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# ASLH NEWSLETTER

American Society for Legal History

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University, MS 38677

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NEWS OF THE SOCIETY

Annual Meeting

The eighteenth Annual Meeting of the Society will be held in Charleston, South Carolina, at the Frances Marion Hotel, October 20-22, 1988. Professor Joseph F. Tripp (the Citadel) is local arrangements chairman. Make your plans now to attend.

The 1989 Annual Meeting will be held in San Francisco, October 19-21.

James C. Oldham of Georgetown University Law School is Program Committee Chairman for the 1988 Annual Meeting.

Michael Grossberg of Case Western Reserve University is Program Chairman for the 1989 meeting and will welcome suggestions for panel sessions or individual presentations.

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### President's Letter

In this first annual President's letter, I will undertake to report to the general membership of the Society on the state of the Society. Before turning to that report, I would like to express my gratitude to the Society for entrusting me with the leadership for another term. I feel, as I know you do, great pride in the Society, and I am honored to serve as President. I am also grateful to all of the people whose hard work and dedication has brought us through another successful year, and I look forward to continuing to work with the Officers and Directors, and with all of those who serve on committees, appear on panels at our annual meeting, and in so many ways contribute to the vitality of the Society.

How fares the Society? I am delighted to report that we fare very well indeed. The annual meeting at Philadelphia in October was in every way a success: The attendance was very good, the panel discussions and other intellectual fare of the highest quality, and a fine time was had by all. In particular I should like to record the Society's thanks to this year's principal speaker, Don Fehrenbacher, for his illuminating, thoughtful and graceful talk.

The Society's thanks are due to the outgoing directors: Douglas Hay, R. Kent Newmyer, Rayman Solomon, Sue Sheridan Walker, Jamil S. Zainaldin; to Thomas A. Greene for his labors over the past two years as Vice President, to L. Lynn Hogue for his years of hard work in the Office of Secretary, and to Georgia State University College of Law for the generous support given to Lynn and to the Society.

James W. Ely, Jr., Richard H. Helmholtz, and Kermit L. Hall will be serving with the Officers on the Executive Committee for 1988.

The Society welcomes newly elected Corresponding Fellow, Jean Gaudemet, Director of Studies of the Ecole Pratique des Hautes Etudes, formerly a member of the Faculty of Law, University of Paris (Sorbonne). We record, with sadness, the deaths of Gaines Post, an Honorary Fellow of the Society, and Emile Lousse, Corresponding Fellow.

Congratulations to David J. Ibbetson, winner of the 1987 Surrency Prize, for his article "Words and Deeds: The Action of Covenant in the Reign of Edward I" 4 Law and History Review 71.

On the publications front, we are in splendid shape. The Studies in Legal History series continues its distinguished career; our industrious Editor of the Series, Tom Greene, tells us that promising manuscripts continue to come in, and that we have every reason to expect the Studies to be, in the future, as

they have been in the past, a major contribution to the scholarship of legal history. Our thanks to Louis Bateman of the University of North Carolina Press for the excellent job that he is doing for the Society. (I should note that this year the University of North Carolina Press offered three of their books outside the Studies series at a discount to Society members, and that we hope to continue this arrangement.)

The Law and History Review, which, as you know, has been published by Cornell under the Editorship of Russell K. Osgood, will henceforth be published by the University of Illinois Press. The debt of gratitude that the Society owes to Russell can hardly be overstated. He above all is the person responsible for the fact that in a very short time the Law and History Review has become, and become recognized as, a first-rate scholarly journal. The Society is indebted as well to all those who have served in editorial positions, including Kathleen E. Rourke, Managing Editor, and to Cornell Law School, in particular Dean Peter Martin, for indispensable support, financial and other. And we continue lucky; during this past year we were able to persuade Michael Hoeflich and Bruce Mann to take on the Editorship of the Law and History Review, and are thus assured that great beginnings will become a great tradition.

Your Officers and Directors are pleased indeed at the new arrangement with the University of Illinois Press, and anticipate both a smooth transition and a happy working relationship. One point in particular about the new arrangement deserves special mention, that is that the Press will take on certain functions performed hitherto by a succession of overburdened Secretaries of the Society, primarily dues collection and the maintaining of membership lists. It has been evident for some time that we have been demanding a greater commitment of time and energy than is reasonable, or desirable, from the Secretary, and we deem it of first importance that we are now in a position to reduce the burdens of that office to manageable proportions. There is, however, cost as well as benefit in the new dispensation; in short, the expense of producing the Review will be greater in the future than it has been in the past. Which brings me to the subject of money.

Our Treasurer reported to the Board that the Society's financial position is sound and that we ended the year with a modest surplus. On the other hand, the projection of unavoidable expenses in the years ahead is such that we must take some action to avoid serious depletion of the treasury. Concluding that prudence requires a small increase in dues, the Board voted to raise regular membership from \$18 to \$25, and sustaining membership from \$35 to \$50. We have also adopted a new category of institutional sustaining member, the cost to be \$250. As I am sure you realize, our dues are still relatively low among learned societies; in the words of one who should know, our esteemed



former President, now President of the American Council of Learned Societies, membership in the American Society of Legal History is "Bargainsville, USA."

At the 1986 annual meeting in Toronto, I reported to the membership present the view of the Officers and Directors that two major aspects of Society life and operation deserved exploration, labelling those aspects "Efficiency" and "Democracy." In 1987, I appointed two ad hoc committees: (1) Practices and Procedure: James Ely and Henry Bourguignon, and (2) Openness: Kermit Hall, Norma Basch, Tony Freyer and Christian Fritz. I also asked Janet Loengard to oversee and coordinate the work of these committees. At the 1987 Board Meeting, the two committees submitted reports to the Board. In both cases the reports were preliminary and in both cases the committees will continue their investigation and deliberations this year and bring to the Board, at the 1988 annual meeting, their findings, recommendations, and concrete proposals for implementation.

(1) The interim report of the Committee on Practices and Procedures, exploring the problem of efficient operation of the Society, set forth four organizational models, each in use by one or another Learned Society. Each model has draw-backs and advantages, and a study of all of them will be most useful. Of course the transfer (referred to earlier) of some tasks from the Secretary to the University of Illinois Press will be of considerable help in this matter.

(2) In my original charge to the Committee on Openness, I observed that the goal of the Society was "to have every member... feel that his or her active participation is not only desired but of real importance to the welfare and future of the Society," and requested that they investigate "the extent to which our way of going about things has, on the one hand, encouraged broad participation in Society affairs, and/or, on the other hand, discouraged or even foreclosed such participation." In its report the Committee on Openness had this to say: "Is the Society open? We think, on balance, that it is." The Committee found, however, some gap between the reality of openness, and the perception among the membership; the source of difficulty appears to be faulty communication, and on that certain obvious and immediate steps can be taken. In particular, since the main avenue of communication with all members, not just those who can manage to attend the annual meeting, is the Newsletter, we have to make use of that publication to better advantage. For some time now, our peerless Editors, Bob Haws and Michael Landon, have been urging all of us to send them more information of every kind; your Officers and Directors intend in the future to heed those pleas and we sincerely hope that you will do the same. (Michael Landon having become our Secretary, Bob Haws will henceforth be sole Editor of the Newsletter.) We also urge you

to become as active as you can in Society affairs, to get in touch with committee chairs if you have suggestions or questions, to let the Secretary know if you would like to be considered for membership on committees, to try to attend the annual meetings, and generally, to participate.

Membership in the Society is at a satisfactory level, with about 100 institutional members added in 1987. I would like now to enlist your aid in bringing about a corresponding increase this coming year in individual memberships: Please let us know that you are still with us (by paying your dues) and do spread the word about the Society. We hope to put on something of a membership drive this year, and each of you can play an important role in bringing new people into the Society.

Again, my thanks to all of you for affording me the opportunity to serve as President of this estimable body. I look forward to seeing you in October, in Charleston.

#### Officers

After the balloting held last Fall the Society's officers are now as follows:

President: Barbara Black (Columbia)  
 Vice-President: Lawrence M. Friedman (Stanford)  
 Treasurer: Craig Joyce (Houston)  
 Secretary: Michael de L. Landon (Mississippi)

Directors:  
 thru 1988: Daniel R. Coquillette (Boston College Law)  
 Robert W. Gordon (Stanford Law)  
 Kermit L. Hall (Florida)  
 Michael M. Hoeflich (Illinois Law)  
 Janet Senderowitz Loengard (Moravian College)  
 thru 1989: R. H. Helmholtz (Chicago Law)  
 Bruce H. Mann (Pennsylvania Law)  
 Maeva Marcus (Supreme Court Doc. Hist., DC)  
 Robert C. Palmer (Houston)  
 Marylynn Salmon (Maryland)  
 thru 1990: Norma Basch (Rutgers, Newark)  
 James W. Ely, Jr. (Vanderbilt Law)  
 Cynthia B. Herrup (Duke)  
 Stephen D. White (Wesleyan)  
 William M. Wiecek (Syracuse Law)

President Black has made the following appointments in addition to those listed in her letter:

Chairman, Committee on Documentary Preservation  
 Michael J. Churgin (Texas Law)



- ACLS Delegate  
Katherine T. Preyer (Wellesley)
- Chairman, Ad-Hoc Committee on Prizes  
Robert C. Palmer (Houston)
- Chairman, Surrency Prize Committee  
William Wiecek (Syracuse Law)
- Chairman, Sutherland Prize Committee  
Richard Helmholz (Chicago Law)
- Littleton-Griswold Fund (AHA) Appointees  
Gerald W. Gawalt (Library of Congress)  
Peter Hoffer (Georgia)

#### Board of Directors Actions

At their October 22 meeting in Philadelphia the Society's Directors voted to continue support of the National Co-ordinating Committee for the Promotion of History. We are currently making a contribution of \$100 each year to the Committee.

It was also agreed that we should endorse the work of the Documentary Heritage Trust of the United States.

#### Openness

The Ad-Hoc Committee on Openness in the Society in their report to the Director suggested:

1. That the Annual Meeting agenda should include a general business meeting.
2. That the members of the Nominating Committee should be elected by the membership of the Society--perhaps on a rotating basis.
3. That more care should be made in both the NEWSLETTER and the REVIEW to disseminate information about the Society to its members.

Members who are concerned with these and other "Openness" issues should contact Kermit Hall, Chairman of the Ad-Hoc Committee at the Department of History, University of Florida, Gainesville, FL 32611 (Tel: 904-392-0271). They are also invited to communicate their suggestions and concerns to any of the Officers or Directors.

#### Contacting Other Members

The complete Membership List of the Society consists of a large and bulky computer read-out. The sale of copies of it, for \$200 each, to approved businesses and groups brings in a net profit of approximately \$1,000 per year. Nevertheless, if you are planning a local legal history meeting, or wish to get out information to fellow members about some local program or activity related to the society's purposes, the Secretary can probably arrange to provide you a list of the names and addresses of other members in your city, state or area. Don't hesitate to ask. He will tell you if what you want cannot be done-- or if he will have to bill you for it. Contact Michael Landon at Department of History, University of Mississippi, University, MS 38677 (Tel: 601-232-7105/7148).

Members who wish to make announcements or direct research-related question, to the general membership are invited to do so through the NEWSLETTER. Material should be submitted to the Editor before March 1 (Spring) or August 1 (Fall).

#### Sutherland Prize

The Society announces the establishment of the Donald W. Sutherland Prize in English Legal History to be awarded for the first time at the next annual meeting. The Sutherland Fund was established with the cooperation of the American Society of Legal History, the Selden Society, and the Midwest Medieval Society. The guidelines for the award of the Prize are as follows; nominations are welcomed and will be forwarded to the Chairman of the Prize Committee for the Sutherland Fund.

#### Guidelines:

1. The Sutherland Prize in English Legal History shall be awarded for the best article in any given year. Since the Sutherland Prize is intended to be a prestigious award, it ought not be granted unless the best article in a given year satisfies criteria of quality and importance.
2. The Prize shall be awarded articles solely on the basis of merit, regardless of the academic rank or standing of the author or immediately prior awards.
3. The Prize shall be awarded initially in the amount of \$500, together with a certificate.



4. The amount of the Prize shall be increased as possible (considering the size of the corpus) by \$100 increments to maintain the Prize at the value it had at its first award, but the Prize shall be taken only from the interest of the fund, never from the corpus.
5. The first award shall be made at the Society's meeting in October 1988, considering those articles published in the previous calendar year. The year of publication for these purposes will be determined by the time of actual appearance. When the committee is unsure about the time of actual appearance, it can at its discretion exclude an article from consideration in a given year and nominate it by notification back to the secretary for consideration the following year.
6. The selection committee shall consider articles they know from their own reading, articles submitted to the secretary of the society for this purpose, and articles published in Law and History Review, The American Journal of Legal History or The Journal of Legal History. Interested individuals may nominate the works of others by addressing the secretary. The committee is not otherwise burdened or limited. Nominations should be submitted as soon as possible, but in no case after the June 1 deadline of the relevant year.
7. As well as articles printed in journals, contributions to a festschrift or similar collections of writings by various authors (excluding reprinted collections of articles) shall be capable of nomination.
8. The award shall be made for a single article and not divided between two articles.

#### Professional Meetings

The Albany Law School and the New York State Commission on the bicentennial of the United States Constitution will sponsor a conference entitled "In Search of A Usable Past: An Examination of the Origins and Implications of State Protections of Liberty." The general problem to be addressed by the conference is whether the constitutional traditions of the 18th and 19th centuries provide a useful past for the protection of civil liberties in the 20th Century. The conference will be held from October 13 to 15, 1988 at the Albany Law School. For further information please contact Professor Stephen Gottlieb, Albany Law School, 80 New Scotland Avenue, Albany, New York 12208.

Missouri Western State College has issued a call for papers for a conference on the legacy of the Constitution. The conference will be held April 13 to 15, 1989. Persons interested on presenting papers should contact Dr. Sylvie Richards, Office of University Relations, Missouri Western State College, St. Joseph, MO 64507 no later than June 15, 1988.

#### Recent Publications of Interest

- J. Appleby, "The American Heritage - The Heirs and the Disinherited," Journal of American History (December 1987), 798-813.
- Jean Birrell, "Common Rights in the Medieval Forest: Disputes and Conflicts in the Thirteenth Century," 117 Past and Present (November 1987), 22-49.
- Johnathan M. Chu, "Nursing a Poisonous Tree Litigation and Property Law in Seventeenth-Century Essex County, Massachusetts The Case of Bishop's Farm," 31 American Journal of Legal History (July 1987), 221-252.
- David S. Clark, "The Medieval Origins of Modern Legal Education: Between Church and State," 35 The American Journal of Comparative Law (Autumn 1987), 653-720.
- David Cohen, "Law, Society and Homosexuality in Classical Athens," 117 Past & Present (November 1987), 3-21.
- Robert J. Cottroll, "Liberalism and Paternalism: Ideology, Economic Interest and the Business Law of Slavery," 31 American Journal of Legal History (October 1987), 359-373.
- David P. Currie, "The Constitution in the Supreme Court: The New Deal, 1931-1940," 54 University of Chicago Law Review (Spring 1987), 504-555.
- Janel M. Curry-Roper, "19th-Century Land Law and Current Landownership Patterns," 77 Geographical Review (July 1987), 261-278.
- G. William Domhoff, "Corporate-Liberal Theory and the Social Security Act: A Chapter in the Sociology of Knowledge," 15 Politics and Society (No. 3, 1986), 297-330.
- James M. Donovan, "Justice and Sexuality in Victorian Marseilles, 1825-1885," 21 Journal of Social History (Winter 1987) 229-262.



- E. C. Dubois, "Outgrowing the Compact of the Fathers - Equal Rights, Woman Suffrage, and the United States Constitution," 74 Journal of American History (December 1987), 836-862.
- Andrew Fede, "Legal Protection for Slave Buyers in the U.S. South: A Caveat Emptor," 31 American Journal of Legal History (October 1987), 322-358.
- L. Fink, "Labor, Liberty, and the Law - Trade Unionism and the Problem of the American Constitutional Order," 74 Journal of American History (December 1987), 904-925.
- Paul Finkelman, "Slaves as Fellow Servants: Ideology, Law, and Industrialization," 31 American Journal of Legal History (October 1987), 269-305.
- Price V. Fishback, "Liability Rules and Accident Prevention in the Workplace: Empirical Evidence from the Early Twentieth Century," 16 The Journal of Legal Studies (June 1987), 305-328.
- E. Foner, "Rights and the Constitution in Black Life During the Civil War and Reconstruction," 74 Journal of American History (December 1987), 863-883.
- Stephen Garton, "The Rise of the Therapeutic State: Psychiatry and the System of Criminal Jurisdiction in New South Wales, 1890-1940," 32 Australian Journal of Politics and History (No. 3 1986), 378-388.
- James Gordley, "Law and Religion: An Imaginary Conversation With a Medieval Jurist," 75 California Law Review (January 1987), 169-184.
- Stephen E. Gottlieb, "In the Name of Patriotism: The Constitutionality of 'Bending' History in Public Secondary Schools" 62 New York University Law Review (June 1987), 497-579.
- Mark F. Grady, "Common Law Control of Strategic Behavior: Railroad Sparks and the Farmer," 17 The Journal of Legal Studies (January 1988), 15-44.
- V. G. Harding, "Wrestling Toward the Dawn - The Afro-American Freedom Movement and the Changing Constitution," 74 Journal of American History (December 1987), 718-739.
- H. Hartog, "The Constitution of Aspiration and the Rights That Belong to Us All," 74 Journal of American History (December 1987), 1013-1034.

- T. L. Haskell, "The Curious Persistence of Rights Talk in the Age of Interpretation," 74 Journal of American History (December 1987), 984-1012.
- L. M. Hill. Bench and Bureaucracy: The Public Career of Sir Julius Casear, 1580-1636. Stanford Cal: Stanford University Press, 1988.
- Morton J. Horwitz, "History and Theory," 96 Yale Law Review (July 1987), 1825-1835.
- R. W. Hoyle, "An Ancient and Laudable Custom: The Definition and Development of Tenant Right in North-Western England in the Sixteenth Century," 116 Past & Present (August 1987), 24-55.
- Craig Joyce, "Keepers of the Flame: Prosser and Keeton on the Law of Torts (Fifth Edition) and the Prosser Legacy," 39 Vanderbilt Law Review (April 1986), 851-877.
- Robert J. Kaczorowski, "Revolutionary Constitutionalism in the Era of the Civil War and Reconstruction," 61 New York University Law Review (November 1986), 863-941.
- Leo Katz. Bad Acts and Guilty Minds: Conundrums of the Criminal Law. Chicago, Ill: University of Chicago Press, 1988.
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- C. Ian Kyer and Jerome E. Bickenbach. The Fiercrest Debate: Caesar Wright, the Benchers, and Legal Education in Ontario. Toronto Canada: University of Toronto Press, 1988.
- W. Lafeber, "The Constitution and United-States Foreign Policy-An Interpretation," 74 Journal of American History (December 1987), 695-717.
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- Joe W. Leedom, "Lady Matilda Holland, Henry of Lancaster and the Manor of Melbourne," 31 American Journal of Legal History (April 1987), 118-125.



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- Marc Linder, "Farm Workers and the Fair Labor Standards Act: Racial Discrimination in the New Deal," 65 Texas Law Review (June 1987), 1335-1394.
- Thomas B. Littlewood. Coals of Fire: The "Alton Telegraph" Libel Case. Carbondale Illinois: Southern Illinois University Press, 1988.
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- Calvin R. Massey, "The Excessive Fines Clause and Punitive Damages: Some Lessons From History," Vanderbilt Law Review (November 1987), 1233-1276.
- Randall McGowen, "The Body and Punishment in Eighteenth-Century England," 59 The Journal of Modern History (December 1987), 651-679.
- M. Minow, "We, the Family - Constitutional Rights and American Families," 74 Journal of American History (December 1987), 959-983.
- R. K. Newmyer, "Harvard Law School, New England Legal Culture, and the Antebellum Origins of American Jurisprudence," 74 Journal of American History (December 1987), 814-835.
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- Carole Shammas, "English Inheritance Law and Its Transfer to the Colonies," 31 American Journal of Legal History (April 1987), 145-165.
- Suzanna Sherry, "The Founders' Unwritten Constitution," 54 University of Chicago Law Review (Autumn 1987), 1127-1177.
- Aviam Soifer, "Status, Contract, and Promises Unkept," 96 Yale Law Journal (July 1987), 1916-1959.
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