
ASLH NEWSLETTER



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New Editor, *Law & History Review*

The Executive Committee of the American Society for Legal History is pleased to announce the appointment of David S. Tanenhaus, James E. Rogers Professor of History and Law and Associate Professor of History at the University of Nevada, Las Vegas, as editor of the *Law and History Review*, effective January 1, 2004. He succeeds Christopher Tomlins of the American Bar Foundation, who in his nine years as editor expanded the journal from two issues a year to three, extended its intellectual range beyond the traditional focus on American and British legal history, and led the way into the digital future by joining the History Cooperative and other on-line archives.

Professor Tanenhaus is the author of *Juvenile Justice in the Making* (Oxford University Press, 2004) and of several articles and book chapters, and co-editor of *A Century of Juvenile Justice* (University of Chicago Press, 2002). He received his Ph.D. in History from the University of Chicago and has taught at UNLV since 1997.

Authors should continue to direct manuscripts and editorial correspondence to Chris Tomlins at the American Bar Foundation, 750 Lake Shore Drive, Chicago, Illinois 60611 until further notice.

2004 Annual Meeting, Austin, Texas

The Society's thirty-fourth annual meeting will be held October 28-31, in Austin, Texas. The host hotels will be the Driskill and the Stephen F. Austin. Additional information about the meeting will be available on the Society's web page at http://www.h-net.org/~law/ASLH/conferences/aslh_conference_2004.htm.

2003 Annual Meeting, Washington, D.C.

The Society's thirty-third annual meeting was held November 13-15, in Washington, D.C. Special thanks go to co-chairs of the local arrangements committee, LEWIS GROSSMAN and JAMES P. MAY, both at American University's Washington College of Law.

Thanks also go to the Program Committee: ARIELA GROSS, University of Southern California, chair; Ed Balleisen, Duke University; Holly Brewer, North Carolina State University; Alejandro De la Fuente, University of Pittsburgh; Laura Edwards, Duke University; Darryl Flaherty, Columbia University; Ron Harris, Tel Aviv University; Jill Hasday, University of Chicago; Ken Ledford, Case Western Reserve University; Gerry Leonard, Boston University; Emily Osborn, University of Notre Dame; Cynthia Patterson, Emory University; David Rabban, University of Texas; David Seipp, Boston University; Clyde Spillenger, University of California, Los Angeles; Carolyn Strange, University of Toronto; and John Witt, Columbia University.

2003 Annual Meeting, Board of Directors

The full minutes of the Board of Directors meeting are posted on the Society's web page <http://www2.h-net.msu.edu/~law/>. Key announcements made at the meeting were these:

Approval of the following:

1. A new dues structure, as follows:
For individual members, with annual income:
 below \$50,000 – \$60
 \$50,000 to \$74,999 – \$70
 \$75,000 to \$99,999 – \$80
 \$100,000 to \$124,999 – \$90
 \$125,000 to \$149,999 – \$100
 \$150,000 and above – \$125
Student members – \$20
Sponsor – \$250
Life member – \$1000
For institutional members – \$100
For non-US members, add \$10 in each category.

2. Recommendation that the maximum number of honorary fellows be increased from 10 to 15.

If approved, section I(3) of the Society's By-laws would read:

The directors and officers may create categories of members (including students and emeritus members) upon terms that they deem appropriate, elect honorary fellows from among distinguished legal historians residing in the United States or Canada and elect corresponding fellows from among distinguished legal historians residing in other nations and define the terms of their fellowships. Not more than one honorary fellow and not more than one corresponding fellow may be elected in any calendar year. The number of honorary fellows at one time should not exceed **ten fifteen**. Honorary fellows and corresponding fellows are members for life and are entitled to all privileges and rights of membership without payment of dues.

In addition, the Board heard a report on the new on-line membership directory, to be maintained by the University of Illinois Press:

The Society now has an online membership directory. You can get a view of how the complete system works by going to <http://www.press.uillinois.edu/journals/lhr/directory/>. You should be asked for your subID (which is the number on the mailing address for this newsletter) for this "first time" login. Next, you'll need to provide a personal password to use for subsequent logins. That's it; you can forget your subID from this point forward. For those who misplace their password, the manager of the directory has installed an auto-reply system to email the password to the address on file. You'll also notice the check-box option to remember your login information at this point so that your future connections will go directly into the database. However, you will still need to re-type your password if you chose to edit your personal record. This is an added safety measure to only give access to edit your personal account information.

**NOTE: IF YOU DO NOT WANT YOUR MEMBERSHIP INFORMATION DISPLAYED, CONTACT
PAUL ARROYO <PARROYO@UILLINOIS.EDU>**

Surrency Prize

The 2003 Surrency Prize went to Stephen Jacobson for his article, "Law and Nationalism in Nineteenth-Century Europe: The Case of Catalonia in Comparative Perspective," which appeared in volume 20 of the *Law and History Review* (2002). The citation read: "Stephen Jacobson's marvelously broad and ingenious article explores how resistance to civil law codification contributed to Catalan nationalism in the nineteenth century. He richly explains how jurists, politicians, and controversialists took a decaying regional law, revived and modernized it in the process of resisting codification, and reimagined that law as one of the foundations of Catalan social identity and national solidarity. Far from being backward or stubborn, resistance to codification becomes, in Jacobson's telling, a creative project. Jacobson's treatment of his theme is remarkably broad. He manages to weave together the political history of nineteenth-century Catalonia and Spain; the intellectual context supplied by French, German, and English debates on codification; and an analysis of the substantive features of uncoded Catalan law that made it attractive to its advocates. In so doing, Jacobson shows just how varied, deep, and unpredictable were the connections between codification and nationalism."

The prize committee also recommended an honorable mention for the 2003 prize be awarded to Ronen Shamir for his article, "The Comrades Law of Hebrew Workers in Palestine: A Study in Socialist Justice," which appeared in volume 20 of the *Law and History Review* (2002). The citation read: "Ronen Shamir has offered a new perspective on 'socialist justice' by exploring the aspirations and operation of the 'Comrades Law,' a legal system set up by the General Federation of Hebrew Workers (the Histadrut) in pre-World War II Palestine. The Comrades Law sought, on one hand, to provide socialist justice as an alternative to the courts of the British colonial government. On the other hand, it tried to further the project of nation-building pursued by a variety of Zionist institutions before the foundation of Israel. Shamir's masterful depiction of the tensions between these two roles allows him to contribute to debates about the possibilities and limits of socialist justice. In particular, he is able to show how the imperatives of nation-building led the Comrades Law to subordinate the education and empowerment of workers to the bureaucratic needs of the Histadrut."

Sutherland Prize

The Sutherland Prize for 2003 went to Professor Joseph Biancalana of the University of Cincinnati College of Law for his article "Actions of Covenant, 1200-1330," in the Spring 2002 issue of *Law and History Review*. In the view of the Committee's majority: "Professor Biancalana's article provides an admirably thorough answer to two questions of fundamental importance to the history of the common law of obligations. First, when and why did the royal courts begin requiring the plaintiff to produce a writing under the defendant's seal as proof of their covenant? Second, how, when, and why did the remedy in actions of covenant change? Professor Biancalana's answers are careful, insightful, and persuasive. They show a remarkable

command of legal nuance and are the product of exhaustive research in the surviving manuscripts. Important in its conclusions and meticulous in its detail, this article fully merits the Sutherland Prize for 2003."

2003 Annual Meeting Sessions

Reports from the chairs of sessions at the 2003 Annual Meeting are reprinted below to provide a summary of the work currently being done across the range of the Society's membership.

Session on Comparative Property Rights: North America and Australia

STUART BANNER (UCLA-law) and ANDREW BUCK (Macquarie-law) gave the first two papers, both exploring themes focusing primarily on Australian property history, but also comparing Australia's experience to that of other parts (or ex-parts) of the British Empire. Banner's paper took up the Australian doctrine of *terra nullius* in the 18th and 19th centuries, a doctrine that was extreme in recognizing no native land claims whatever. *Terra nullius* deviated from Imperial policy and practice elsewhere, and Banner offered several explanations that contrasted with other British settler experiences with indigenous peoples, including the settlers' particular distaste for Aborigines, the Aborigines' disengagement from agriculture (which was foundational in most British land claims), and their relative military weakness. Banner argued that once in place, *terra nullius* became the basis for settler land transactions and could not be easily dislodged.

Buck's paper began by sketching out the conventional comparison of North American and Australian settlement--the former supposedly driven by independent "rugged individuals," the latter by state institutions and large landholders. He then contrasted this large mythology to an on-the-ground 19th century New South Wales legal experience: the debate over the abolition of widows' dower. Contemporary commentators saw dower as a clog on real estate, and the debates revealed an ideal of freely transferable property among independent smallholders, quite different from the conventional view of Australian settlement as "colonial socialism"; indeed the Australian dower reform was in some ways more single-minded than the more cautious US and Canadian reforms.

PAUL KENS (Southwest Texas State-Political Science & History) gave an illustrated presentation that described his and Andrew Buck's joint teaching project on comparative property history. Kens and Buck overlapped their two quite different classes--one at Southwest Texas State, the other at Macquarie--so as to link their respective US and Australian students via computer technology; students read and electronically discussed a set of paired Australian and US property cases. Kens described the intellectual, technological and administrative challenges, which turned out to be considerable but manageable, in a class that was evidently an eye-opening experience for participants in both institutions.

CAROL ROSE's comments primarily touched on some further comparisons between the two substantive papers: both were stories of expropriation of relatively weak groups

(Aborigines and widows), both were driven by the imperatives of land transferability, both resonate with recent property theory on the "numerus clausus" limiting complex claims for the sake of property's marketability, and both hinted at serious discomfort over the status of groups that seemed to be disengaged from conventional market activities. Audience questions raised further issues in settler-native relations in these and other parts of the world, explored nuances of dower reform, and posed issues about the distinction (vel non) between sovereignty and property. And last but not least, several people wanted copies of the Kens-Buck reading list.

Constitutional Theory and Practice in the Anglo-American Eighteenth Century

JOHN MURRIN, reports: The session on Constitutional Theory and Practice in the Anglo-American Eighteenth Century featured three papers. MARY BILDER argued that Rhode Island, for all its eccentricities, had more law suits appealed to the British Privy Council than any other mainland colony and thus played an outsized role in the emergence of judicial review after independence. DANIEL HULSEBOSCH traced a shift from England's idealized ancient constitution to the emergence of constitutional law in the early American republic. DAVID LIEBERMAN explored the differences between two foreign admirers of Britain's eighteenth-century constitution: Montesquieu and Delolme. BARBARA BLACK added a superb comment on all three.

Athenian Judging/Athenians Judging

This panel explored issues raised by Athenian litigation in the 5th and 4th centuries BCE. Two of the papers addressed the relation between tragic performance and litigation. VICTOR BERS discussed the representation of the jury in Aeschylus' *Oresteia* (a tragic trilogy performed in 458). SHEILA MURNAGHAN explored the silencing of women's passion in both tragedy and Athenian law courts. She offered a reading of Euripides' tragic drama *Hippolytus* and the speech written by Lysias for a homicide trial, "On the Murder of Eratosthenes."

Finally, ADRIAAN LANNI disputed the currently fashionable model of Athenian litigation as a contest for honor. By focusing on appeals to pity and the use of character evidence in Athenian trials, Dr. Lanni argued that Athenian courts aimed at a particularized justice that regarded the concrete situation of the actual litigants. In his commentary, KEVIN CROTTY suggested that the intellectual milieu of Athenian litigation would be captured better by a "poetics" of law than by a "philosophy" of law.

New Tricks for Finding Old Law

THOMAS P. GALLANIS (Washington & Lee University) reports: A discussion of legal-historical sources in electronic format was the theme of three connected presentations. ERNEST METZGER (Aberdeen) spoke on civil and canon law resources on the Internet, including his website <www.iuscivile.com>. DAVID SEIPP (Boston University) examined Bracton, available at <hls.law.harvard.edu/bracton/>; the English Reports and State Trials on CD-ROM; the Old Bailey Proceedings, available at <www.oldbaileyonline.org>; and his own on-going project to index and paraphrase the Year Books, at <www.bu.edu/law/seipp>. WILLIAM FRAY (Yale Law School) discussed the Avalon Project, which he directs, and its

extensive array of on-line primary material, plus additional sources in the field of American constitutional. The Avalon Project's URL is <www.yale.edu/lawweb/avalon/avalon.htm>. The presentations were consistently informative and prompted lively discussion. I want to express a special word of thanks to the panelists for the effort and care that have gone into each of their websites. I hope that more legal-historical sources become so widely available.

Law, Violence, and Gender

LAUREL FLETCHER, University of California, Berkeley, reports: Conference participants turned out in droves (more than 30) to listen and participate in a lively discussion regarding the relationships of gender and violence to the law. Each panelist presented a paper which captured this relationship in a particular historical period. ADRIENNE DAVIS led off with an exploration of cases of American slave women which contrasted in the legal treatment of the subjects. Davis used the stories as a vehicle to dig beyond the application of property doctrine to expose a more complicated array of legal norms that regulated slavery's sexual dynamics. KATHERINE FRANKE examined the different types of claims that black men and black women brought to the Freedmen's Bureau in Mississippi for resolution. While black men sought assistance from state-sanctioned violence or intrusion, black women asked for help to gain custody of children, protection against domestic violence and matters typically labeled "family" matters. The case study points to surprisingly gendered relationships of blacks to the law in the ante-bellum period. Finally, JOHN PETTEGREW presented his insights into the relationship of male identity to the law. Using the vehicle of the natural provocation doctrine, Pettegrew traced the contours of evolutionary biology, its relation to patriarchy, and to culture to offer an explanation of how the law obscures its relationship to the preservation of the privileged treatment of male violence. As with all thought-provoking discussions, the questions from the audience overwhelmed the time available for discussion. Participants were 3-deep at the podium at the conclusion of the session, eager for the opportunity to follow up individually with each of the panelists.

Liberty and Property: Legal Interpretations of Property Rights in Revolutionary and Early National America

A sizeable (especially given the early hour on Saturday) and enthusiastic audience enjoyed three excellent papers on the configuration of liberty and property rights in late 18th and early 19th century America. EMILY BLANCK's paper, "The 'Contest between Liberty and Property': Freedom Suits in the Revolutionary Era," discussed how freedom suits brought by slaves in the revolutionary and post-revolutionary periods, brought into full relief the fact that liberty and property at times contradict each other. CHRISTOPHER CURTIS' paper, "Taking 'Notice of an Error': Historical Interpretations of Land Ownership in the Virginia Commonwealth," described how American legal writers in the late 18th century, especially Thomas Jefferson and St. George Tucker, sought to revise the conventional view that the origin of American land titles was feudal in character. ELLEN PEARSON's paper, "Taking Liberties with Native American Property: Creating a Moral Landscape through the Language of Land Possession," discussed the ways in which legal writers in the early national period (notably James

Kent) rationalized the extinguishment of Indian land ownership. The audience filled in the remaining half hour with a lively discussion.

Liberty and Litigation in Comparative Perspective: England and Mexico 1550-1750

BRIAN LEVACK (University of Texas) reports: About twenty people attended this session, which focused on notions of liberty embodied in litigation during the early modern period. TIM STRETTON (St. Mary's University, Halifax) in his paper, "Marital Litigation in the Court of Requests 1542 -1642," suggested a causal connection between an increase in the number of admittedly rare cases in which wives sued their husbands, and the dominance of civilian masters on the court, especially the Italian immigrant civil lawyer Sir Julius Caesar, before James I began replacing civilians with common lawyers as masters. His paper offered a striking example of real, tangible civilian influence on English judicial decisions as well as evidence of significant changes in the types of exceptions made to coverture. PAUL HALLIDAY (University of Virginia) in his paper, "Whose Liberty? Habeas Corpus 1550-1750," explored various concepts of liberty that emerge from his study of 2200 writs of habeas corpus during these years. He argued that all early modern notions of liberty, including that of Christian liberty, involved subjection to authority and that one person's liberty often involved another's restriction. Halliday also found in these writs early evidence of a later shift from the liberty of the subject to that of the individual, from the liberty of inheritance to the liberty of natural right. BRIAN OWENSBY (University of Virginia) in his paper "Servants of the Laws: Indians, Liberty and Obedience in Seventeenth-Century Mexico," analyzed hundreds of petitions from Indians outside Mexico City seeking amparos-or writs of royal protection- against Spaniards who had denied them property or liberty or had taken violent action against them. These petitions represented more than a manipulation of Spanish law to remedy the plight of the Indians and appealed to some very real notions of liberty embodied in the Spanish legal tradition. The libertad sought by the Indians involved freedom from the control of others as well as the liberty to obey the king and practice their religion. In his commentary Levack suggested ways that the neo-Roman concept of liberty as the antithesis of slavery, which did not make inroads into England until the seventeenth century, might provide a common link between English and Mexican notions of liberty.

Israeli Legal: National Security and Arab Displacement in the post-1948 Period

NIR KEDAR (Bar-Ilan University, Israel) reports: an enthusiastic audience of about 20 heard three very interesting papers and two insightful commentaries on a topic which transcends the historical interest. Adopting an interdisciplinary - legal-historical-geographical - approach, SANDY KEDAR (Haifa University, Israel) critically examined the Israeli government's use of law to institutionalize the dispossession of Palestinian Arabs displaced by the 1948 war and traced the legal transformation of their land during the formative years of Israel's land regime (1948-1960). YIFAT HOLZMAN-GAZIT (College of Management, Israel) explored the Israeli history of land expropriation and demonstrated how concerns of "national security" which governed the practice of expropriating Arab lands diffused into the Israeli "general" laws of expropriation and eventually affected the rights of the entire Israeli population. OREN

BRACHA (Harvard & University of Texas) discussed the massive litigation during the 1950s involving Palestinian Arabs who after becoming refugees in 1948 tried to cross the borders back into the territories that became the State of Israel. Based on the Israeli case, Oren illustrated the rhetorical and psychological mechanisms employed by judges in rulings that involve moral dissonance or harsh practical outcomes. In his poignant commentary RAIF ZREIK (Harvard) demonstrated how Israeli law treated the Jews from a collectivist-national perspective while considering the Arabs as individuals. Building on this observation Raif expounded the manifold ways in which modern law helps to shape geographical and cultural boundaries between groups or communities. LAMA ABU-ODEH (Georgetown) commented on the intricate relations between law and power. Looking back at the history of the Jewish-Arab conflict in Israel, she critically revisited the role of liberal law in dissolving (or at least appeasing) complicated violent disputes such as the Israeli-Palestinian conflict. In the short - but live - general discussion that followed the audience added new valuable perspectives to the interesting debate on Israeli legal history.

Forfeitures and Penalties in the English Medieval Common Law

JANET LOENGARD, Moravian College, reports: The audience for the Saturday afternoon session heard papers by Dr. PAUL BRAND, senior research fellow at All Souls College, Oxford, and Prof. JOSEPH BIANCALANA of the University of Cincinnati School of Law, with commentary by Prof. CHARLES DONAHUE JR. of the Harvard Law School.

Discussing the origins of the action of cessavit per biennium, whereby a lord could claim a tenant's land in demesne if the tenant had ceased to perform the services owed for it for a period of two years, Dr. Brand suggested that the first legislation on the matter, ch. 4 of the Statute of Gloucester of 1278, may have been drafted in response to the case that year of one Ellis of Tingewick. It provided for an action in a fairly narrowly defined situation and included a requirement that nothing distrainable be found on the land. Seven years later, ch. 21 of the Statute of Westminster II provided a general action for any lord whose tenant had ceased to perform services owed for a minimum of two years; there was no mention of the unavailability of distraint. However, the courts apparently read the requirement into the action. It has previously been suggested that cessavit per biennium was primarily brought against a contumacious tenant who refused to perform services he owed but pleadings in recorded cases show that often a defendant's refusal was based on a denial that the services claimed were owed or that they were owed to the plaintiff. Many cases brought under Westminster II were for urban property or for small rural holdings; Dr. Brand suggested that this may be related to the requirement that the tenement not be open to sufficient distraint for at least two years before the action was brought. He also discussed what the courts made of the possibility of defendant tenants saving their tenements in return for payment of arrears and offering surety for future performance of services.

Professor Biancalana spoke about the use of penalty clauses in English contracts and conveyances before the invention of the penal bond in the middle of the fourteenth century. He showed that penalty clauses began to appear in England in the later twelfth century and argued that they were borrowed mainly from Roman law as it was practiced on the continent, although

Jewish money bonds also used penalty clauses. He further argued that penalty clauses came to England through the academic study and teaching of Roman law, through the use of penalty clauses by ecclesiastical authorities, and through greater contact with continental merchants (chiefly Flemish and Italian) who used penalty clauses as standard practice. He hypothesized that the penalty bond with conditional defeasance on the back of the bond did not derive from the use of straightforward penalty clauses, but from the use of conditional recognizances of debt. The recognizance entered on the plea roll or close roll was the penalty and the condition rendering the recognizance void was in a separate document. From this arrangement there developed arrangements in which a bond was the penalty and a separate conditional acquittance could render the bond void. Endorsing the separate conditions on the back of the bond produced the penal bond with conditional defeasance on the back of it.

Professor Donahue devoted most of his commentary to remarking about the very different approaches the papers took to the question of the influence of Roman and canon law on English legal development. Professor Biancalana had written in a longer paper that English courts followed Roman law with regard to the enforcement of penalties; he had suggested that either the parallel treatment was due to coincidence or the justices were guided by Roman rule. If the similarities continued over different issues, perhaps the coincidences became too remarkable to be simply coincidence. In support of Professor Biancalana's position, Professor Donahue outlined various points of similarity with regard to the treatment of penalties. Dr. Brand had not considered a borrowing from Roman law as a root of the action of cessavit per biennium. But there was Romano-canonic law dating back to Justinian on a similar topic, a constitution of 529 which also authorized the holder of the land to tender payment of the rent to avoid losing the holding. A statute of 535 involving lands held from the church amended the time period required for non-payment from three to two years and the shorter period appeared in Pope Gregory IX's compilation of decretals. It is clear from the language used there that Gregory had Justinian's 529 constitution in mind. The interpretation of Westminster II thus has two things in common with this provision: part of an earlier statute was read into a later one and the tenant was given a way to avoid forfeiture by quickly making payment. Professor Donahue remarked that it would not be inconsistent to suggest that the Roman law provided the background, the decline of seigniorial enforcement powers the general occasion, and Ellis of Tinglewick's case the immediate impetus for ch. 4 of the Statute of Gloucester.

Smoke Screens Sounds Uncouth and Black Rams: Women in the Spaces of the Law

Despite the timing of the panel, 9:30 on a Sunday morning, the panelists were delighted to discover that the audience outnumbered them! "Fit tho' few" (Milton), the audience was treated to papers that covered continents and centuries, from Greece and Rome to 18th- and 19th-century England, offering glimpses of the persistent efforts by the patriarchal social body to enforce the paradoxical-to contain women within the law while simultaneously preventing the disruptions that such containment must necessarily entail.

Two papers – by LESLEY DEAN-JONES and JUDITH EVANS-GRUBBS – addressed the ancient world's (4th-century Greek and late Roman) efforts to legislate women's issues at the same time as the law severely limited women's capacity to speak or be spoken of in courts of

law. In "Prostitution as a smoke screen in a 4th-century B.C. lawsuit," Lesley Dean-Jones read Apollodorus' prosecution of the prostitute, Neaira (340 B.C.) as an elaborate rhetorical exercise in not saying what must be said – the name of the daughter born to Neaira, Phano, who was a legitimate citizen of Athens and whose name should thus never be spoken in court. Judith Evans-Grubbs' paper, "Patriarchy as usual: women, children and the family tribunal in late Roman law," demonstrated how as late Roman legal institutions controlling women's actions (*tutela mulierum* and *patria potestas*) went into decline in the early fourth century, others were revived to ensure that male family members continued to judge matters involving women's sexual conduct.

This need to control women's physical and metaphoric disruptions to law and its patriarchal institutions appears again in the two other papers by KATHERINE TEMPLE and SUSAN SAGE HEINZELMAN. Katherine Temple's paper "The 'Sounds uncouth' of Westminster Hall," addressed the physical space, 18th-century Westminster Hall, in which law was practiced and which was subject to the material disruption of real women's bodies and those practices symbolically associated with women-commerce and trade. This paper suggested that these closely connected complaints about noise and women communicated a subtextual anxiety related to England's rapid commercial expansion. Finally, Susan Sage Heinzelman ("Disturbing the Peace: Queen Caroline and the Black Ram") explored the significance of a political cartoon, published in 1820 during the trial of Queen Caroline for adultery and treason, which depicts Caroline riding a black ram with the face of her alleged lover, Bergami. Drawing on the still-present power of manorial customs, the cartoonist represents the queen as both guilty and yet a symbol of the progressive reform movements. She is satirized as an individual and yet remains potentially subversive to the centralized, legal and political institutions of early 19th-century England-institutions already tested by the increasingly aggressive demands for reform from the working class and Whig politicians.

Economic Analysis of Legal History

GEOFFREY MILLER introduced the panel and made some prefatory remarks. He observed that the papers being presented each illustrated, in different ways, the potential for economic analysis as applied to topics in legal history. Despite pronounced differences in methodology and intellectual foundations as between the disciplines, the papers demonstrated how the techniques of economic analysis could be used to illuminate corners of legal history that have not previously been understood from that dimension.

DANIEL KLIERMAN and PAUL MAHONEY's paper, "The Value of Judicial independence: Evidence from Eighteenth-Century English Securities Prices," uses an event study methodology drawn from modern finance theory to investigate the impact on stock and bond prices of certain developments in England in the movement towards an independent judiciary during the early years of the Eighteenth Century. The authors find evidence that the market reacted positively towards key events leading up towards the Act of Settlement which guaranteed some degree of independence for British judges. Klerman and Mahoney cleverly check prices from London against prices of the same securities in Amsterdam, which received the news from

England only after a delay but which received news from the rest of the world roughly at the same time as the London market.

RICHARD BROOKS' paper, "Covenants and Conventions: The Limited Impact of Shelley v. Kramer on the Chicago Housing Market," used a game-theoretic framework and theories of social norms and signaling to investigate a topic in recent American legal history. Brooks deals with an important issue in the history of segregation in the North, namely, the impact of racially restrictive covenants on housing markets. He looks in particular at the city of Chicago, where such covenants were ubiquitous. Historians have debated whether these covenants had much impact: their enforceability was always in question and they were legally nullified by the Supreme Court's decision in Shelley in 1948. Brooks argues, interestingly, that regardless of their legal enforceability, these covenants operated as signals that served as focal points for norms of behavior among homebuyers, banks, realtors and other participants in the market, and that these signals worked to perpetuate segregation in this market long after their legal enforceability had been dismantled.

BRUCE FRIER's paper, "Adverse Selection in Market Sales of Roman Slaves," uses insights from new institutional economics to explain certain otherwise-mysterious liabilities imposed on Roman sellers for hidden defects in slaves sold to third parties. In particular, Frier applies George Akerlof's work on lemons markets to argue for the presence of a market failure which could be remedied, at least partially, by imposing on the seller a form of limited but strict liability for undisclosed defects.

JOHN WALLIS provided commentary on each of the papers and also offered observations on the general topic of the intersection (or lack of intersection) between economics and legal history. Wallis noted that these were each thought-provoking studies which provided insight and clarification about the issues, although each was subject to problems such as lack of complete data (particularly for Bruce Frier's paper, where price information is unavailable) or methodological difficulties.

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<scheiber@uclink.berkeley.edu>

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Barbara Y. Welke (2005), University of Minnesota <welke004@tc.umn.edu>

* Executive Committee Member

() Indicates year term expires

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2004 Program Committee

Vicky Saker Woeste, American Bar Foundation, Chair <vswoeste@abfn.org>

Barry Cushman, University of Virginia <bjc2r@virginia.edu>

Laura Edwards, Duke University <ledwards@duke.edu>

Norma Landau, University of California, Davis <nlandau@ucdavis.edu>

Laurent Mayali, University of California, Berkeley <MAYALIL@law.berkeley.edu>

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Cromwell Prize

The William Nelson Cromwell Foundation will award a \$5000 annual prize for excellence in scholarship in the field of American Legal History by a junior scholar, beginning in 2004.

The prize is designed to recognize and promote new work in the field by graduate students, law students, and faculty not yet tenured. The work may be in any area of American Legal History, including constitutional and comparative studies, but scholarship in the colonial and early national periods will receive some preference.

The prize will be awarded annually by the Foundation on the recommendation of a committee of the American Society for Legal History, which will consider all work published, or dissertations accepted, in the previous calendar year. It will announce the award at the annual meeting of the Society in the following autumn.

Candidates should send a hard copy version (no electronic submissions) to each member of the committee postmarked no later than July 15:

Professor David T. Konig, Chair
Department of History
Washington University in St. Louis
Campus Box 1062
One Brookings Drive
St. Louis, Missouri 63130

Professor Barbara Aronstein Black
George Welwood Murray Professor of Legal
History
Columbia Law School
435 West 116th St.
New York, New York 10027-7297

Professor Charles W. McCurdy
Professor of History and Law
Chair, Corcoran Department of History
Randall Hall, P.O. Box 400180
University of Virginia
Charlottesville, Virginia 22904

Professor Richard Ross
Apartment 3E
625 W. Stratford Place
Chicago, Illinois 60657

Professor Barbara Y. Welke
Department of History
University of Minnesota
614 Social Sciences Tower
267 19th Avenue South
Minneapolis, Minnesota 55455

Fellowship Announcement:

J. Willard Hurst Summer Institute in Legal History

June 12-24, 2005

University of Wisconsin Law School – Madison, Wisconsin

– Applications will be accepted from Sept. 1, 2004 - Jan. 15, 2005 –

Cosponsored by:

The American Society for Legal History and The Institute for Legal Studies

Invitation

The American Society for Legal History and the Institute for Legal Studies at the University of Wisconsin Law School are pleased to invite applications for the third biennial J. Willard Hurst Summer Institute in Legal History. The purpose of the Hurst Summer Institute is to advance the approach to legal scholarship fostered by J. Willard Hurst in his teaching, mentoring, and scholarship. The "Hurstian perspective" emphasizes the importance of understanding law in context; it is less concerned with the characteristics of law as developed by formal legal institutions than with the way in which positive law manifests itself as the "law in action." The Hurst Summer Institute assists scholars from law, history, and other disciplines in pursuing research in legal history.

The 2005 Hurst Institute will be led by senior legal history scholars who will be announced at a later date. (The 2003 session was cochaired by Lawrence M. Friedman, Marion Rice Kirkwood Professor of Law at Stanford University, and Robert W. Gordon, Chancellor Kent Professor of Law and Legal History at Yale University.) The program also will include visiting faculty and guest lecturers. The two week program is structured but informal, and features discussions of core readings in legal history and analysis of the work of the participants in the Institute.

The general format includes daily sessions Monday-Friday that run through early afternoon, a few scheduled social events, and ample free time for additional discussion, reading and research. Fellows will have the opportunity to conduct archival work at the Wisconsin Historical Society. The Society holds a vast array of primary documents and is particularly strong in areas involving nineteenth and twentieth century social movements and labor activism. In addition, the Library possesses an excellent collection of federal and state government material which is largely uncataloged. The Society offers open stacks, liberal copying policies, and is open six days a week.

The ASLH Hurst Selection Committee will select up to twelve Fellows to participate in this event.

Applicant Qualifications

Preference will be given to applications from scholars in the early stage of their career (beginning faculty members, doctoral students who have completed or almost completed their dissertations, and J.D. graduates with appropriate backgrounds). More advanced scholars may also apply.

Fellowship Requirements

Fellows are expected to be in residence for the entire two-week term of the Institute, to participate in all activities of the Institute, and to give an informal works-in-progress presentation in the second week of the Institute.

Fellowship Terms

The Institute for Legal Studies will pay for approved travel expenses and will provide a private hotel room for each fellow at The Lowell Inn and Conference Center, located on the University of Wisconsin-Madison campus. Most meals will be provided.

Application Process

To apply, submit the following materials and arrange to have two letters of recommendation sent to the Institute for Legal Studies, Hurst Selection Committee, UW Law School, 975 Bascom Mall, Madison, WI, 53706-1399. *Please submit the original and six copies (total = 7) of your application packet, which must include the following:*

1. Cover sheet with your name and complete contact information.
2. Curriculum Vitae.
3. Statement of Purpose (maximum 500 words) describing your current work, specific research interests, and what you hope to gain by attending the Institute.
4. Estimated travel costs (airfare or mileage plus any other travel related expenses).

It is not necessary to arrange for multiple copies of the letters of recommendation.

Deadlines

Applications will be accepted from **September 1, 2004 - January 15, 2005**.
Decisions will be announced by March 15, 2005.

Additional Information

Questions about the Hurst Summer Institute may be directed to the Hurst Institute Coordinator: Pam Hollenhorst, Associate Director, Institute for Legal Studies, at <pshollen@wisc.edu> or <ils@law.wisc.edu>.

The Institute for Legal Studies offers systematic support for research and associated scholarly activity related to the "law in action," as distinguished from doctrinal analysis of the "law on the books." The Institute promotes the exchange, testing, and dissemination of ideas at the UW Law School through colloquia, workshops, conferences, and the hosting of visitors. For more information about ILS, Legal History and comments from participating fellows at the 2001 and 2003 Hurst Summer Institutes, consult the ILS webpage at <<http://www.law.wisc.edu/ils/>>.

The American Society for Legal History is a nonprofit membership organization dedicated to fostering scholarship, teaching, and study concerning the law and institutions of all legal systems. More information about ASLH is available at <<http://www.history.msu.edu/~law/ASLH/aslh.htm>>.

Journal Invites Submissions

The *Journal of the Gilded Age and Progressive Era* invites manuscripts from members of the ASLH on any aspect of legal history in the United States between roughly 1870 and 1920. Published by the Society for Historians of the Gilded Age and Progressive Era, this is the only journal specifically devoted to this decisive period in the history of law, the legal profession, and the judiciary in the United States. Please contact the editor: Professor Alan Lessoff, Department of History, Illinois State University, Campus Box 4420, Normal, IL 61790-4420, email: ahlesso@ilstu.edu. Or go to: www.jgape.org.

Washington & Lee University Center for Law and History

Washington and Lee University announces the creation of the W&L Center for Law and History. The Center's mission is to promote research and teaching in all areas and periods of legal history. The Center sponsors an annual Legal History Lecture, which is a major address by an internationally-distinguished legal historian. The inaugural lecture was given in September by Professor Sir John Baker (Cambridge), who spoke on "Human Rights in English Legal History." The Center also sponsors a series of Legal History Workshops, designed to promote the discussion of scholarship in progress. In the current academic year, workshops will be led by Professors Robert Palmer (Houston), Bruce Frier (Michigan), Sarah Barringer Gordon (Penn), and Robert Gordon (Yale). Full details of the Center's activities, and a webcast of Professor Baker's lecture, are available on the Center's website, <law.wlu.edu/clh>.

Woodrow Wilson International Center for Scholars

The Woodrow Wilson International Center for Scholars supports research in the social sciences and humanities. Men and women from a wide variety of backgrounds, including law, other professions, government, the non-profit sector, and the corporate world, as well as academia, are eligible for appointment. Through an international competition, it offers 9-month residential fellowships to academics, public officials, journalists, and business professionals. Fellows conduct research and write in their areas of interest, while interacting with policymakers in Washington and Wilson Center staff. The Center also hosts Public Policy Scholars and Senior Scholars who conduct research and write in a variety of disciplines.

The deadline for application is October 1. Additional information, on the Center's web site: <<http://wwics.si.edu/index.cfm?fuseaction=Fellowships.welcome>>

Philippa Strum, Director of the Division of United States Studies
strump@wwic.si.edu

University of Texas, Jamail Center for Legal Research

Corwin Johnson gives a lively account of his experiences in an oral history interview just published by U.T.'s Jamail Center for Legal Research. The interview was conducted by Sheree Scarborough, a professional oral historian who has conducted hundreds of interviews for oral history projects in Texas.

Johnson is lauded as "an institution, the genial authority" in the Foreword by his former student, James A. Baker III, the former U.S. Secretary of State and Secretary of the Treasury. In the interview, Johnson tells about teaching in the "separate but equal" law school created by the State of Texas in response to Heman Sweatt's lawsuit challenging the exclusion of African Americans from The University of Texas. A product of integrated universities, Johnson said, "I was repelled by segregation."

Johnson, co-author of a leading textbook on property law, also discusses the Law School's rising reputation under deans Charles McCormick and Page Keeton, as well as the social life of law students and traditions such as the annual Assault & Flattery musical review.

This publication (and all other Jamail Center publications) can be ordered on the web at <<http://tarlton.law.utexas.edu/pubs/>>, or by contacting the Publications Coordinator (Publications Coordinator, Jamail Center for Legal Research, University of Texas School of Law, 727 East Dean Keeton St., Austin, TX 78705-3224; phone 512/471-7726; fax 512/471-0243).

Tarlton Law Library Legal History Series, No. 4: Scarborough, Sheree. CORWIN W. JOHNSON: AN ORAL HISTORY INTERVIEW. Austin, Tex.: Jamail Center for Legal Research, 2003. vi, 36 pages. ISBN: 0-935630-57-0. Price: \$15.00

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