

AMERICAN SOCIETY
FOR
LEGAL HISTORY



Historia Omnium Legum

1993

Twenty-third Annual Meeting
Peabody Hotel
Memphis, Tennessee
October 22-23

PROGRAM

Registration

Thursday, October 21
2:00 — 6:00 p.m.

Friday, October 22
8:30 a.m. — 4:30 p.m.

Saturday, October 23
8:00 a.m. — 12:00 p.m.

East Mezzanine
Peabody Hotel

Note: The Registration Fee includes the bus transportation to and from the Plenary Session at the Memphis State University Campus and the Dixon Gallery Reception on Friday afternoon.

Thursday, October 21, 1993

5:00-6:30 p.m.

Forest Room

Welcoming Reception

7:30 p.m.

Brinkley Room

Board of Directors Meeting

Friday, October 22, 1993

7:30-8:30 a.m.

Mezzanine Floor

Complimentary Continental Breakfast

**Aspects of the Law of Nuisance in
Mid-Nineteenth Century America**

8:30-10:00 a.m.

Moorman Room

Robert Kaczorowski, Chair
Fordham University School of Law

Papers:

"The Road to Slaughterhouse: The Regulation
of Noxious Trade, 1930-1872"

William Novak, History
University of Chicago

"Efficient But Antisocial: A Different
Perspective on the American Rejection of the
Ancient Lights Doctrine, 1815-1880"

Peter Karsten, History
University of Pittsburgh

Commentators:

Christine Rosen, Haas Business School,
University of California, Berkeley

William LaPiana
New York Law School

Friday, October 22, 1993

**Legality and Legitimacy in the
English Revolution of 1688**

8:30-10:00 a.m. Parker Room

Richard Kay, Chair
University of Connecticut
School of Law

Papers:

"The Law of Succession and the
Revolution of 1688"

Howard Nenner, History
Smith College

"Coping With Revolution: Problems of
Transition in the Aftermath of 1688"

Richard Kay, Law
University of Connecticut

Commentators:

Carolyn Edie, History
University of Illinois-Chicago

David Seipp, Law
Boston University

**Gay and Lesbian Rights in Recent
American History**

8:30-10:00 a.m. Forest Room

Mary Lou Fellows, Chair
University of Minnesota Law School

Papers:

"From the Black Cat Bar to the Department
of Defense: A Historical Perspective on
the Legal Construction of 'Homosexual
Conduct' "

Patricia Cain, Law
University of Iowa

"Boutillier Revisited: Lesbian-Gay Law
Reform and the Limits of Sexual Liberalism
on the Warren Court"

Marc Stein, History
University of Pennsylvania

Friday, October 22, 1993

Commentators:

Elvia Arriola, Law
University of Texas

Marc Fajer, Law
University of Miami

Anglo-American Influence on Sources of Law Abroad

10:15 a.m.-12:00 p.m. Parker Room

Ronald Frank, Chair
Department of History
Old Dominion University

Papers:

"German Anglophiles and American Jurists:
Some Sense about the Wisdom of the Second
Reich"

James Q. Whitman, Law
Yale University

"Mrs. Palsgraf Visits Republican-Era China:
The Application of American Law at the
United States Court for China"

Tahirih V. Lee, Law
University of Minnesota

"The Influence of United States Law on Post-
World War II Japan."

Daniel H. Foote, Law
University of Washington

Commentator:

Alan Watson, Law
University of Georgia

**Legal History, Literary History:
Eighteenth-Century Intersections**

10:15 a.m.-12:00 p.m. Moorman Room

Aviam Soifer, Chair
Boston College School of Law

Friday, October 22, 1993

Papers:

"When Women Do Law: Eighteenth-Century
Novelistic Origins of Contemporary Feminist
Legal Theory"

Kathryn Temple, English
University of Virginia

"From Censorship to Authorship: Daniel
Defoe and the Invention of Literary Property"
Benjamin Moore, English
University of Iowa

"The Eighteenth-Century Law of Evidence:
Chief Baron Gilbert, John Locke, and Samuel
Richardson's *Clarissa*"

Judy M. Cornett, Law
University of Tennessee

Commentator:

Elizabeth Gemmette
Albany Law School and Gemmette and
Gemmette

Reparations

10:15 a.m.-12:00 p.m. Forest Room

Boris I. Bittker, Chair
Yale Law School

Papers:

"The Political Economy of Capitalism:
Implications for African Reparations"

Obiagele Lake, Anthropology
University of Iowa

"Reparations for the Forced Removal and
Internment of Japanese Canadians During
World War II"

Judge Maryka Omatsu
Provincial Court of Ontario

"Compensatory Justice and the Imprisonment
of Japanese Americans During World War II"

Shirley Castelnovo, Political Science
Northeastern University

Commentator:

Howard Venable, Law
New York University

Friday, October 22, 1993

12:00-1:15 p.m.

Lunch Break

**Proper Protection of Women: Theories of Property
and Self-Ownership in Nineteenth-Century
Women's Political and Intellectual History**

1:15-3:00 p.m.

Forest Room

Robert Gordon, Chair
Stanford Law School

Papers:

"The Lady Athenians': Conflicts in the
Woman's Suffrage Movement in Boston and
New York"

Elizabeth Battelle Clark, Law
Boston University

"Home as Work: The First Women's Rights
Claims Concerning Wives' Household Labor"

Riva Siegel, Law
University of California, Berkeley

"The Moral Sense of Our Own People': The
Republican Party, Congress, and National
Morality in the Anti-Polygamy Campaign"

Sarah Barringer Gordon, Law
University of Pennsylvania

Commentator:

Linda K. Kerber, History
University of Iowa

**What Did Medieval English Villagers
Mean By "Customary Law"?**

1:15-3:00 p.m.

Parker Room

Paul Hyams, Chair
Department of History
Cornell University

Friday, October 22, 1993

Papers:

"What Was Customary Law in Medieval English Manorial Courts?"

John Beckerman, Law
Benjamin N. Cardozo School of Law

"The Customary Law of Family and Property Relations in Medieval English Manorial Courts"

Lloyd Bonfield, Law
Tulane University

Commentators:

Sandra Van Burkdeo, History
Wayne State Univrsity

Robert Palmer, Law
University of Houston

**Property Rights and Economic Development
in the Early Republic**

1:15-3:00 p.m. Moorman Room

Norma Basch, Chair
Department of History
Rutgers-Newark

Papers:

"Confiscatory Condemnation and the Founders' Concept of Eminent Domain: the Maryland Ironworks Act"

John F. Hart, Law
Widener University

"Property Rights and the Transportation Revolution: Eminent Domain in Virginia, 1815-1850"

John Majewski, History
University of California, Los Angeles

"Property Rights and the Acquisition of a Continent: The Public Supervision of Native American Land Sales, 1779-1823"

Lindsay G. Robertson, History
University of Virginia

Friday, October 22, 1993

Commentator:

William W. Fisher, III, Law
Harvard University

3:30 p.m.

Buses leave Peabody Hotel for Memphis State
University Campus

4:00 p.m.

Cecil C. Humphreys
School of Law

Keynote speaker

Paula Giddings

Title: "Ida B. Wells and the Origins of the Modern Civil Rights Movement"

5:00-6:30 p.m.

RECEPTION

Dixon Art Gallery

Bus transportation will be available to the Gallery and after the Reception back to the Peabody.

Saturday, October 23, 1993

8:00-8:45 a.m.

Mezzanine Floor
Complimentary Continental Breakfast

**Class, Caste and Arms: Firearms Regulation
in Comparative Perspective**

8:45-10:15 a.m.

Moorman Room

Robert Haws, Chair
Department of History
University of Mississippi

Papers:

"Enforcement of Firearms Restrictions in Seventeenth-Century England"

Joyce Lee Makolm, History
Bentley College

Saturday, October 23, 1993

"Firearms Regulation and Racial Disparity in the Reconstruction and Post Reconstruction South"

Robert J. Cottrol, Law
Rutgers School
and

Raymond T. Diamond, Law
Tulane University

Commentators:

Michael Kent Curtis, Law
Wake Forest University

Nicholas Johnson, Law
Fordham University

**Regulating the Lives of the Later
Medieval English Urban and Rural Dwellers**

8:45-10:15 a.m. Parker Room

R.H. Helmholtz, Chair
University of Chicago Law School

Papers:

"Supervised Citizens: Late Medieval Borough Courts and the Growth of Regulation"

David Carr, History
University of South Florida

"The Heavy-Handed Marriage Counselor:
Regulating Marriage in Some Later-Medieval
English Local Ecclesiastical-Court
Jurisdictions"

L.R. Poos, History
Catholic University

Commentators:

Elaine Clark, History
University of Michigan at Dearborn

Victoria List, History
Washington and Jefferson College

Saturday, October 23, 1993

Brennan and Marshall

8:45-10:15 a.m. Venetian Room

Mary Dudziak, Chair
University of Iowa
College of Law

Papers:

"Thurgood Marshall as Republican Lawyer"

Mark Tushnet, Law
Georgetown University

"The Nomination of Justice Brennan:
Eisenhower's Mistake?"

Steve Wermiel, History
Georgia State University

Commentators:

Gilbert Ware, History and Politics
Drexel University

Jack Bass, Journalism
University of Mississippi

Origins of the Eleventh Amendment

10:30 a.m.-12:00 p.m. Venetian Room

John V. Orth, Chair
University of North Carolina
Law School

Papers:

"Legal Immunity and Legislative Obligation:
Petitioning for Private Relief in the Early
Republic"

Christine Desean, Law
Harvard University

"Suits Against States: Diversity of Opinion
in the 1790s"

Maeva Marcus and Natalie Wexler
Supreme Court Documentary History Project

Saturday, October 23, 1993

Commentators:

William Fletcher, Law
University of California, Berkeley

Akhil Amar, Law
Yale University

Canadian Legal History and Race Discrimination

10:30 a.m.-12:00 p.m. Parker Room

John McLaren, Chair
Faculty of Law
University of Victoria

Papers:

"White Women Versus Chinese Men: The
Prosecutions of Quong Wing and Quong Sing,
Moose Jaw, Saskatchewan, 1912"

Constance Backhouse, Law
University of Western Ontario

"Race and Law: Canadian Narratives"

Tina Loo, History
Simon Fraser University

Commentators:

John Wunder, History
University of Nebraska

Elizabeth Higginbotham, Sociology/Social
Work and Center for Research on Women
Memphis State University

**The Voices in the Classroom: Bringing Different
Visions to Bear on the Teaching of Legal History**

10:30 a.m.-12:00 p.m. Moorman Room

Kellis Parker, Moderator
Columbia University School of Law

Panelists:

Nancy Erickson
National Center of Women & Family Law, Inc

Saturday, October 23, 1993

Hendrick Hartog, Law
Princeton University

Carol Chomsky, Law
University of Minnesota

Comment:

The Audience

12:15-1:15 p.m.

Continental Ballroom

ASLH LUNCHEON

**Courts and Torts, In Work and Out: Hidden Classes
of Injury in Victorian America**

1:30-3:15 p.m.

Venetian Room

Christopher L. Tomlins, Chair
American Bar Foundation

Papers:

"The Triangle Shirtwaist Fire of 1911: Social
Change, Industrial Accidents, and the
Evolution of Common-Sense Causality"

Arthur F. McEvoy
American Bar Foundation

"The Social Foundations for Non-Workplace
Injuries in Negligence, 1850-1920"

Barbara Y. Welke
American Bar Foundation

Commentators:

Martha Chamallas, Law
University of Iowa

Michael Grossberg, History
Case Western Reserve University

✓ *Saturday, October 23, 1993*

**Seditious Libel and Partisan Politics in
Colonial America**

1:30-3:15 p.m.

Parker Room

Deobrah Rosen, Chair
Department of History
Lafayette College

Papers:

"Before Zenger: Truth and Seditious Speech
in the American Colonies, 1607-1700"

Larry Eldridge
Widener University

"Considering Zenger: Constitutional Politics
and the Legal Profession in Colonial New
York"

Eben Moglen
Columbia Law School

Commentators:

Peter Hoffer, History
University of Georgia

Richard Ross, Law
University of Chicago

**Defining and Evaluating the Concept of
Race in American Legal History**

1:30-3:15 p.m.

Moorman Room

Paul Finkleman, Moderator
Department of History
Virginia Tech

Panelists:

Howard Arnett, Law
Seton Hall University

Andrew Kull, Law
Emory University

James Lindgren, Law
Chicago Kent College of Law

D. Marvin Jones, Law
University of Miami

Comment:

The Audience

✓ *Saturday, October 23, 1993*

**Dimensions of Supreme Court History
in the Nineteenth Century**

3:30-5:15 p.m.

Venetian Room

Kermit Hall, Chair
Department of History
University of Tulsa

Papers:

"Stephen J. Field and the Presidential
Election of 1880"

Paul Kens, Political Science
Southwest Texas State University

"Conservative Jurisprudence in the Age of
Enterprise: The Fuller Court Reconsidered"

James W. Ely, Jr., Law
Vanderbilt University

Commentators:

Linda Przybyszewski, History
University of Cincinnati

R. Ben Brown, Law
Northwestern University

Social Status and the American Criminal Law

3:30-5:15 p.m.

Parker Room

Milton Klein, Chair
History Department
University of Tennessee

Papers:

"Making New Sense of an Old Crime:
Changes in the Social Discourse of
Incendiarism, 1869-1913"

Victor Jew, History
Michigan State University

"Preferred by Persons of the Lowest
Character: Immigration, Class and Ohio Rape
Law, 1869-1900"

David Morrison, History
University of Cincinnati

Saturday, October 23

"Extra-Legal Factors in Forcible Rape Trials:
The 'Legitimate' Rejection of Male Sexuality,
1850-1950"

Kathleen R. Parker, History
Waynesburg College

Commentator:

Carolyn Strange, Law
Carleton University

Group Tour of the National Civil Rights Museum. Bus will depart from the Peabody Hotel at 3:30 p.m. Cost \$5.00. The tour will last one hour. Please sign up in advance at the conference registration desk. Information on the museum will be available at the registration desk.

Note: We regret to announce that the Saturday morning panel on "How Legal Anthropologists Think About History" had to be cancelled.

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Studies in Legal History

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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)
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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 Corporations 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)
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- 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, *The Mansfield Manuscripts and the Growth of English Law in the Eighteenth Century* (1992)
- Robert Palmer, *English Law in the Age of the Black Death, 1348-1381: A Transformation of Governance and Law* (1993)
- Eileen Spring, *Law, Land, and Family: Aristocratic Inheritance in England, 1300 to 1800* (1993)

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ACKNOWLEDGEMENTS

For their generous contributions to the success of this 1993 Annual Meeting thanks are due to:

The University of Mississippi Law School
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And also to these law firms:

Friedman, Sissman and Heaton, of Memphis
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