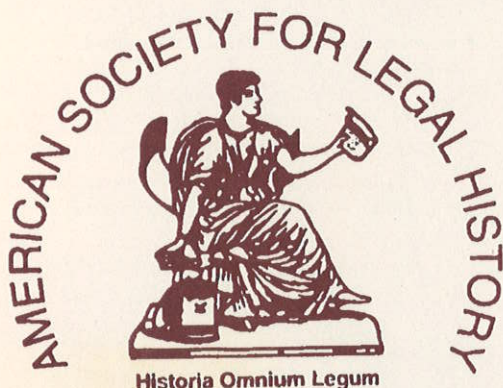

ASLH NEWSLETTER



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Santa Barbara

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Law School
University of Michigan

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Bowling Green State University

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Bowling Green State University

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NEWS OF THE SOCIETY

Officers and Directors, 1998

President: Laura Kalman, University of California, Santa Barbara
President-Elect: Thomas A. Green, University of Michigan
Secretary-Treasurer: Donald G. Nieman, Bowling Green State University

Board of Directors

Mary Sarah Bilder (2000), Boston College
Carol Chomsky (1999), University of Minnesota
Robert J. Cottrol (2000), George Washington University
Cynthia Herrup (1999), Duke University
Harold M. Hyman (Immediate Past-President), Rice University
Craig Joyce (1999*), University of Houston
Michael de L. Landon (2000*), University of Mississippi
Maeva Marcus (1998), U. S. Supreme Court Historical Society
Arthur F. McEvoy (1998), University of Wisconsin, Madison
John P.S. McLaren (1999), University of Victoria
William J. Novak (1998), University of Chicago
John V. Orth (1999), University of North Carolina
David Rabban (2000), University of Texas
Carol Weisbrod (2000), University of Connecticut
Victoria Saker Woeste (1998), American Bar Foundation
Sandra F. Van Burkleo (1998*), Wayne State University

* Executive Committee Member

() Indicates year term expires

ASLH Committees, 1998

Nominating Committee

David Seipp (1998), Boston University, Chair
Sarah Barringer Gordon (1999), University of Pennsylvania
Michael Grossberg (2000), Indiana University
Victoria List (2000), Washington and Jefferson College
Rayman Solomon (1998), Northwestern University

() Indicates year term expires

1998 Program Committee

Daniel R. Ernst, Georgetown University, Chair
Charles Donahue, Jr., Harvard University
Christian G. Fritz, University of New Mexico
Ariela J. Gross, University of Southern California
William J. Novak, University of Chicago
John Henry Schlegel, SUNY-Buffalo
Barbara Welke, University of Oregon
Rosemarie Zagari, George Mason University

1998 Local Arrangements Committee

Eric Chiappinelli, University of Seattle, Chair

Standing Committee on Conferences and the Annual Meeting

John P.S. McLaren (1995), University of Victoria, Chair
Christine A. Desan (1998), Harvard University
Dwight Jessup (1997)
Eben Moglen (1997), Columbia University
Kenneth Murchison (1997), Louisiana State University
William E. Nelson (1998), New York University
Frances Rudko (1993), Southern New England School of Law
David S. Tanenhaus (1998), University of Nevada, Las Vegas

() Indicates year appointed

Publications Committee

M. Les Benedict (1995), Ohio State University, Chair
Thomas J. Davis (1998), Arizona State University
Hendrik Hartog (1997), Princeton University
Craig Joyce (1991), University of Houston
Tahirih V. Lee (1998), University of Minnesota
Bruce Mann (1998), University of Pennsylvania
Christopher Tomlins (1996), American Bar Foundation
Christopher Waldrep (1997), Eastern Illinois University

() Indicates year appointed

Committee on Documentary Preservation

Michael J. Churgin (1982), University of Texas, Chair
Mary L. Dudziak (1988), University of Iowa
Christian G. Fritz (1985), University of New Mexico
Michael Griffith (1990), Office of the Clerk, U. S. District Court,
Northern District of California
DeLloyd J. Guth (1988), University of Manitoba
J. Gordon Hylton (1998), Marquette University
Harold M. Hyman (1998), Rice University
Maeva Marcus (1988), U. S. Supreme Court Historical Society
Gregory Mark (1998), Rutgers University, Newark
R. Michael McReynolds (1985), U. S. National Archives
Rayman L. Solomon (1982), Northwestern University
Marsha Trimble (1992), University of Virginia

() Indicates year appointed

Honors Committee

Herbert A. Johnson (1997), University of South Carolina, Chair
Richard Helmholtz (1997), University of Chicago
Linda Kerber (1998), University of Iowa

() Indicates year appointed

Membership Committee

Victoria Saker Woeste (1998), American Bar Foundation, Chair
Carol Chomsky (1998), University of Minnesota
Catherine Fisk (1998), Loyola University
Daniel Ernst, ex officio (Chair, 1998 Program Committee)
Thomas Gallanis (1998), Ohio State University
Robert Goldman (1998), Virginia Union University
Kenneth Ledford (1998), Case Western Reserve University
Laura Kalman, ex officio (President)
Fred Konefsky (1998), SUNY-Buffalo
Randy McGowen (1998), University of Oregon
Donald G. Nieman, ex officio (Secretary-Treasurer)
G. Edward White (1998), University of Virginia

() Indicates year appointed

Editor of *LAW AND HISTORY REVIEW*

Christopher Tomlins, American Bar Association

Managing Editor of the *ASLH Newsletter*

R. Mark Phillips, Bowling Green State University

H-Law Moderators

Ian Mylchreest, Monash University
Christopher Waldrep, Eastern Illinois University

Co-Editors of *STUDIES IN LEGAL HISTORY*

Hendrik Hartog, Princeton University
Thomas A. Green, University of Michigan

ASLH E-Mail and Telephone Information

The Secretary-Treasurer can be contacted either by phone, (419) 372-2030, or e-mail, dnieman@bgnet.bgsu.edu. Fax messages may be sent to (419) 372-7208.

1998 Annual Meeting: October 22-24

Make plans now to attend the Society's 1998 meeting in Seattle, where we will meet at the Seattle Hilton. President LAURA KALMAN has appointed DANIEL ERNST of the Georgetown University Law Center chair of the program committee. His committee includes CHARLES DONAHUE, JR. of the Harvard Law School, CHRISTIAN FRITZ of the University of New Mexico School of Law, ARIELA GROSS of the University of Southern California School of Law, WILLIAM NOVAK of the University of Chicago, JOHN HENRY SCHLEGEL of the SUNY-Buffalo School of Law, BARBARA WELKE of the University of Oregon, and ROSEMARIE ZAGARRI of George Mason University. ERIC CHIAPPINELLI of the University of Seattle School of Law is in charge of local arrangements.

Registration materials and information on lodging will be mailed late this summer.

Watch the H-LAW web page (www.h-net.msu.edu/~law/) later in the year for the program and abstracts of the papers to be presented, a promising initiative Dan Ernst and his committee have undertaken.

Sutherland Prize Awarded

Among legal historians in North America, Donald Sutherland set the profession's highest standard for legal scholarship based on careful analyses of original texts. Each year, the Sutherland Prize Committee recognizes a recently published article in the field of English legal history that best represents Professor Sutherland's commitment to original research and lucid analysis.

For 1997, the Committee has announced that ALBERT W. ALSCHULER of the University of Chicago School of Law has won the award for his article entitled "Rediscovering Blackstone," 145 *University of Pennsylvania Law Review* (November 1996). According to Committee Chair DE LLOYD J. GUTH of the University of Manitoba, Professor Alschuler applies Sutherland's disciplined approach to the one text that remains the most influential link between the English legal tradition and American republicanism, William Blackstone's *Commentaries*. Alschuler's article is an exceptionally well-written analysis of the libertarian and communitarian balancing that characterize Blackstone's synthesis of English law. It thus offers an unusual range of provocative insights and a deeper learning about Blackstone and the law.

The Committee has also awarded an honorable mention to Professor MARGOT FINN of the Department of History at Emory University for her article, "Women, Consumption and Coverture in England, 1760-1860," 39 *Historical Journal* (1996). Professor Finn adds one more dimension to the history of female legal capacity in England. Her article blends legal theory and economic practices, integrating the primary evidence for each and offering both anecdotal and aggregate perspectives.

Surrency Prize Winner

The society annually awards the Erwin C. Surrency Prize for the best article published in the previous year's *Law and History Review*.

After an extensive review of a strong field of articles, the Surrency Prize Committee has awarded the 1996 prize to TIMOTHY S. HASKETT of the History Department at the University of Victoria for his article, "The Medieval Court of Chancery." Haskett, following the lead of S.F.C. Milsom, has searched from the beginnings of the chancellor's equitable jurisdiction in the voluminous bills of complaint and related documents. From a massive data base that will continue to reward study, Haskett has discovered who petitioned the chancellor and what they sought--seemingly simple questions that are critical to understanding how chancery developed. The article, which includes a masterly historiographic discussion of what historians know and think they know about chancery, is a model of prodigious research and lucid analysis.

Members of the 1997 Committee were BRUCE H. MANN of the University of Pennsylvania's School of Law and Department of History (Chair), TAHIRIH V. LEE of the University of Minnesota Law School, and W. WESLEY PUE of the University of British Columbia Faculty of Laws.

New Honorary Fellow and Corresponding Fellow Announced

Congratulations to LAWRENCE M. FRIEDMAN and ENNIO CORTESE for their designation respectively as Honorary Fellow and Corresponding Fellow of the Society.

Friedman is the Marion Rice Kirkwood Professor of Law at Stanford University and a former president of both the Law and Society Association and the American Society for Legal History. He has authored 17 books and more than 100 articles dealing with the history of American law, legal institutions, law and society, and comparative legal development. Among his most important works are *A History of American Law* (2nd ed., 1985) and *Crime and Punishment in American History* (1993).

Cortese holds a prestigious chair in legal history at the University of Rome and has served as president of the Societe italienne d'Histoire du droit, Italy's equivalent of the ASLH. His *La Norma Giuridica* is a seminal work on the history of Continental law that has fundamentally shaped his field of study, and his 1992 book on the renaissance of Roman law is a widely recognized synthetic work. His career has also been distinguished by careful, detailed scholarship on the careers of important medieval jurists.

H-LAW Notice

Members of ASLH are invited to subscribe to H-Law, the society's electronic "list." H-Law now has over one thousand subscribers around the world and features announcements, news of the society, book reviews, and discussion of topics in legal history. Each week H-Law posts a bibliography of articles of historical interest appearing in law reviews. The volume of electronic mail produced by H-Law is not onerous, averaging two a day. CHRISTOPHER WALDREP and IAN MYLCHREEST edit H-Law.

There is an H-Law Web site at www.h-net.msu.edu/~law/. Visitors to the H-Law Web page will find an index to *Law and History Review*, back issues of the *ASLH Newsletter* (volumes 25 [2] through 28 [1]), H-Law book reviews, and the texts of previous H-Law discussions. Next year's ASLH conference program and abstracts of papers will appear on the H-Law Web page.

Membership is limited to persons with an interest in some aspect of legal or constitutional history. To apply for membership, request an application

form from cferw@eiu.edu or send this message to listserv@h-net.msu.edu:
subscribe h-law. Leave the subject line blank.

ELIZABETH BATTELLE CLARK

On December 26, 1997, Professor Elizabeth Battelle Clark died at her home in Arlington, Massachusetts, after more than a year of treatment for an advanced cancer. She was 45 years old. Her husband, Prof. David D. Hall of Harvard Divinity School, her parents, Mary Jean (Battelle) and Samuel K. Clark of Ann Arbor, Michigan, and her brothers, stepsons, and stepdaughter were all with her at her death. A funeral service was held on January 3, 1998, at St. James Episcopal Church, in Cambridge, Massachusetts and a memorial service followed at 3 p.m. on January 24, 1998, in the Sperry Room, Andover Hall, Harvard Divinity School.

Betsy Clark made enduring friendships at the many universities where she studied and taught. She received the A.B. degree (with high distinction) in Classical Studies from the University of Michigan, a J. D. degree (cum laude) from the University of Michigan Law School, and the M.A. and Ph.D. in American History from Princeton University. While pursuing her Ph.D. degree, Betsy became the first legal history fellow at the University of Wisconsin Law School, which also awarded her an LL.M. In 1987, she joined the faculty of Benjamin N. Cardozo School of Law at Yeshiva University. In 1989 she accepted an offer from the University of Pennsylvania Law School, but spent one year as a Visiting Lecturer and Research Associate at the Harvard Divinity School, and the following year as a Visiting Professor at Harvard Law School. In 1991 Betsy joined the faculty at Boston University School of Law, where she became a Professor of Law. She spent the academic year 1993-1994 as a Fellow of the Charles Warren Center at Harvard University.

Betsy also served the American Society for Legal History in a number of capacities, including service as an elected member of the board and, most recently, as chair of the Society's Nominating Committee.

Betsy Clark has left us many things by which we can remember her and celebrate her life.

She has left us her writings. She wrote with brilliant clarity, humor, and grace. Each paragraph bore the fruit of her years of patient research in the manuscripts, newspapers, novels, autobiographies, sermons, and pamphlets of the nineteenth-century woman's rights, abolition, and temperance movements. Betsy had an unerring eye for the apt and revealing quotation. Her best-known scholarly publications include: "'The Sacred Rights of the Weak': Pain, Sympathy, and the Culture of Individual Rights in Antebellum America," 82 *Journal of American History* 463 (1995) for which she won the Binkley-Stephenson Prize of the Organization of American Historians; "Religion and Rights Consciousness in the Antebellum Woman's Rights Movement," in Martha Albertson Fineman and Nancy Sweet Thomadsen, eds., *At the*

Boundaries of Law: Feminism and Legal Theory 188 (Routledge, 1991); "Matrimonial Bonds: Slavery and Divorce in Nineteenth-Century America," 8 *Law and History Review* 25 (1990); and "Self-Ownership and the Political Theory of Elizabeth Cady Stanton," 21 *Connecticut Law Review* 905 (1989). Betsy also published several book reviews and bibliographic essays. Betsy's book, to be entitled "Women, Church and State: Religion and the Culture of Rights in Nineteenth-Century America," remains under advance contract with the University of North Carolina Press, in its *Studies in Legal History* cosponsored by the ASLH. The editors of the series intend to bring out a version of the book in about two years.

Betsy has left us her ideas. Most notably, she challenged the standard account of an abstract, secular, philosophic origin of rights in America. Delving deeply into the widely varying strains of the woman's rights movement in nineteenth-century America, Betsy found a deeply religious sensibility rooted in liberal Protestant Christianity. She found transformative moral and political agendas extending far beyond issues of suffrage and legal rights. She found powerful appeals to sympathy in depictions of the physical suffering of slaves and other victims of human power and authority. Betsy has taught us that the language of individual rights in America cannot be understood apart from its religious dimensions, particularly the conviction that no human authority is legitimate that interposes between an individual and God.

Betsy has left us her example. Her friends will quickly recall to mind her vivid personality, her hopes, her ideals, and her humor. She loved preparing, serving, ordering, and sharing meals, always with delightful conversation and laughter. On faculties, in organizations, and at conferences, Betsy insisted upon and worked for a broader inclusiveness and a closer sense of community. She fought bureaucratic inertia, duplicity, and inanity in all their myriad forms. Her response to people and their needs was always immediate and personal. She had a remarkable mind--quick, acute, insightful, clear. She was often angry--with dishonesty, with political behavior, with the morally obtuse, and with disease. Yet, she was also immensely patient and thoughtful, with students and with all of the rest of us who could so easily be left behind. And she was so extraordinarily funny.

Betsy did everything in life with passion--her scholarship, her political life, her conversation, her cooking and eating, her driving, her jokes, her friendships, her loves, her marriage with David Hall. In her last eighteen months, faced with a terrible illness, her passionate determination to live never wavered. She met the world with a cheerfulness and optimism that awed us, sometimes terrified us, but also inspired us.

Still, much, much too soon, Betsy Clark left us. She has left us in the middle of a conversation, with so much more to say, so much more to learn.

It would be nice to say that we will continue the conversation. We will build upon her writings and her ideas. We will learn to be more caring to one another. We will follow her example.

But for the moment, we want to acknowledge our loss and the loss to the community of legal historians.

Hendrik Hartog
Princeton University

Victoria List
Washington and Jefferson College

David Seipp
Boston University

1997 ANNUAL MEETING

The Society held its twenty-seventh annual meeting in Minneapolis, October 16-18, 1997. The meeting was a great success with registration reaching 263, the largest in the Society's history. High points of the meeting included a session on the scholarship of JOHN PHILLIP REID (chaired by DIRK HARTOG and featuring papers by LAURA KALMAN of the University of California at Santa Barbara, MARTIN FLAHERTY of Fordham University Law School, STANLEY N. KATZ of Princeton's Woodrow Wilson School, and JACK P. GREENE of Johns Hopkins) and the annual lecture, "Women in Minnesota Legal History," presented by JUDGE DIANA MURPHY of the U. S. Court of Appeals for the Eighth Circuit. A memorial for our late president, PAUL L. MURPHY, followed Judge Murphy's lecture. Those paying tribute to Paul included JUDGE MURPHY, LAURA KALMAN, SANDRA VAN BURKLEO, KENT NEWMAYER, BOB KACZOROWSKI, and KERMIT HALL. A reception, with music by the Bruce Allard Quartet, followed. Paul, a jazz lover, would have been pleased. At the Saturday luncheon, MICHAEL LANDON was honored for his long service to the Society with engraved cuff links and money clip and an original musical tribute, "Hooray to Michael," written by our own CRAIG JOYCE and sung to the tune of "Dixie" by Craig and JIM PAULSEN.

Special thanks go to ROBERT KACZOROWSKI of Fordham University Law School, the chair of the program committee, and his colleagues LLOYD BONFIELD of Tulane University School of Law, ROBERT J. COTTRILL of the George Washington University Law Center, CORNELIA DAYTON of the University of Connecticut, SARAH BARRINGER GORDON of the University of Pennsylvania School of Law, TAHIRI LEE of the University of Minnesota School of Law, and JOHN P.S. MCLAREN of the

University of Victoria Faculty of Law. They assembled a rich and varied program that featured 28 panels, the most extensive program we have had.

We are also deeply indebted to ISABEL LEVINSON and JULIE BERGH PENKE, co-chairs of the local arrangements committee, who went beyond the call of duty to ensure that things ran smoothly and we were well fed, transported, and entertained. They were assisted by committee members CAROL CHOMSKY of the University of Minnesota School of Law, SAM KRISLOV of the University of Minnesota, and MATTHEW SELTZER in the behind-the-scenes work that helped make the 1997 meeting a success.

Board of Directors Meeting

The Meeting was called to order by President LAURA KALMAN. Present were Secretary-Treasurer MICHAEL LANDON, and the following Board Members: CAROL CHOMSKY, CORNELIA DAYTON, MARY DUDZIAK, KERMIT HALL, PAUL HYAMS, HAROLD HYMAN (Immediate Past President), CRAIG JOYCE, MAEVA MARCUS, ARTHUR McEVoy, JOHN McLAREN, JOHN ORTH, VICTORIA SAKER-WOESTE, HARRY SCHEIBER, and SANDRA VAN BURKLEO.

Also present were Secretary-Treasurer Elect DONALD G. NIEMAN, and ISABEL LEVINSON, co-chair of the 1997 Local Arrangements Committee; DANIEL ERNST, chair of the 1998 Program Committee; DAVID SEIPP, chair of the Nominating Committee; CHRIS WALDREP, H-LAW editor; M. LES BENEDICT, chair of the Publications Committee; CHRIS TOMLINS, editor of *Law and History Review*; ANN LOWRY, journals manager for the University of Illinois Press; THOMAS GREEN and DIRK HARTOG, co-editors of *Studies in Legal History*; and LEWIS BATEMAN, executive editor for the University of North Carolina Press.

In her opening remarks, President Kalman referred to the sad death, in July, of the Society's President for 1996-97, PAUL MURPHY, of the University of Minnesota History Department. She had attended a memorial service in his honor, in Minneapolis, right after his death, at which ASLH former president and honorary fellow, STANLEY KATZ had delivered the eulogy. The Society's memorial service for him was scheduled for the coming Friday afternoon.

The minutes of the Board Meeting, October 17, 1996, in Richmond, Virginia, were approved as written.

President Kalman next introduced the Local Arrangements Committee co-chair Isabel Levinson, and thanked her and her Committee colleagues for a job very well done. Ms. Levinson welcomed everyone to Minneapolis and went over the schedule for the next few days. Daniel Ernst next announced that the 1998 Program Committee had already started to work and members were

invited to offer suggestions for papers and panel sessions. No member of the 1998 Local Arrangements Committee was present, but the Secretary-Treasurer informed Board members that the Meeting was scheduled for October 22-24 in Seattle, Washington, at the Hilton Hotel. Local Arrangements chair, ERIC CHIAPINELLI, was also going to try to find some less expensive accommodations in the same neighborhood as the Hilton.

For the Committee on Conferences and the Annual Meeting, John McLaren reminded the Board that they had been asked last year to look into the possibility of an Annual Meeting in Canada again in the near future. Montreal had been particularly suggested for 1999. For various reasons, however, neither Montreal nor Ottawa seemed to be possible, but Toronto (last visited in 1986) was a definite possibility. Local Arrangements volunteers there were proposing the Park Plaza as the headquarters hotel with the panel sessions being held at the nearby University of Toronto Law Faculty building. Both the Osgood Society and the Law Society for Upper Canada were willing to offer hospitality. A motion was made, recorded, and after some further discussion of details unanimously approved that Toronto should be the site for the 1999 Meeting.

BRUCE MANN's report, from the Committee on the Surrency Prize, that the 1997 Prize was awarded to Professor TIMOTHY HASKETT, of the Department of History at the University of Victoria, Canada, for his article entitled "The Medieval Court of Chancery," which appeared in volume 14, no. 2, of *Law and History Review*, was acknowledged. Also acknowledged was DE LLOYD J. GUTH's report from the Sutherland Prize Committee that their prize-winner was Professor ALBERT W. ALSCHULER, of the University of Chicago Law School, for his article entitled "Rediscovering Blackstone," published in volume 145 (November, 1996) of the *University of Pennsylvania Law Review*. The Committee also felt that Honorable Mention was due to Professor MARGOT FINN, of the Emory University Department of History, for her article entitled, "Women, Consumption, and Coverture in England, c. 1760-1860," published in volume 39 (1996) of the *Historical Journal*. President Kalman noted that both Prize awards and the Honorable Mention would be formally announced, as usual, at the Annual Luncheon on Saturday.

Receipt of the report from MICHAEL CHURGIN on the work of the Committee on Documentary Preservation was also acknowledged.

Incoming Secretary-Treasurer Don Nieman reported that he planned to include a questionnaire in the Winter 1998 edition of the *ASLH Newsletter* that members could mail back, reporting what they most liked about the *Newsletter* and suggesting any changes in its content or format that they would like to see made. Secretary-Treasurer Landon noted that a vote of thanks from the Board was due to ROBERT HAWS for his co-editorship (with Landon) of the *Newsletter* from 1978 to 1987 and his sole editorship of it from 1987 to the

present. Board members expressed their thanks to him by a round of warm applause.

The 1997 Program Committee Chair, ROBERT KACZOROWSKI remarked that a total of twenty-eight sessions were scheduled covering a varied and diverse group of topics. For the future, they would caution against always requiring a full abstract of proposed papers, and also against saying no paper proposals whatever would be considered after the announced deadline had passed. But now they would advise strongly that the program each year, be virtually finalized as to its content and format before the end of the academic year, after which committee members' research and vacation activities made it almost impossible for them to make any further progress as a group.

Professor Kaczorowski also reported from the Committee on a Murphy Memorial, which called for the creation of a prize award to be given annually to a junior scholar working in the field of American constitutional history. Age should not be a consideration for granting the award; any scholar who had recently completed the requirements for his or her terminal degree and had not yet been awarded academic tenure should be considered eligible. It was moved and recorded that the report be accepted. After some further discussion the motion was unanimously approved.

The Secretary-Treasurer reported that the increased dues rates approved at the 1996 Board Meeting had once again raised the General Account to a level where it could readily support the Society's usual operations. If, however, the suggestion that *Law and History Review* should publish three numbers annually were accepted, then a further raise might be necessary. The Smith Memorial Fund continued to be in a healthy state, and the Sutherland Prize fund, thanks to some generous new donations, was now large enough that there should be no trouble, for the foreseeable future, in paying out the \$500 annual prize.

On behalf of the Honors Committee, Kermit Hall moved that LAWRENCE M. FRIEDMAN (Marion Rice Kirkwood Professor of Law at Stanford University) be elected as an Honorary Fellow of the Society, and that ENNIO CORTESE (holder of the La Sapienza Chair of Italian Law at the University of Rome) be elected a Corresponding Fellow of the Society. The motion was approved unanimously.

David Seipp prescribed a written report from the Nominating Committee. With regard to the report, Incoming Secretary-Treasurer Nieman reported that 110 ballots had been mailed back to his office. Thomas A. Green had been elected to the newly-created office of "President Elect," which meant that he would automatically succeed President Laura Kalman, whose term in office would end on the last day of the 1999 Annual Meeting. MICHAEL GROSSBERG and VICTORIA LIST had been elected to three year terms (1998-2000) on the Nominating Committee. Four members, MARY SARAH BILDER, ROBERT J. COTTROL, Michael Landon, and CAROL WEISBROD

had been elected to serve three-year terms on the Board of Directors. However, there was a tie for the fifth position on the Board between DAVID M. RABBAN and DAVID WARRINGTON. In accordance with the by-laws, the Board Members, by a secret ballot, elected David Rabban to fill that fifth position.

Chris Waldrep's report on H-LAW was next discussed. Board members generally favored having abstracts of papers scheduled for presentation at the Society's Annual Meeting published in advance on H-LAW. In order to assist that process in the future, a motion was made, recorded, and passed (by 12 to 4, with one abstention) that henceforth a member of the H-LAW Editorial Board should be named each year by the President to serve ex-officio on the Program Committee.

Les Benedict gave the Report of the Publications Committee, and moved on their behalf that publication of *Law and History Review* be expanded to three issues per year beginning in 1998. In the discussion of the motion, Review Editor Christopher Tomlins commented that the quantity and quality of material currently being submitted made the planned expansion "very doable." The motion was carried unopposed. With regard to the Committee's proposed agreement with LEXIS/NEXIS to place the *Review* on the LEXIS database, Benedict pointed out that it did not allow LEXIS/NEXIS to distribute the *Review* as an independent item outside of its overall database and that the agreement was for three years only, rather than for five years, as LEXIS/NEXIS had originally requested. A motion to approve the agreement passed unanimously.

Christopher Tomlins presented the report from *Law and History Review*. He stated that UMI was currently interested in entering into an agreement with the Society whereby it should have the right to distribute articles from LHR in any medium, and he recommended against entering into any such agreement at this time. He also reported on plans being made to gain more international contributions for the *Review*. Finally, he commented that thanks were due to the members of his Editorial Board for all their hard work, and also to the American Bar Foundation for their continuing support of the *Review's* publication.

Reports from *Studies in Legal History* co-editors Tom Green and Dirk Hartog and University of North Carolina Press executive editor Lewis Bateman were acknowledged. The Board noted with approval that three new books in the series had been published during the past year, and that *Southern Slavery and the Law, 1619-1860*, by THOMAS D. MORRIS, published in 1996 had won the 1997 book prize awarded by the Society of Historians of the Early American Republic. All three editors were applauded by the Board for their continuing good work.

Under "Old Business," the Secretary-Treasurer reported that the task of sorting through the Society's archival records in order to sort out what was worthy of being preserved and sent to the Special Collections Department at the University of Illinois Library for deposit was nearly completed. They should be ready to send to the Library early in the New Year.

A motion was made, recorded and approved under "New Business" to raise the Society's membership dues as of January 1, 1998, to the following rates: Regular Membership \$50 (non-U. S. \$60), Sustaining Membership \$75, Life Membership \$500, Sponsoring Membership \$125, Institutional Membership \$65 (non-U. S. \$75). The Membership Dues for students and emeriti remain at \$15.

The Secretary-Treasurer reminded the Board that the Society used to have a Membership Committee, but that it had become extinct some three or four years ago. Around that time, H-LAW became the main means of publicizing the Society and attracting new members. After some further discussion, President Kalman said that she planned to revive the Membership Committee, and also give it some general outreach responsibilities, including opening up contacts with scholars and students outside the United States who were interested in legal history.

The Board decided to defer action on the NHA's Statement on Electronic Publishing until more information on the subject was available.

President Kalman nominated Sandra Van Burkleeo (on the Board through 1998) and Craig Joyce (on the Board through 1999) to continue as members of the Executive Committee, and Michael Landon (on the Board through 2000) to be the third Board representative, so that the Society could "take advantage of his institutional memory." The nominations were approved by acclamation by the Board.

There being no further business, the Meeting was adjourned at 10:00 p.m.

Annual Meeting Sessions

The 1997 Conference consisted of 28 engaging panel presentations. Panel titles ranged from *Land, Law and Politics in 19th Century British Colonies* to *Ethnic Identity and National Loyalty*. Twelve panel chairs graciously submitted summaries of their sessions. Their remarks offer a glimpse of the exciting and important work being done in the field of legal and constitutional history.

Legal Scholarship in Cyberspace

October 17

8:45-10:00 a.m.

CHRISTOPHER WALDREP (Eastern Illinois University, History) comments:

The session underwent a last minute reorganization. Instead of presenting a paper, CHARLES ZELDEN of Nova Southeastern University chaired the session. Christopher Waldrep, though originally scheduled to chair the session and comment, instead presented his paper "Clash of Cultures: Historical Writing and Authority in Cyberspace." Editor of H-Law, Waldrep reviewed the history of H-Net and H-Law, arguing that the Internet has a distinctive, frontier-like culture not entirely compatible with practices in traditional scholarly venues. Most particularly, the Internet challenges hierarchy while both the consumers and producers of print culture live in a hierarchical world.

CHRISTOPHER TOMLINS of the American Bar Foundation entitled his paper "Don't Mourn, Organize: A Ruminant on Printed Scholarly Journals at the Edge of the Internet." Editor of *Law and History Review*, Tomlins argued that scholarly journals will continue to play an important role in the Internet era. Scholarship published in journals has been certified by editors and referees in a way that makes it more authoritative than electronic media. Print journals add value in a way electronic publication does not.

In a paper entitled "Goodbye to Law Reviews? New Models of Scholarly Publishing in the Age of Cyberspace," the University of Pittsburgh's BERNARD HIBBITTS predicted that computer technology would revolutionize legal scholarship in the same way the printing press changed scholarship. He expected law reviews to disappear with legal scholars self-publishing on the World Wide Web instead. Scholarly review would occur after publication rather than before.

The session was well attended and a lively discussion followed presentation of the papers. Audience member SALLY HADDEN of Florida State University set the theme for the discussion when she asked whether junior scholars should invest time in Internet and World Wide Web projects in departments where senior scholars discounted such work in favor of printed articles and books.

Mental Competence, Insanity and Responsibility in Nineteenth-Century American Law

October 17 8:45-10:00 a.m.

THOMAS GREEN (University of Michigan) remarks:

On November 25, 1869, Daniel McFarland fatally shot his wife's lover, Albert Richardson, in the counting-room of *The New York Tribune*. At the ensuing murder trial, McFarland's lawyers argued that McFarland was not legally responsible for Richardson's death because he shot Richardson while in

a state of "temporary insanity," brought upon by the discovery of his wife's infidelity. The defense portrayed McFarland as a sentimental, feminine, and irrational man who lost all control of his emotions and actions. Persuaded by the defense's argument, the jury rendered a verdict of not guilty.

McFarland's acquittal has been interpreted as a vindication of male honor. Yet MELISSA J. GANZ, Law Clerk to U. S. District Judge William H. Yohn (E.D. PA), argued that defense lawyers used the insanity defense to transform an act of seemingly manly vengeance into an act of sentimental passion. Her paper, entitled "'Strong Men Weep Like Women': Masculinity, Madness, and Murder in the McFarland-Richardson Trial," focused on defense lawyers' portrayal of McFarland as a sentimental victim of a free love conspiracy, and explored their strategic attempt to transfer blame and responsibility for the killing from McFarland to his wife and her co-conspirators. Most important, it analyzed the ways in which defense lawyers unsettled Victorian gender roles by focusing on Abby's cold-heartedness and McFarland's sensitivity. It asserted that the verdict rested upon and exposed profound tensions in gendered categories in late nineteenth-century America.

Oliver Wendell Holmes observed in *Privilege, Malice, and Intent* (1894) that "the state of a man's consciousness is always material to his liability." SUSANNA BLUMENTHAL of Yale University's Department of History explores the significance of "consciousness" in the not-so-separate spheres of nineteenth-century American public and private law. Her paper, "The Duress of the Delusion: Mental Capacity and the Rules of Responsibility in Nineteenth-Century American Law," centrally addressed the relationship between mental capacity and legal responsibility in civil and criminal jurisprudence, analyzing how judges, jurists, attorneys, and jurors thought about consciousness. While concentrating on the arena of law, the paper also attended to the ways religious and scientific theories of the mind influenced doctrinal reasoning about human agency and personal culpability in this period. More specifically, it documented the influence of a romantic view of consciousness in antebellum legal thought and practice, one that inspired confidence in self-knowledge and free will. And it explored the predicament of postbellum legal professionals as they confronted deterministic models of human behavior while working within a system predicated on the ideal of the autonomous individual.

Historians interested in the connections between mental capacity and responsibility have tended to confine their studies to the domain of criminal law. Yet there is ample evidence in treatises and case law of the importance of intent as a basis for civil as well as criminal liability throughout the nineteenth century. Accordingly, this paper dealt with the formulation of rules of responsibility, focusing upon wills and contracts cases where mental state was at issue. Although primarily aiming to document shifting conceptions of consciousness within American legal culture, the paper also sought to relate these changes to wider cultural currents especially romanticism and positivism.

The point to which the inquiry led: that legal professionals' constructions of the rules of responsibility may also be read as anxious meditations on the limits of human freedom and the locus of evil in American society.

American Constitutional History in Colleges

October 17 1:30-3:00 p.m.

HERBERT A. JOHNSON (University of South Carolina School of Law) reports:

Accrediting agencies have increasingly pressured law schools to incorporate more practice-oriented topics and fewer academic subjects into their curriculum. As a result, law schools stress the need for constitutional history training at the undergraduate level.

Faced with this impending reality, the four panelists discussed different approaches to teaching undergraduate courses in constitutional history. SANDRA VAN BURKLEO of Wayne State University and SANFORD LEVINSON of the University of Texas questioned whether American constitutional history should go beyond the study of Supreme Court history. Van Burkleo suggested that the value of the subject is enhanced by fitting it into the broader study of American history, and that some of the new disciplines and approaches to history can provide students with fresh insights into the impact of constitutional decision-making. There is great value in asking students to view Supreme Court cases from the perspective of the poor, the disadvantaged and the marginalized. This makes legal and institutional history more directly applicable to the lives of everyday Americans, and thus increases its interest for student and professor alike.

Levinson argued that even within the accepted and traditional canon of constitutional history, there is value in altering one's perspective. For example, *Marbury v. Madison*, long a beginning point for constitutional history (and constitutional law) really does not justify itself either by its importance, or as a vehicle for teaching constitutional history. Together the two panelists addressing this question suggested that much can be gained by taking new and creative approaches to teaching American constitutional history.

MICHAEL LES BENEDICT of Ohio State University and STEPHEN PRESSER of Northwestern University pondered whether constitutional and legal history can be mixed successfully. Benedict maintained that constitutional history has more than enough value for extended treatment in a two semester undergraduate offering. To add legal history simply limits the time one can devote to the importance of the Constitution in the overall history of the United States. Constitutional history, viewed broadly as far more than the institutional history of the Supreme Court or analysis of its decisions, is quite able to stand alone and attract undergraduate attention.

Presser noted that he has been teaching constitutional and legal history in one course for a number of years. The combination is a very useful one, and it eliminates an artificial distinction frequently made between private and public law. Although some argue that legal history is not an appropriate subject matter for undergraduates, he has found them capable of understanding the materials and enthusiastic about the course. Discussion from the floor suggested that there was a need for institutional history studies of the U. S. Supreme Court, and that a very valuable undergraduate course could be built around that subject.

Legal Reform in Nineteenth Century Russia

October 17 1:30-3:00 p.m.

WILLIAM G. WAGNER (Williams College, History) chaired the panel and writes:

The panelists offered a cohesive presentation, as all of their papers focused on Russian legal reforms in the 1860's. CHERI C. WILSON (University of Minnesota, History), in her paper entitled "The Judicial Reform of 1864: An Overview," asserted that the judicial reform resulted from several preconditions: the acceptance in principle earlier in the nineteenth century of the need for both reform of the judicial system and the codification of law, the introduction by the state after 1830 of legal training resulting from the desire to improve the state bureaucracy, and the emergence of a legal profession. Ms. Wilson then described the process of reform and the principles underlying it, concentrating on the development of an independent judiciary and bar. According to Ms. Wilson, the statutes defining both institutions were influenced by their French, German, and British counterparts, but were adapted creatively to suit the particular conditions of imperial Russia.

ABBY SCHRADER (Franklin and Marshall College, History) argued similarly that the foundation for the reforms of the 1860s was laid in the 1830s and 1840s. Her paper, "The Language of Punishment and the Limits of Reform: The Russian Autocracy and the 1863 Amelioration of Corporal Punishment," maintained that the generally liberal efforts at reform in the earlier period ultimately limited the scope of reform in the later period. After placing developments in imperial Russia in a general European context, Professor Schrader outlined how the tsarist state used penal policy to shape the social order, particularly through the use of "negative privileges" (especially the freedom from corporal punishment). Differentiated punishment based on social status and sex served both as a means of moral education and as a way of reinforcing their conception of an appropriate social order. Reformers in the 1860s accepted this instrumentalist and didactic conception of law, and in many cases also the appropriateness of differentiating punishment based on the presumed qualities of different social groups.

In her paper entitled "The Judicial Reform of 1864 and the Role of Medical Expertise in the Russian Courtroom," ELISA BECKER (University of Pennsylvania, History) argued that the reformed courts constituted an arena where professional authority challenged and conflicted with the authority of the autocratic state. According to Ms. Becker, the new judicial procedure and the introduction of the jury increased the role and importance of medical expertise in criminal trials. Nonetheless, a tension remained between older legal regulations that seemed generally to subordinate medical professionals to state authority and to state officials and the new judicial statutes, which appeared to subordinate medical professionals only to the law. In this situation, most medical professionals sought to establish their professional autonomy, for example by resisting the claim of state officials that they were obligated to help such officials prepare criminal prosecutions. In this conflict, which generated considerable public debate, the Criminal Cassation Department of the Governing Senate (the highest court of appeal in the reformed judicial system) tended to uphold the autonomy of medical experts and expertise.

Social Histories of Law and Authority in the Pre-Progressive City

October 18

8:30-10:00 a.m.

VICTORIA SAKER WOESTE (American Bar Foundation) notes:

ELIZABETH DALE (Clemson University, History), SHARON E. WOOD (University of Chicago, History), and DAVID S. TANENHAUS (University of Nevada at Las Vegas, History) presented a nice package of the newest work being done in the still new and emerging field of the social history of law. Dale's "The People v. Zephyr Davis: Law and the Public Sphere, Chicago, 1888," Woods' "Before the Juvenile Court: Gender and the Policing of Children in Late-Nineteenth-Century Urban America," and Tanenhaus' "The Anti-Progressive Impulse: A Personal Crusade Against an Infamous Juvenile Law" explored variations on the theme of the relationship of the state to individuals during a period in which state authority to control behavior was expanding in distinctive ways.

The papers pointed out that the construction of new state structures to police behavior, impose morals, and ensure social order during the Progressive Era was not without controversy, debate, and even overt confrontation. Individuals and groups did not always welcome new expansions of state authority into their lives. Some, like Zephyr Davis, submitted to the state's power to punish but refused to conform to racial stereotype even as they did. Some, like the nameless boys and girls whose cases came before the juvenile court in Davenport, Iowa demonstrated that beneath the formal structures and apart from the police matrons who symbolized the new discipline, children resorted to delinquent behavior as a way of asserting individual freedom. And some, like William H. Dunn, were mavericks, motivated by personal

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convictions to mount very public assaults on the institutional edifice created by Progressive Era convictions about agency and expertise.

These papers also identified a common theme: law and authority in the Pre-Progressive City were continually being tested and challenged by the citizens whom they purportedly safeguarded. The familiar thesis that these institutions--courts, police, and reform homes--were agents of social control has been substantially amended by the larger arguments made in these essays, which themselves point to much broader inquiries into the social, cultural, and legal relationships of the cities in which they are historically located. The papers raised good, provocative, and tantalizing questions.

The audience pushed the presenters further on the implications of some of these questions. One participant raised the issue of periodization, asking Tanenhaus to say when he thinks the Progressive Era began and ended, and to talk about the impact that definition has for his conceptualization of the city. Another scholar asked Dale what it means to do social history on the basis of one newspaper case. Wood was asked to supply additional information about the police matrons at the heart of her study, and whether there were more of them to draw into her analysis. The audience and panelists enjoyed the engagement over these issues.

Legal Construction of Employer/Employee Relationships

October 18 8:30-10:00 a.m.
DANIEL ERNST (Georgetown University Law Center) chaired this session and reports:

CATHERINE FISK (Loyola Law School of Los Angeles) presented the paper "Removing the Fuel of Interest from the Fire of Genius: Law and the Employee Inventor, 1830-1930." Part of a larger study on the intersecting histories of labor law and intellectual property in the United States, Fisk's paper centered on the "progression from the early-nineteenth-century rule that employees usually owned the entire rights to their inventions to the later nineteenth-century situation in which employees owned their invention but employers had to license them," a license commonly termed a "shop right."

From the standpoint of labor legal historiography, perhaps the most interesting aspect of the paper was its use of work on antebellum labor law by CHRISTOPHER TOMLINS and ROBERT STEINFELD. Most intriguing was her argument that when the law of employee inventions emerged in the antebellum era, employment law was still just taking shape, as Tomlins and Steinfeld demonstrated. By the time employment law coalesced, certain inventor-protective principles, derived from the law of property, were too entrenched to be easily dislodged.

DANIEL ERNST noted that Fisk's topic provided her with the opportunity to sort out the differing views of antebellum labor law of Steinfeld, Tomlins, and, after the previous day's session on "Freedom of Contract and the State," JOHN ORTH. But Ernst also urged caution before extrapolating too quickly from the antebellum studies. So long as skilled craftsmen exercised substantial control over the conduct of their work (as the labor historian DAVID MONTGOMERY has shown for the Gilded Age), one might expect courts to be ready to accord them ownership of inventions created in the course of their labor. The judicial recognition of the shop right might have less to do with preserving the authority of employers than in ensuring that an invention could be used by the original as well as a subsequent employer so that the public could enjoy the benefit of competition between the two.

PAUL MORENO of St. Thomas Aquinas College presented a compact summary of his recently published book, *From Direct Action to Affirmative Action: Fair Employment Law and Policy in America, 1933-1972* (LSU Press, 1997), entitled "Defining Discrimination in Employment: An American Legal Antimony." The paper and book comprehended several generations of employment discrimination laws in terms of "a vexing antimony." "Unless antidiscrimination laws were enforced," Moreno wrote, "discrimination would go unchecked, but if antidiscrimination laws were enforced, quotas would result." In charting the rise and fall of "disparate-impact" and "disparate-treatment" visions of discrimination and equality, Moreno provided an intriguing account of the racial proportionalism of the New Negro Alliance and Roosevelt administration in the 1930s. He also traced the emergence of an alternate, "disparate treatment" approach in the decisions of state fair employment commissions in the 1940s and 1950s. These decisions, he argued, informed the original provisions of Title VII of the Civil Rights Act of 1964, but not their subsequent enforcement.

DAVISON DOUGLAS of the William and Mary Law School commented that Professor Moreno's book provided an excellent treatment of the history of employment discrimination policy in this country and that Professor Moreno had plowed new ground in analyzing efforts by the Roosevelt Administration to combat employment discrimination in New Deal agencies, particularly through the use of racial proportionalism.

Medieval Property Transfers

October 18 8:30-10:00 a.m.

CONSTANCE BRITTAIN BOUCHARD (University of Akron, History) writes:

The panel included presentations by ELENA PAVLOVA (Ph.D. candidate, University of Chicago), Dr. JONATHAN ROTONDO-McCORD (Xavier University), and Dr. AMY LIVINGSTONE (Maryville College).

Although the panelists' papers dealt with three different geographical areas (respectively Russia, Germany, and France), one common theme emerged: the need for historians to conceptualize property and property transfers in the medieval period in terms used then, rather than simply trying to apply modern understandings of these issues.

Here all three panelists were working, explicitly or not, in the mode of Stephen White, whose *Custom, Kinship, and Gifts to Saints* (1989) has redirected for the '90s scholarship on the nature of medieval property. Specifically, White has argued that there were no universal laws in the Middle Ages on the rights which various family members might have over transfers of "family" property. And yet there were always underlying assumptions and expectations--which differed from family to family, even from family member to family member.

Within this conceptual context, Ms. Pavlova spoke of the many kinds of land transfers to Russian monasteries made by the Russian aristocracy, sometimes for the good of a relative in the cloister, sometimes for the good of their own souls, sometimes simply to honor the saint. Emergent from her material was the symbolic value which the property took on: the establishment of close ties between layman and church, which the property transfer made concrete, was in some cases more important than the property itself. The same symbolic value of property transfers was seen by Dr. Rotondo-McCord, who took the analysis one step further to talk about how such transfers could be used as weapons in or as means to settle power disputes in medieval Germany. Finally, Dr. Livingstone used records of property transfers from medieval French monasteries for information on the family structures such records reveal, and she challenged the too-easily accepted model of a fairly abrupt appearance of patrilineal families around the year 1000 with a more nuanced view of the very individualistic ways that families organized their authority and inheritance, depending both on situation and individual traditions.

Making Sense of the New Deal "Constitutional Revolution"

October 18 10:15-11:45 a.m.

G. EDWARD WHITE (University of Virginia School of Law) comments:

The panel was an experimental departure from the typical ASLH format. It was a product of a collective judgment among some long-time members of the Society that the typical format often produced sessions whose general appeal and accessibility was limited. The topic of the "constitutional revolution" of the 1930s was chosen, and a panel format selected, in order to increase the breadth of audience appeal and to avoid the problems attendant on listening to the text of a prepared paper being read. Panelists were instructed to limit the length of their remarks and to engage one another in an informal, impromptu fashion.

The general topic under discussion was whether the conventional view of the origins of the "constitutional revolution," which emphasizes the close connection between dramatic doctrinal change on the Supreme Court after 1937 and the introduction of a plan to "pack" the Court with additional justices by the Roosevelt administration in that year, was still statured. Panelists defending the conventional view were MELVIN UROFSKY of Virginia Commonwealth University and RICHARD POLENBERG of Cornell University, both former students of WILLIAM LEUCHTENBURG, the chief architect of the conventional view.

Panelists WILLIAM NELSON of New York University Law School and BARRY CUSHMAN of St. Louis University Law School, though, suggested that the conventional view focused too narrowly on a short span of time and misplaced the causal relationships. If there was any causal relationship between the Court-packing plan and the "constitutional revolution," the critics argued, it was one in which the Court-packing plan itself was symptomatic of the broad epistemological, doctrinal, and cultural changes that produced the "constitutional revolution," changes which centered on the triumph of a behaviorist model of judging, a human-centered view of causation in the universe, and the special experience of a generation--the "New Deal" generation--that came to maturity in the midst of political and economic dislocations and believed it had located the "causes" of those dislocations.

G. Edward White showed no pretenses of objectivity, weighing in on the side of the critics. Reaction to the session suggested that the experiment may well be repeated at future meetings.

Identifying, Rewarding, and Punishing in German Law

October 18 10:15-11:45 a.m.

PETER C. CALDWELL (Rice University, History) remarks:

The panel consisted of three papers, dealing respectively with German judicial action in the late 18th century, under Nazism, and in the present. KENNETH LEDFORD of Case Western Reserve University spoke on "The High Dignity of the Judicial Office: Judges, the State, and Civil Society in the Legal Reforms of Frederick the Great, 1740-1806." Absolutism, Leford noted, produced not only a stronger centralized power, but also a relatively independent judiciary imbued with an ideology that it represented the "general will," which would feed into 19th century liberalism.

GABRIEL FINDER's (Susquehanna University, History) paper, "'Transferred to the Custody of the Hitler Youth': Hitler Youth in the Juvenile Courts of Frankfurt and Wiesbaden," presented the allegedly independent judiciary at a different moment--and in a different light. The judges, he showed,

voluntarily hedged their independence by permitting Hitler Youth members access to their chambers and materials in certain cases.

Finally, DAVID ABRAHAM of the University of Miami, in "Reduction of Demands, Reduction of Rewards: The Emergence of Proportionality and Cost-Benefit Analysis in the Treatment of Aliens in Germany and the U. S.," commented on the effect of asylum and immigration law on the political nation and the practice of citizenship in the world economy. He examined the way judges used new, "unheroic" methods of argumentation to extend rights to non-citizens as a necessary response to challenges of the global economy that at the same time diminished the practical potential for social change based on the principle of national sovereignty, whether progressive or reactionary.

All three papers dealt with the way judicial action is charged with political significance, even the apparently "unpolitical" decisions of contemporary courts in asylum and immigration law. They also presented three very different conceptions of justice, both in the institutional sense (what is the judicial institution and what is its role?) and in the sense of fairness or appropriateness. And all demonstrated clearly the connection between conceptions of the state and conceptions of the judiciary: the absolutist state produced a formalistic variety of jurisprudence; Nazism, with its radical antistatist tendencies, produced a deformalized court practice; and the era of globalization, when the nation-state itself has come under pressure, produces legal decisions that are unprincipled and unheroic.

The panel brought forth a number of questions from the audience. Perhaps most fruitful for future conferences was the comment by JANE BURBANK of the University of Michigan, who noted the different role played by the party in Nazi German and Soviet Russian justice. Such carefully formulated comparative questions, like Abraham's comparison of United States and German immigration law, could serve as ways to organize comparative panels at future conferences.

Ethnic Identity and Loyalty in Eighteenth and Nineteenth Century Legal Campaigns

October 18 3:30-5:00 p.m.

EDWARD L. FARMER (University of Minnesota, History) chaired this panel and notes:

The panel consisted of two papers, one set in late imperial China and one set in New Zealand in the early twentieth century. DONALD S. SUTTON of Carnegie-Mellon University's History Department read a paper on "Expropriation, Miscegenation, and Feud: The Miao Substatutes and the Polyethnic Society of Eighteenth Century West Hunan." Sutton explored the ways the legal system of the dominant Han culture accommodated to the

governance of the Miao (better known here as Hmong) minority in south central China.

The second paper was read by JUDITH BASSETT from the History Department at the University of Auckland. Her title was "Flags and Aliens: The Commission of Inquiry into the Loyalty of the Dalmatian Gumdiggers in Northland, New Zealand, 1916." The gumdiggers, a class of poor laborers imported from the Balkans, fell under popular suspicion at the time of the First World War. This occurred in part because as foreigners they were not subject to military conscription and despite the fact that they were hostile to the German side in the conflict. Careful legal inquiries into charges against them cleared them on all counts.

The panel was electrified when REBECCA R. FRENCH of the University of Colorado School of Law made her comments. French questioned how cultures interact when side-by-side and how does law mediate. She then treated those present to a historical overview of responses to the questions touching along the way on diffusionism, pluralism, colonialism and post-colonial theory, social constructionist theory, and recent work on nationalism, identity, and boundaries. The panel adjourned to drinks and dinner in high spirits.

Lessons of Comparative Constitutional History

October 18 3:30-5:00 p.m.

DE LLOYD GUTH (University of Manitoba Faculty of Law) writes:

Comparing constitutions too often reduces itself to comparing nationalisms, where the focus quickly emphasizes differences created by local customs, institutions, historical contexts, religious values and social priorities. Instead of focusing solely on comparisons, Alan Watson would have us think in terms of the process, which he identifies as "borrowing." Professor Watson reminds us that comparative law is only a method, not a matter of its own. This was clearly understood by those who attended the session and took part in the lively discussion that ensued.

BILL WIECEK (Syracuse University Law School) compared differing conceptualizations of "Property in the American Constitutional Order: From Locke to Rehnquist." This was comparative law internalized within a single system and at the doctrinal level. Beginning with "Lockean Liberalism," and its ideological assertion of an individualism based on private property, Wiecek demonstrated ways in which the twentieth century Supreme Court of the U. S. has approached "regulatory takings," based on *Pennsylvania Coal v Mahon* (1922) and *Euclid v. Ambler Realty* (1926). In analyzing the before and after, Wiecek established a line of developing thought through Blackstone, Madison,

Jefferson and George Mason to debates about the "preferred position" of property rights.

Having reconstructed the arguments and authorities by which property rights in the United States have become part of the First Amendment protection doctrine, JAMES A. THOMSON (Western Australia, Office of Attorney General) offered a second level of comparative methodology. His paper, "Reciprocal Influences in Comparative Constitutional History: Lessons from the American-Australian Connection," outlined the development of Australia's Constitution Act (1900), which was an imperial British statute "borrowing" heavily from the U. S. constitutional model. Thomson extended this anti-"British parliamentary thesis" by showing the impact of "popular sovereignty" throughout the 1890s and after: colonial and national constitutional conventions, referenda, and public debates held across the land.

DANIEL FARBER (University of Minnesota Law School), in his paper "Adjudication of Things Past: Reflections on History as Evidence," focused sharply on methodology, especially in the context of the two preceding papers and the ways they constructed "the past" that each needed. Farber set his epistemological scene with a discussion of "the historian as expert witness," both in Holocaust and in Aboriginal land claim cases. He examined the post-modernist and relativist challenges to "the very possibility of keeping faith with the past;" and then illustrated how "the objectivity question" routinely confronts lawyers and historians. One vital dimension to constitutional interpretation always depends heavily on how we answer that question (e.g. establishing original intent), on whether any past is knowable and remains independent of its present observer.

LARRY BAKKEN (Hamline University Law School) took up the Farber theme and applied it to the Wiecek and Thomson presentations. His commentary focused on how one can move lawyers beyond a solitary focus on borrowing anything in order to win, to a more deliberate use of comparables, in researching facts and laws, and to a deeper awareness of the "objectivity of the past" dynamic in their daily roles as counselors and litigators. Bakken added examples from his own experiences as a lawyer and as a legal historian, showing how a client's future often rests on how conscientious the lawyer is in applying such epistemological concerns.

Members of the audience took up these topics with zest, sharing their own research and courtroom encounters, regarding topics raised by all three speakers. Comparative methods and constitutional matters combined to educate all in attendance.

The Law and Economic Development in 19th Century United States

October 18 3:30-5:00 p.m.

PETER KARSTEN (University of Pittsburgh, History) comments:

One of the last sessions of the meeting consisted of three papers on law, railroads, and streetcars. TOM RUSSELL of the University of Texas Law School offered a truly crowd-pleasing multi-media talk on the fate of those injured by streetcars in Alameda County (Oakland), California in the early 20th century, utilizing huge tables of litigation and settlement data, fastened to the walls, as well as a film of a streetcar ride through San Francisco in about 1910 (taken by a cameraman who had mounted the camera on the front of the streetcar), and a neat red laser-pointer, which Russell used at timely moments in his talk to relate his remarks to the film. Streetcar accident victims had little success in recovering, either through the courts or the settlement process. The company's skilled lawyers, and the contributory negligence defense, proved too much for them.

Both of the commentators, RANDE KOSTAL of Western Ontario Law School and BARBARA WELKE of the University of Oregon's History Department, pointed out what the film had made obvious, that most of the pedestrians and alighting passengers had, indeed, displayed considerable contributory negligence. But Russell's figures remained grim. Kostal wondered whether Oakland was not unique. Where, he asked, were the effective contingency fee lawyers one encountered in other cities he was familiar with in these years?

JAMES HUNT of Mercer Law School focused on accidents involving animals on the tracks in several Southern states throughout the 19th century. He pointed out the substantial differences between the strict liability law mandated by several of the legislatures of these states on the one hand, and the range of reactions to those statutory alterations in the common law of negligence liability by the jurists, on the other. Some courts accepted the statutory changes; others rejected them outright or interpreted them quite narrowly.

WILLIAM THOMAS (University of Virginia, History) was by his wife's side at the birth of their first child; but the moderator read his paper (offering his version of the regional accents of those being quoted, a performance which, he has been led to believe, was not as entertaining as Tom Russell's film, but regarded as being better than nothing). Thomas's story concerned the use of retainers by railroads to render unavailable to others much local legal talent throughout the South in the years that the interstate system was coming into being. Like Russell, Thomas looked at the process of settlement of accident claims, and considered as well the arbitration of legal issues involving larger legal foes.

ANNOUNCEMENTS

Paul L. Murphy Grant Established

The academic world was saddened by the death last summer of Paul L. Murphy, Regents' Professor of History and American Studies at the University of Minnesota. To honor his memory, the American Society for Legal History is establishing a research grant in his name to assist a junior scholar engaged in research in United States constitutional or legal history. As a scholar, an educator, and a citizen, Professor Murphy was especially concerned with the Constitution and its guarantees of civil liberties and civil rights. Scholarly topics relating to issues of individual liberty, human rights and the legal protection of and equal opportunity for unpopular and oppressed groups will be given special consideration. However, awards will not be limited to these topics. The grant is intended to reward scholarship that reflects Professor Murphy's multifaceted and imaginative approaches to the history of the American Constitution and law.

The Society has received pledges of several thousands of dollars to establish the grant. However, the endowment requires a substantially larger amount of funds to make an annual grant helpful to scholars. It therefore requests donations be sent to Secretary-Treasurer, American Society for Legal History, Department of History, Bowling Green State University, Bowling Green, OH 43403.

Urban History Association Prize Competitions

The Urban History Association is conducting its ninth annual prize competitions for best doctoral dissertation in urban history, best book in North American urban history, and best journal article in urban history. To obtain information about submission procedures, please contact Professor Dorothy M. Schulz, Department of Law, John Jay College, CUNY, 899 10th Avenue, Room 422T, New York, NY 10019. The deadline for receipt of submissions is **June 15, 1998**. Please **do not** send submissions to Professor Schulz.

U. S. Supreme Court History Society's Hughes-Gossett Prize

The Supreme Court Historical Society invites submissions for the Hughes-Gossett Prize, given to the best student paper submitted annually. The prize carries a stipend and publication in the *Journal of Supreme Court History*.

The paper must be on some aspect of the Supreme Court's history. This includes institutional matters, historical examination of particular cases, and biographical studies of individual justices. Because the *Journal* is concerned primarily with historical questions, papers focusing mainly on doctrinal issues will not be eligible.

Authors must be or have been students at the time the paper was written, and may be either undergraduate, graduate, or law school students. Papers should be submitted on plain paper, with appropriate annotation. If accepted, a diskette will be necessary.

Papers should be submitted **no later than July 1, 1998** to Ms. Clare Cushman, Managing Editor, Supreme Court Historical Society, 111 Second Street, N.E., Washington, D.C. 20002.

1998-1999 Mini-Grant Program

The ABA Commission on College and University Legal Studies announces the availability of grants up to \$2,500, to enhance undergraduate students' education about law, the legal process, and law's role in society.

For information on award categories, application procedures, selection criteria, and eligibility, please see the following web address:
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Proposal submissions must be **postmarked by April 1, 1998** and sent to: ABA Commission on College and University Legal Studies, 541 N. Fairbanks Ct., Chicago, IL 60611-3314. Announcement of the awards will be made by June 1, 1998.

Oral History Association Awards

The Oral History Association invites applications for three awards to be presented in 1998 that will recognize outstanding work in the field of oral history. The three award categories are as follows:

1. a published article or essay that uses oral history to advance an important interpretation or addresses significant theoretical or methodological issues
2. a completed oral history project that addresses a significant historical subject or theme
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In all cases, awards will be given for works published or completed between April 1, 1996 and March 30, 1998. Awards will be announced at the Association's annual meeting, to be held October 15-18, 1998, in Buffalo, New York. The Association welcomes entries and nominations from all who practice oral history. The **deadline** for receipt of all application and nomination materials is **April 1, 1998**.

For guidelines and submission information, write Oral History Association, Baylor University, P. O. Box 97234, Waco, TX 76798-7234; e-mail OHA_Support@Baylor; or see the OHA homepage: <http://www.baylor.edu/~OHA/>.

U. S. Capitol Historical Society Meeting

The United States Capitol Historical Society will hold its annual conference on the history of Congress in the 1790s in Washington, D.C., on 17 April 1998. The topic this year is seeking justice and influencing Congress. Marion Winship will speak about communicating western interests to Philadelphia; Richard John, about petitions relating to the post office; Chris Desan will focus on "Petitioning the Federal Congress: The Case of *Chisholm v. Georgia*"; Jeffrey Pasley, about the relationship between gentility and lobbying; and Chuck diGiacomantonio will describe the six hundred petitions received by the First Federal Congress which make up the forthcoming volumes seven and eight of the DOCUMENTARY HISTORY OF THE FIRST FEDERAL CONGRESS, 1789-1791.

The conference fee is \$25.00. Additional information can be obtained from Donald Kennon at nonnek@erols.com or at 202-543-8919 (ext. 27).

Next year's conference will provide an overview of the accomplishments of Congress during the 1790s. The final conference, in 2000, will focus on Congress's move to Washington, D. C. in 1800. Anyone wishing to propose a paper for either conference should contact kbowling@gwis2.circ.gwu, or at 2120 L. St. N.W. #255, Washington, D.C. 20037.

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