

AMERICAN SOCIETY
FOR
LEGAL HISTORY



1990

Twentieth Annual Meeting
at
Forum Hotel
Chicago, Illinois
October 18-20, 1990

PROGRAM

Registration

Thursday, October 18 — 2:00-5:00 p.m.

Friday, October 19 — 8:00-12:00 a.m.

Thursday, October 18, 1990

5:00-6:30 p.m. Reception hosted by the Keck, Mahan and Cate Law Firm; in the Atrium, Northwestern University School of Law (entrance on Superior Street or Chicago Street - near Lakeshore Drive)

8:00 p.m. Michigan Room

Board of Directors Meeting

Friday, October 19

7:30-8:30 a.m. Complimentary Continental Breakfast

American Military Justice: Trials and Travails

8:30-10:00 Session A
Forum Ballroom East

Harold M. Hyman, Chair
Department of History
Rice University

"The Creation of the United States Court of Military Appeals: An Historical Retrospective"

Jonathan Lurie
Rutgers University
Department of History

"Ode to Billy Budd: American Military Justice, 1951-1990"

Christopher Sterritt
Chief Commissioner
United States Court of Military Appeals

Comment: Harold M. Hyman

Friday, October 19, 1990

Aspects of Criminal Justice Theory in the Middle Ages

8:30-10:00 Session B Hutchinson Room

Harold J. Berman, Chair
School of Law
Emory University

"On the Medieval Origins of Rights Theory:
Scholastic Notions of Criminal Due Process"

Richard M. Fraher
School of Law
Indiana University, Bloomington

"From Sin to Crime: Discretionary Punishment in
Medieval Jurisprudence"

Laurent Mayali
School of Law
University of California, Berkeley

Comment: Harold J. Berman

**Transatlantic Influences on Early American
Legal Cultures**

8:30-10:00 Session C Trade Room East

David Lieberman, Chair
School of Law
University of California, Berkeley

"Transatlantic Influences on American Constitutional
Republicanism"

Mortimer Sellers
School of Law
University of Baltimore

"Comparing Legal Cultures: Toward a New Method?"

Jeffrey Sawyer
Department of History and Philosophy
University of Baltimore

Comment: Stephen A. Conrad
School of Law
Indiana University, Bloomington
David Lieberman

Friday, October 19, 1990

10:00-10:15

Coffee Break

Problems in Tort Law in America, 1840-1925

10:15-12:15 Session A Forum Ballroom East

G. Edward White, Chair
School of Law
University of Virginia

"Cost-Benefit Analysis in Nuisance Law, 1840-1906"

Christine Rosen
School of Business
University of California, Berkeley

"Explaining the Emergence of the Attractive Nuisance
Rule: A 'Kinder, Gentler' Instrumentalism in the Age of
Formalism, 1850-1925"

Peter Karsten
Departments of History and Sociology
University of Pittsburgh

Comment: William P. LaPiana
New York Law School

Markets and Communities in Antebellum America

10:15-12:15 Session B Hutchinson Room

Arthur F. McEvoy, Chair
Department of History
Northwestern University

"'Let us go down there and confound their language':
The Multiplicity of Legal Discourses in the Antebellum
United States"

R. Ben Brown
American Bar Foundation

"Fires and the Well-Regulated Society"

William J. Novak
Institute of Legal Studies
School of Law
University of Wisconsin

"The Problem of Low Prices at Sales by Operation of Law:
Appellate Construction of Markets in Antebellum South
Carolina"

Thomas D. Russell
Department of History
Stanford University

Comment: Victoria Saker
Department of History
Amherst College
Arthur F. McEvoy

Friday, October 19, 1990

Labor Law in the 19th and 20th Centuries

10:15-12:15 Session C Trade Room East

Leon R. Fink, Chair
Department of History
University of North Carolina, Chapel Hill

"Labor Law verses the 'Gusty Passions of Politics' in the
United States and England, 1870-1930"

William Forbath
School of Law
University of California, Los Angeles

"The Invention of Free Labor in the United States"

Robert J. Steinfeld
School of Law
State University of New York at Buffalo

"Beggars and 'Free Labor' in Postbellum American"

Amy Dru Stanley
Department of History
University of California, Irvine

Comment: Leon R. Fink

Luncheon

12:30 p.m. Empire Ballroom

Presiding: Lawrence M. Friedman,
Marion Rice Kirkwood
Professor of Law,
Stanford University
Law School
President, American
Society for Legal
History

Address: The State of the Society

1:30-2:30 **General Business Meeting** Empire Ballroom

3:45 p.m. Buses will leave the Hotel for the University of
Chicago Law School

4:30 p.m. University of Chicago Law School Auditorium

Fulton Lecture
Holmes's "Life Plan": Confronting Passion,
Ambition, and Powerlessness

G. Edward White, John B. Minor Professor of Law and
History, University of Virginia

Friday, October 19, 1990

5:30 p.m. Reception

Hosted by the University of Chicago Law School

Bus transportation back downtown will be available
after the Reception

Saturday, October 20, 1990

8:00-8:45 Complimentary Continental Breakfast

Civil Liberties in World War II

8:45-10:15 Session A Forum Ballroom East

Michael de L. Landon, Chair
Department of History
University of Mississippi

"When the Army Rules: Martial Law and Constitutional
Crisis in Hawaii, 1941-1945"

Jane L. Scheiber
College of Chemistry
University of California-Berkeley

Harry N. Scheiber
School of Law
University of California-Berkeley

Comment: Mari Matsuda
William S. Richardson School of Law
University of Hawaii

Paul L. Murphy
Department of History
University of Minnesota

Saturday, October 20, 1990

The Social and Political Construction of "Crime": A Comparative Perspective

8:45-10:15 Session B Hutchinson Room

Paul Haagen, Chair
School of Law
Duke University

"The State and Social Definitions of Crime in Qing China"

Jonathan Ocko
Department of History
North Carolina State University

"The Changing Social Constructions of Arson in the United States, 1880-1980"

Victor Jew
Department of History
University of Wisconsin, Madison

Comment: Paul Haagen

Law and Economics in Antebellum Louisiana

8:45-10:15 Session C Adler Room

Judith K. Schafer, Chair
Murphy Institute of Political Economy
Tulane University

"Securing Antebellum Credit Transactions with Slaves: East Feliciana Parish, Louisiana, 1825-1860"

Richard H. Kilbourne
Clinton, Louisiana

"Tort Law in Antebellum Louisiana: A Test Case for the Horwitz Thesis"

James Etienne Viator
School of Law
Loyola University, New Orleans

Comment: Joseph W. McKnight
School of Law
Southern Methodist University

10:15-10:30

Coffee Break

Saturday, October 20, 1990

Marriage and Its Consequences in Medieval Europe

10:30-12:00 Session A Forum Ballroom East

Richard H. Helmholz, Chair
School of Law
University of Chicago

"The American Heritage of Roman Marriage Law"

James A. Brundage
Department of History
University of Kansas

"Regulating the Marital Bond: Bestiality Laws"

Joyce E. Salisbury
Department of History
University of Wisconsin, Green Bay

Comment: Charles Donahue, Jr.
School of Law
Harvard University
Richard H. Helmholz

Lawyers, Judges, and Reform in the Interwar Period

10:30-12:00 Session B Hutchinson Room

Rayman L. Solomon, Chair
School of Law
Northwestern University

"A New Deal Lawyer as Catalyst: Lloyd K. Garrison in Wisconsin and Washington"

Kjell A. Modeer
Law Faculty
Lund University

"Liberals and Conservatives on the New York Court of Appeals in the Interwar Period"

William E. Nelson
School of Law
New York University

Comment: Rayman L. Solomon

Saturday, October 20, 1990

Origins and Meanings of the Bill of Rights

10:30-12:00 Session C Adler Room

Michael Kent Curtis, Chair
School of Law
Wake Forest University

"James Madison and the Bill of Rights: A Reluctant Paternity"

Paul Finkelman
Brooklyn Law School

"The Second Amendment: Toward an Afro-Americanist Reconsideration"

Robert J. Cottrol
School of Law
Rutgers University, Camden
Raymond T. Diamond
School of Law
Tulane University

Comment: Sanford Levinson
School of Law
University of Texas
Michael Kent Curtis

12:00-1:45 p.m.

Lunch Break

Authority and Morality in England and Early America

1:45-3:15 Session A Forum Ballroom East

David H. Flaherty, Chair
Department of History
University of Western Ontario

"Establishing Legitimacy in Colonial County Courts: Contempt and Morals Prosecutions in Early Pennsylvania and New Jersey"

William Offutt
Department of History
Pace University

"A Bawdy Court and the Local Community: The Archdeacon's Court of Canterbury in Post-Reformation Kent"

Victoria List
Department of History
Washington and Jefferson College

Comment: Bruce H. Mann
School of Law and Department of History
University of Pennsylvania
David H. Flaherty

Saturday, October 20, 1990

Sources of Law in Early Modern Europe

1:45-3:15 Session B Hutchinson Room

Brian P. Levack, Chair
Department of History
University of Texas

"'Une certaine idee de l'Etat': Montesquieu and the *judex lex loquens* Revisited"

Karel M. Schönfeld
The Hague

"Why Did Early Modern Lawyers Confuse Customary Law with Natural Law?"

James Whitman
School of Law
Stanford University

Comment: Brian P. Levack

3:15-3:30

Coffee Break

Legal Development in Medieval England

3:30-5:00 Session A Forum Ballroom East

Joseph Biancalana, Chair
School of Law
University of Cincinnati

"The Process of Legal Development in Fourteenth-Century England"

Robert C. Palmer
School of Law and
Department of History
University of Houston

"Law and Fact in Litigation in the Early Yearbook Period"

Paul Brand
Institute of Historical Research
London

Comment: Joseph Biancalana

Saturday, October 20, 1990

Realism and Reform in the Twentieth Century

3:30-5:00 Session B Hutchinson Room

Laura Kalman, Chair
Department of History
University of California, Santa Barbara

"Common Laborers? Institutional Economists and Labor
Law, 1917-1935"

Daniel Ernst
Georgetown Law Center

"Cycles, Networks, and *Bricolage*: A Modest Revision of
the History of Modern American Jurisprudence"

N.E.H. Hull
School of Law
Rutgers University, Camden

"Walter Wheeler Cook: The Law Professor Confronts the
Scientific Ideal"

John Henry Schlegal
School of Law
University of New York at Buffalo

Comment: Laura Kalman

**American Society for
Legal History**

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Thomas G. Smith
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**Schedule of Forthcoming Meetings
of the Society**

October 24-25, 1991
San Francisco, California

Studies in Legal History

- C.H.S. Fifoot, *Frederick William Maitland: A Life*. (1971)
- Raoul Berger, *Impeachment: The Constitutional Problems*. (1973)
- The Autobiographical Notes of Charles Evans Hughes*, edited by David J. Danielski and Joseph S. Tulchin. (1973)
- John H. Langbein, *Prosecuting Crime in the Renaissance: England, Germany, and France*. (1974)
- Raoul Berger, *Executive Privilege: A Constitutional Myth*. (1974)
- George Dargo, *Jefferson's Louisiana: Politics and the Clash of Legal Traditions*. (1975)
- William E. Nelson, *Americanization of the Common Law: The Impact of Legal Change on Massachusetts Society, 1760-1830*. (1975)
- Maxwell H. Bloomfield, *American Lawyers in a Changing Society 1776-1876*. (1976)
- Morton J. Horwitz, *The Transformation of American Law, 1780-1860*. (1977)
- Robert Stevens, *Law and Politics: The House of Lords as a Judicial Body, 1800-1976*. (1978)
- Stephen D. White, *Sir Edward Coke and "The Grievances of the Commonwealth," 1621-1628*. (1979)
- David Thomas Konig, *Law and Society, 1629-1692*. (1979)
- Richard A. Cosgrove, *The Rule of Law: Albert Venn Dicey, Victorian Jurist*. (1980)
- Michael S. Hindus, *Prison and Plantation: Crime, Justice, and Authority in Massachusetts and South Carolina, 1767-1878*. (1980)
- Paul Finkelman, *An Imperfect Union: Slavery, Federalism, and Comity*. (1981)
- Robert C. Means, *Underdevelopment and the Development of Law: Corporations and Corporation Law in Nineteenth Century Columbia*. (1980)
- On the Law and Customs of England: Essays in Honor of S.E. Thorne*, edited by Morris S. Arnold, Thomas A. Green, Sally A. Scully, and Stephen D. White. (1981)
- John Philip Reid, *In Defiance of the Law: The Standing-Army Controversy, The Two Constitutions, and the Coming of the American Revolution*. (1981)
- A.G. Roeber, *Faithful Magistrates and Republican Lawyers: Creators of Virginia Legal Culture, 1680-1810*. (1981)
- William E. Nelson, *Dispute and Conflict Resolution in Plymouth County, Massachusetts, 1725-1825*. (1981)
- Lawrence M. Friedman and Robert V. Percival, *The Roots of Justice: Crime and Punishment in Alameda County, California, 1870-1910*. (1981)
- Robert Stevens, *The Law School: Legal Education in America from the 1850's to the 1980's*. (1983)

- Hendrik Hartog, *Public Property and Private Power: The Corporation of the City of New York in American Law, 1730-1870*. (1983)
- R. Kent Newmyer, *Supreme Court Justice Joseph Story: Statesman of the Old Republic*. (1986)
- Norman Rosenberg, *Protecting the Best Men: An Interpretive History of the Law of Libel*. (1986)
- Michael Grossberg, *Governing the Hearth: Law and the Family in Nineteenth Century America*. (1985)
- Marylynn Salmon, *Women and the Law of Property in Early America*. (1986)
- Laura Kalman, *Legal Realism at Yale, 1927-1960*. (1986)
- Bruce H. Mann, *Neighbors and Strangers: Law and Community in Early Connecticut*. (1987)
- Stephen D. White, *Custom, Kinship, and Gifts to Saints: The Laudation Parentum in Western France, 1050-1150*. (1988)
- Emily Zack Tabuteau, *Transfers of Property in Eleventh-Century Norman Law*. (1988)
- Allen Steinberg, *The Transformation of Criminal Justice: Prosecution, Politics and Popular Life in Philadelphia, 1800-1880*. (1989)
- Robert J. Steinfeld, *The Invention of Free Labor in the United States*. (1991)
- James Oldham, *Unpublished Legal Papers of Lord Mansfield*. (forthcoming)

Membership in the American Society for Legal History is available to all persons interested in the general history of law, its origins, and its institutional growth. The annual dues are \$10.00 for student members, \$30.00 (\$33.00 non U.S.) for regular members, \$50.00 for sustaining members, \$50.00 (\$53.00 non-U.S.) for institutional members, \$100.00 for sponsoring members, and \$400.00 for life members. Dues include the cost of a subscription to the *Law and History Review* which is published twice a year, and the right to receive all publications of the Society upon terms set for each type of volume published. Communications concerning the Society may be addressed to the Secretary-Treasurer, Professor Michael de L. Landon, University of Mississippi, Department of History, University, Mississippi 38677.

