

**AMERICAN SOCIETY
FOR
LEGAL HISTORY**



Historia Omnium Legum

1996

Twenty-Sixth Annual Meeting
Omni Richmond Hotel
Richmond, Virginia
October 17-19, 1996

PROGRAM

Registration

Thursday, October 17
2:00 - 6:00 p.m.

Friday, October 18
8:30 a.m. - 4:30 p.m.

Saturday, October 19
8:30 a.m. - 10:30 a.m.

Thursday, October 17, 1996

SUMMARY OF PROGRAM

Friday, October 18

8:45 A.M.

Bankrupt Bondsmen: Slavery Metaphors in 18th & 19th Century America	The NAACP and the Law	Comparative Federalism
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10:30 A.M.

Nuremberg Fifty Years Later: Rule of Law	In Blackacre's Wake: Lawyers and American Agriculture, 1820- 1945	New Perspectives on the African-American Lawyer, 1865-1940
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1:30 P.M.

Courts in Colonial and Early National Virginia	Capital Punishment and Social Control in Europe and America	Canadian-American Comparative Legal History
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3:15 P.M.

Legal History of Australia and New Zealand	Law and the Sexual Revolution	The Corporation in American History
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5:30 P.M. Annual Lecture

"Shades of Freedom: Racial Politics and Presumptions of
the American Legal Process"
Judge A. Leon Higginbotham, Jr.

Saturday, October 19

8:45 A.M.

New Perspectives on Southern Women and the Law During Reconstruction	Law in the Heartland	Criminal Responsibility in Europe 1380-1800
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10:30 A.M.

Civil Liberties in the South During the Civil War and Reconstruction	Criminal Procedure in England	Legal Rights of Indigenous Peoples
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2:00 P.M.

Law and Identity in Early Twentieth Century America	Colonial and State Slave Laws	Law and Religion in Europe and China
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BOARD OF DIRECTORS MEETING

7:30 p.m.

Potomac G

Friday, October 18, 1996

COMPLIMENTARY CONTINENTAL BREAKFAST

8:00-8:45 a.m.

Bankrupt Bondsmen: Slavery Metaphors in 18th and 19th Century America

8:45-10:15 a.m.

Potomac F-G

James Oakes, Chair
History, Northwestern University

Panel:

"Debt, Dependence, and Slavery: The Imagery of
Insolvency in the Early Republic"

Bruce H. Mann, Law School and History
University of Pennsylvania

"A Hundred Thousand Merchants in Chains: The
Racial Politics of Bankruptcy Law During the Civil
War"

Scott A. Sandage, History
Carnegie Mellon University

Commentator:

James Oakes

Charles W. McCurdy, Law School and History
University of Virginia

The NAACP and the Law

8:45-10:15 a.m.

Potomac E

Robert Pratt, Chair
History, University of Georgia

Friday, October 18, 1996

Panel:

"'Seizing the 'Equal' in 'Separate but Equal':
NAACP Litigation Strategy in Virginia, 1939-1951"

Peter Wallenstein, History
Virginia Polytechnic Institute

"The NAACP and Police Violence, 1930-1950: The
Origins of a Federal Strategy"

Eric W. Rise, Sociology and Criminal Justice
University of Delaware

Commentators:

Johnie Smith, History
Central Michigan University

Ruth Anne Thompson, History
Georgia Southern University

Comparative Federalism

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

Harry Scheiber, Chair
Law School, University of California, Berkeley

Panel:

"The Incorporation and Control of Territory by the
Later Chinese Empire"

Edward Farmer, History
University of Minnesota

"Models of Federalism in Canada: Scholars, Courts
and Politics"

Richard Risk, Law Faculty
University of Toronto

"The Development of Fiscal Federalism in
Australia"

Anita Ramasastry
University of Washington School of Law

Commentator:

Harry Scheiber

Friday, October 18, 1996

Nuremberg Fifty Years Later: Rule v. Role of Law

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

Potomac F-G

Jon Lurie, Chair
History, Rutgers-Newark

Panel:

"From Goering to Tadic: The Lessons of Nuremberg
and Today's International War Crimes Trials"

Michael Scharf
New England College of Law

"Balkan War Crimes and the Nuremberg Legacy"

Major Mark Martins
U.S. Army Judge Advocate General's School

Commentators:

Edward Wise
Wayne State University Law School

Ruth Wedgwood
Yale Law School

**In Blackacre's Wake:
Lawyers and American Agriculture, 1820-1945**

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

Potomac E

Robert Gordon, Chair
Yale Law School

Panel:

"Pleaders v. Plowmen: Lawyering and Farming in
the Old Northwest, 1820-1860"

Ann Fidler, History
Ohio University

"Law, Regulation and the State: Outsider Lawyers
and U.S. Agricultural Policy, 1918-1945"

Victoria Saker Woeste
American Bar Foundation

Friday, October 18, 1996

Commentators:

W. Wesley Pue, Law Faculty
University of British Columbia

Ray Solomon
Northwestern University School of Law

**New Perspectives on the African-American Lawyer,
1865-1940**

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

Adam Kurland, Chair
Howard University Law School

Panel:

"Harvard Law School's First Black Graduates"

J. Clay Smith
Howard University Law School

"The African-American Lawyer Moves North: The
Emergence of the Black Bar of Chicago, 1870-
1920"

J. Gordon Hylton
Marquette University Law School

"The Black Woman Lawyer in the 1920's: The Case
of Mabel Raimey"

Phoebe Williams
Marquette University Law School

Commentator:

Robert Cottrol
George Washington University Law School

Courts in Colonial and Early National Virginia

1:30-3:00 p.m. Shenandoah Room

Brent Tarter, Chair
The Library of Virginia

Friday, October 18, 1996

Panel:

"St. George Tucker and the Case of *Tom v. Roberts*:
Blunting the Revolution's Impact in Virginia's
District Courts"

Christopher Doyle, History
American International College

"Law and Illegitimacy in Seventeenth Century
Virginia"

John Pagan
New York University School of Law

Commentators:

David Konig, History
Washington University

Cornelia Hughes Dayton, History
University of California, Irvine

**Capital Punishment and Social Control in Europe and
America**

1:30-3:00 p.m. Potomac F-G

Paul Finkleman, Chair
History, University of Miami

Panel:

"Lynching and Criminal Justice in North Louisiana,
1880-1910"

Michael J. Pfeifer
University of Iowa

"A Dishonorable Death: The 1918 Camp Dodge
Hangings"

Derryn E. Moten
University of Iowa

"Capital Punishment in Early Modern Europe"

Jürgen Martschukat
University of Hamburg, Germany

Friday, October 18, 1996

Commentator:

W. Fitzhugh Brundage, History
Queens University, Kingston, Ontario

Canadian-American Comparative Legal History

1:30-3:00 p.m.

Potomac E

John McLaren, Chair
Faculty of Law, Victoria University, British Columbia

Panel:

"Climates of Conflict: A Comparative Legal History
of the Cleveland, Ohio, and London, Ontario, Street
Railway Strikes of 1899"

Rande Kostal, Law Faculty
University of Western Ontario

"Her Majesty's Yankees: American Authority in the
Supreme Court of Nova Scotia, 1837-1901"

Bernard Hibbitts
University of Pittsburgh School of Law

Commentator:

DeLloyd J. Guth, Law Faculty
University of Manitoba

John McLaren

Legal History of Australia and New Zealand

3:15-4:45 p.m.

Shenandoah Room

David Bogan, Chair
University of Maryland School of Law

Panel:

"Civil Law in Convict-era New South Wales (1788-
1814)"

Bruce Kercher, Law Faculty
Macquarie University, Sydney, Australia

Friday, October 18, 1996

"Pigs and Negativism"

Peter Karsten, History
University of Pittsburgh

"'Much Mischief can be done': Legal Semantics,
the Police and Prostitution in Early 20th Century
New Zealand"

Bronwyn Dalley
Historical Branch, Department of Internal Affairs,
Wellington, New Zealand

Commentator:

Mr. Justice Peter Young
New South Wales Supreme Court, Sydney, Australia

Law and the Sexual Revolution

3:15-4:45 p.m.

Potomac F-G

Robert N. Strassfeld, Chair
Case Western Reserve University Law School

Panel:

"Hair, the Law, and Schools in the 1960s"

Winston Whitehead Edwards
Samford University, Cumberland School of Law

"The Validity of Massage Parlor Legislation in the
70s: Law Enforcement Caught with its Pants
Down?"

Bethany Kolleen Vause
Samford University, Cumberland School of Law

Commentators:

Thomas Mackey, History
University of Louisville

Beth Bailey, History
Barnard College

Friday, October 18, 1996

The Corporation in American History

3:15-4:45 p.m.

Potomac E

Catherine M.A. McCauliff, Chair
Seton Hall University School of Law

Panel:

"A History of the Duty of Loyalty"

Gregory Mark
Rutgers Law School - Newark

"Metaphors of Historical Evolution and Interpretation in the Context of American Corporate Law"

Mark Roe
Columbia University School of Law

Commentators:

William Novak, History
University of Chicago

William N. Treanor
Fordham University School of Law

ANNUAL LECTURE

"Shades of Freedom: Racial Politics and Presumptions of the American Legal Process"

Judge A. Leon Higginbotham, Jr.
John F. Kennedy School of Government,
Harvard University

5:30 p.m.

Halsey Room
Virginia Historical Society

ANNUAL RECEPTION

6:30 p.m.

Cabell Gallery
Virginia Historical Society

Saturday, October 19, 1996

COMPLIMENTARY CONTINENTAL BREAKFAST

8:00-8:45 a.m.

**New Perspectives on Southern Women and the Law
During Reconstruction**

8:45-10:15 a.m.

Potomac F-G

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

Panel:

"Vagrancy and Gender: The Freedmen's Bureau and the Black Woman's Obligation to Labor"

Mary Farmer
Bowling Green State University

"'If I had not been strong as I am': African-American and Poor White Women's Claims to Legal Rights in Post Emancipation North Carolina"

Laura Edwards, History
University of South Florida

"Sexual Assault, Fraud, and Womanhood in the Victorian South"

Peter Bardaglio, History
Goucher College

Commentator:

Leslie Rowland
Freedmen and Southern Society Project,
College Park, Maryland

Law in the Heartland

8:45-10:15 a.m.

Potomac E

Gordon Morris Bakken, Chair
History, California State University, Fullerton

Saturday, October 19, 1996

Panel:

"Cases of Shattered Dreams: United States Supreme Court Justice Samuel Freeman Miller, Municipal Bonds, and the Rise and Fall of Iowa's River Towns, 1850-1870"

Michael A. Ross
University of North Carolina

"Fence Law and the Railroad on the Great Plains, 1865-1900"

Yasu Kawashima, History
University of Texas at El Paso

Commentators:

Richard Aynes
C. Blake McDowell Law Center, University of Akron

Gordon Morris Bakken

Criminal Responsibility in Europe, 1380-1800

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

James Oldham, Chair
Georgetown Law Center

Panel:

"From Explanation to Excuse: Criminal Responsibility in England 1660-1800"

Dana Rabin, History
Millersville University of Pennsylvania

"Justification or Excuse? Defendants and Their Self-Fashioning in the Homicide Trials of Zurich, 1380-1600"

Susanne Pohl
University of Michigan

Commentators:

James Cockburn, History
University of Maryland

Saturday, October 19, 1996

David Seipp
Boston University School of Law

Civil Liberties in the South During the Civil War and Reconstruction

10:30 a.m.-12:00 p.m. Potomac F-G

Donald Nieman, Chair
History, Bowling Green State University

Panel:

"Challenges to Confederate Conscription in the Texas Supreme Court"

James Paulsen
South Texas College of Law

"Violence and Justice in the Civil War South: Changing Concepts of Law and Order in a Divided Georgia Community"

Jonathan D. Sarris
University of Georgia

"Federal Enforcement and Local Resistance in Post-Redemption South Carolina"

Lou Falkner Williams, History
Kansas State University

Commentator:

Mark Neely, History
St. Louis University

Criminal Procedure in England

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

Charles Donahue, Chair
Harvard Law School

Saturday, October 19, 1996

Panel:

"Anglo-Saxon and Anglo-Norman Legal Process
With Respect to the Punishment of Crime"

Peter D. Tjapkes, History
Calvin College

"Between the Devil and the Deep Blue Sea: Double
Jeopardy in Post-Reformation Kent"

Victoria List, History
Washington and Jefferson College

"The Rise of the Evidentiary Objection"

Thomas P. Gallanis, Jr.
St. John's College, Cambridge, England

Commentator:

Sue Sheridan Walker, History
Northeastern Illinois University

Legal Rights of Indigenous Peoples

10:30 a.m.-12:00 p.m. Potomac E

Sidney L. Haring
City University of New York School of Law at Queens
College

Panel:

"Tenurial Revolution in New Zealand, 1865-1909"

Richard Boast, Faculty of Law
Victoria University of Wellington, New Zealand

"The Supreme Court's Decisions in the Cherokee
Cases and Indian Property Rights"

Thomas Wessel, History
Montana State University

Saturday, October 19, 1996

Commentators:

Curtis G. Berkey, Indian Resources Section,
Environment and Natural Resources Division,
United States Department of Justice

John Wunder, History
University of Nebraska

ANNUAL LUNCHEON

12:00 p.m.

James River Salon C

"The State of the Society"
President Paul L. Murphy

Law and Identity in Early Twentieth Century America

2:00-3:30 p.m.

Potomac F-G

Sandra VanBurkleo, Chair
History, Wayne State University

Panel:

"'Up and Down the Aisles of Lesbos': Indecency in
New York Theatre, 1926-27"

Leslie Taylor
University of Iowa

"Privacy and the Legal Construction of Identity in
Progressive America"

Jonathan Kahn, History
Bard College

Commentators:

Mary Anne Case
University of Virginia School of Law
(Visiting at New York University School of Law)

Anne Goldstein
Western New England College of Law

Saturday, October 19, 1996

Colonial and State Slave Laws

2:00-3:30 p.m.

Potomac E

Alan Watson, Moderator
University of Georgia School of Law

Panel:

"Rigid and Inclement: Origins of the Jamaica Slave Laws of the Seventeenth Century"

David Barry Gaspar, History
Duke University

"Slaves and the Judicial System in the French Antilles: 1830-1848"

Bernard Moitt, History
Virginia Commonwealth University

"Fugitive Slaves and the Law of Virginia"

Philip J. Schwarz, History
Virginia Commonwealth University

Law and Religion in Europe and China

2:00-3:30 p.m.

Shenandoah Room

Tahirih Lee, Chair
University of Minnesota Law School

Panel:

"The Spread of Learned Law in Europe: Roman or Christian?"

James Whitman
Yale Law School

"Law and Ritual in Tang and Ming China"

Jiang Yonglin, History
University of Minnesota

Commentator:

Harold Berman
Emory University School of Law

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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 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 Man: 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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 Laura Kalman, *Legal Realism at Yale, 1927-1960*. (1986)
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 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, *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)
 John Henry Schlegel, *American Legal Realism and Empirical Social Science*. (1995)
 Richard F. Hamm, *Shaping the Eighteenth Century Amendment: Temperance Reform, Legal Culture, and the Polity, 1880-1920*. (1995)
 Lucy E. Salyer, *Laws Harsh as Tigers: Chinese Immigrants and the Shaping of Modern Immigration Law*. (1995)
 Peter W. Bardaglio, *Reconstructing the Household: Families, Sex and the Law in the Nineteenth Century South*. (1996)

Thomas D. Morris, *Southern Slavery and the Law, 1619-1860*.
(1996)

William J. Novak, *The People's Welfare: Law and Regulation in
19th Century America*. (1996)

Peter Karsten, 'Heart' Versus 'Head': *The American Judiciary
and the Rules of Common Law and Equity in the Nineteenth
Century*. (Forthcoming, 1997)