did. Congress passed that legislation.

With regard to judicial supremacy on constitutional matters, Lincoln in his first inaugural address stated that if the policy of the government "upon vital questions affecting the whole people is to be irrevocably fixed by decisions of the Supreme Court," the people "will have ceased to be their own rulers." Part of the *Dred Scott* decision in 1857 concluded that Congress could not prohibit slavery in the territories. Congress passed that legislation in 1862 and Lincoln signed it into law.

Turning to more contemporary presidents, Gormley's essay on Bill Clinton analyzes his impeachment by the House for committing perjury and obstruction of justice. Although the two articles did not receive anywhere near the required two-thirds majority needed in the Senate to remove Clinton, there is little reason to interpret the result as some kind of vindication. Reading individual floor statements by senators reveals a pattern far more critical of Clinton. A large number of senators concluded that he had committed perjury and had obstructed justice, providing detailed analysis for their conclusions. However, after deciding that he should not be removed from office, they proceeded to vote "not guilty."

As Gormley notes, Clinton "did not escape entirely." After the Senate trial, Judge Susan Webber Wright held Clinton in civil contempt for "lying under oath in the *Paula Jones* lawsuit." Given Clinton's grand jury testimony and subsequent public statements, she concluded that his responses during the deposition were "false, misleading and evasive answers that were designed to obstruct the judicial process." In a consent order dated Jan. 19, 2001, one day before leaving office, Clinton acknowledged "having knowingly violated Judge Wright's discovery orders in my deposition in that case," admitting that "certain of my responses to questions about Ms. Lewinsky were false." After Independent Counsel Robert Ray made it clear he would pursue Clinton after he left the presidency, Clinton decided on Jan. 19, 2001, to settle the *Jones* case. He agreed to pay her $850,000 in settlement and $89,484 for reasonable expenses, including legal fees, and he acknowledged that he "knowingly gave evasive and misleading answers" in the Paula Jones deposition.

With regard to President George W. Bush, the essay by Benjamin Kleinerman explains that after the Sept. 11 terrorist attacks, the Bush administration began to insist "on treating the enormous powers of the president as constitutionally vouchsafed to him," sparking a negative response from the public, Congress, and the courts. Legal advisers to Bush argued that his commander-in-chief powers overrode "all relevant statutory limitations" and even the Geneva Conventions governing the treatment of prisoners. Public knowledge of "large-scale torture" of prisoners at the Abu Ghraib prison in Iraq led to greater pressure to restrict the administration. In four major decisions—*Hamdi*, *Rasul*, *Hamdan*, and *Boumediene*—the Supreme Court rejected the constitutional model promoted by Bush. By the time he left office, his approval rating had sunk to 22 percent. This essay does not discuss the six claims by the Bush administration that Saddam Hussein possessed weapons of mass destruction, with all six claims found to be empty. That record did much to discredit the conventional belief in executive expertise regarding national security.

The final essay, by Michael Gerhardt on Barack Obama, begins by discussing the Affordable Care Act, which became law on March 23, 2010, with no Republicans in the House or the Senate supporting it. Litigation focused on the law's individual mandate, requiring all Americans to purchase a minimal level of health-care insurance or pay a penalty. In June 2012, the Supreme Court in *National Federation of Independent Business v. Sebelius* upheld the statute, but under the taxing power rather than the Commerce Clause.

Other lawsuits were filed against the Affordable Care Act, including one by the House charging that the administration had used permanent appropriations to help finance subsidies to certain individuals. Congress never set aside those funds for that purpose. On Sept. 9, 2015, District Judge Rosemary Collyer ruled that the House had standing to sue in order to control federal spending. In her words, Congress' power of the purse "is the ultimate check on the otherwise unbounded power of the executive." The following year, she not only granted standing to the House but held in its favor after analyzing several sections of the Affordable Care Act. The matter carried forward to the Trump administration and is now before the D.C. Circuit.

Gerhardt next discusses Obama's initiatives with regard to immigration policy, starting with the DACA ("Dreamers") program in June 2012 covering undocumented immigrants who entered the country as children. Toward the end of the essay, Gerhardt notes that Obama "made robust use of executive actions, partly in response to congressional inaction." Footnote 56 refers to Obama's remarks on Nov. 20, 2014, regarding a second immigration initiative: DAPA, covering undocumented immigrants with children who are U.S. citizens. The essay does not mention that this initiative lost in district court on Feb. 16, 2015, and in two decisions by the Fifth Circuit that same year. The position of the Fifth Circuit was

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sustained on June 23, 2016, by an equally divided Supreme Court, split 4-4.

Among other legal setbacks discussed by Gerhardt is Obama's decision to resort to recess appointments. As Gerhardt explains, for Obama's first two years he enjoyed a nearly filibuster-proof Senate, which approved 87 percent of his judicial and other nominations. However, during the 2010 midterm elections the Democrats lost six seats in the Senate and the rate of nominations receiving approval fell sharply. Under these conditions, Obama decided in January 2012 to make recess appointments to the National Labor Relations Board (NLRB) and the Consumer Financial Protection Bureau. Republican members of the House and the Senate objected that the Senate was not formally adjourned. Instead, it was meeting every three days in "pro forma" sessions to block recess appointments. Although the Office of Legal Counsel upheld Obama's action, the Supreme Court in *NLRB v. Noel Canning* (2014) voted unanimously against the appointments.

The essay on Obama discusses his use of military force in killing Osama bin Laden in Pakistan and using armed drones to attack terrorist groups abroad, including a U.S. citizen in Yemen, Anwar Al-Aulaqi. It does not discuss the decision of Obama to use military force against Libya in 2011, seeking support not from Congress but from the U.N. Security Council. In doing so, Obama followed precedents established by Truman in 1950 with regard to war against North Korea and Clinton's use of military force against Haiti and Bosnia, with each president seeking support from the Security Council, not Congress. When Clinton sought support from the Security Council to mount military operations in Kosovo, and the Security Council refused to pass a resolution, Clinton turned to NATO allies for support. Is this process by Truman, Clinton, and Obama constitutional? It is said that when presidents seek support from the Security Council, they comply with international law. Let us grant that. But does it comply with the U.S. Constitution? To sustain that argument, one would have to argue that the Senate through the treaty process (the U.N. Charter or NATO) may transfer the Article I authority of Congress to international or regional organizations, a theory that lacks any credibility. ⊙

Louis Fisher is scholar in residence at the Constitution Project and visiting scholar at the William and Mary Law School. From 1970 to 2010, he served at the Library of Congress as senior specialist in separation of powers at the Congressional Research Service and specialist in constitutional law at the Law Library. He is the author of 25 books, including Supreme Court Expansion of Presidential Power: Unconstitutional Leanings (University of Kansas Press, 2017). For more information, see http://loufisher.org.