ASLH NEWSLETTER

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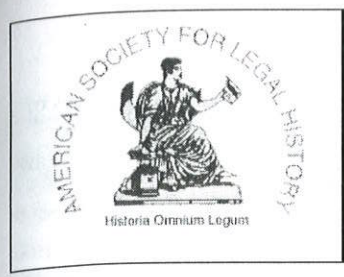

ASLH Newsletter

Winter 2007

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NOTE FROM CHARLIE DONAHUE

As much that is in this newsletter shows, the Baltimore meeting was a huge success. The Society is very much indebted to John Witt and Dan Klerman (co-chairs) and to their program committee who put together a truly splendid program of panels and to all those who participated in them. The Society is also very much indebted to Mortimer Sellers, David Bogen and Jane Dailey and their committee who "did" the local arrangements. Bob Gordon's memorable plenary address was held in Westminster Hall, a massive

decommissioned church next to the grave of Edgar Allen Poe and over the Catacombs of Baltimore. It was followed by a splendid reception in the Atrium of the University of Maryland School of Law, sponsored by the Law School, the University of Baltimore Law School and Johns Hopkins University.

On to Tempe! The next annual meeting will be held at the Mission Palms Hotel in Tempe, Arizona, October 25–28, 2007. The program committee, chaired by Risa Goluboff and Jon Rose, are at work as I write. Local arrangements are chaired by, once more, Jon Rose. It promises to be a great occasion. Details will be forthcoming in the summer newsletter.

As I mentioned in my address in Baltimore, the job of Secretary-Treasurer of the Society has become too big for one person. In order to split the two offices we need a by-law amendment, which requires the approval of the membership. A ballot to vote on the by-law amendments proposed by the Board is enclosed.

Posting the newsletter on the Internet and not mailing it to the members did not prove to be a success. I would still like to see if we cannot reduce postage costs and reach people in the way in which they want to be reached by making greater use of email, but for the time being the newsletter is being mailed to all the members. Richard Bernstein has graciously agreed to edit the newsletter, and this is the first newsletter under his editorship.

BY-LAW AMENDMENTS

As mentioned in the above note, splitting the office of Secretary and Treasurer requires a by-law amendment, the text of which is given below. In the process of preparing this amendment, we discovered that two previous Boards had amended the by-laws without obtaining approval of the membership. Both amendments were technical. One raised the number of authorized honorary fellows from ten to fifteen (a reflection, among other things, of our growing membership and the fact that academics are living longer). The other adopted the Uniform Management of Institutional Funds Act as a by-law (something that is required in some of the states in which we operate in order to allow us to take advantage of the flexibility that the Act gives us). The fact that two Boards had adopted two technical, and seemingly non-controversial, amendments to the by-laws without thinking that they had to seek the approval of the membership suggested that the Board should have the power to do this in the future. A full-scale by-law revision would be very time-consuming, but there are a number of provisions in the by-laws that seem to be out of date, and the Board seeks the authority to amend such provisions on its own without the expense of mailing a ballot to the membership. As a fail-safe the Board proposes that if any two members of the Board think that the amendment ought to be submitted to the membership for a vote, it will be, and if, after announcement to the membership of the Board's action, any ten members of the Society petition the President to have the amendment submitted to the membership for a vote, it will be.

The text of the proposed amendments follows (the catch-phrases at the beginning are not part of the official text of the amendment; underlined text is new; struck-out text is to be deleted):

Splitting the Office of Secretary and Treasurer

Article I, section 5: The officers are president, president-elect, and secretary-treasurer (or secretary and treasurer as the officers and directors shall determine). The president and president-elect each serve two-year terms, with the president-elect being elected biennially and automatically succeeding to the presidency. Both of their terms commence on the first day following the closing day of the annual meeting immediately following the biennial election. The secretary-treasurer is (or secretary and treasurer are) appointed by the president, on the recommendation of the Nominating Committee, to a three-year term commencing on the first day of the calendar year after ~~her/his~~ the appointment, and the current holder ~~of the office~~ is eligible for re-appointment. The powers and duties of these officers are those usually held by officers of like organizations and those assigned by the directors or members. If the office of president becomes vacant, the ~~vice-president~~ president-elect shall immediately become president for the remainder of the unexpired term. If any other office becomes vacant, the president shall fill the office by appointment with the approval of the executive committee. The terms of such office shall be for the unexpired period, commencing with their approval by the executive committee.

Raising the Number of Honorary Fellows to Fifteen

Article I, section 3: 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.

Adopting the Uniform Management of Institutional Funds Act as a By-law

Article V. Add a new section 7 as follows and renumber section 7 as section 8: The Society adopts the terms of the Uniform Management of Institutional Funds Act (1972), as amended by the Commissioners on Uniform State Laws to the date of acceptance of this by-law and as hereafter amended by them, as a by-law of the Society. The current version of the Act is attached hereto and made a part hereof as if set out in full.

Authorizing the Board to Make Technical Amendments to the By-laws Without a Vote of the Membership

Renumbered Article V, section 8: ~~Amendments to these by-laws shall be upon recommendation of directors and officers and a two-thirds vote of those members voting.~~

Amendments to these by-laws shall be upon a two-thirds vote of the directors and officers. Any amendment shall be noticed to the members (by newsletter or other appropriate means), unless a minimum of two among the directors and officers vote to have the amendment submitted to the membership for a vote. If within thirty days of the notice ten members of the Society petition the President to submit the amendment to a vote of the membership, the officers and directors shall do so. Two-thirds of the members voting shall be required for approval of an amendment so submitted.

BALLOT ON BY-LAW AMENDMENTS, FEBRUARY, 2007
American Society for Legal History

BALLOT MUST BE POSTMARKED NO LATER THAN MARCH 25, 2007 TO BE COUNTED

Amendment to Article I, section 5 (secretary-treasurer)

Approve [ ] Disapprove [ ]

Amendment to Article I, section 3 (honorary fellows)

Approve [ ] Disapprove [ ]

New Article V, section 7 (Uniform Management of Institutional Funds Act)

Approve [ ] Disapprove [ ]

New Article V, section 8 (amendments to by-laws)

Approve [ ] Disapprove [ ]

BALLOT MUST BE POSTMARKED NO LATER THAN MARCH 25, 2007 TO BE COUNTED

Return to:
William P. LaPiana
57 Worth St.
New York, NY 10013-2960

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PRIZES, AWARDS AND FELLOWSHIPS

The Society offers a wide range of prizes, awards and fellowships. See below for information about the ones that were awarded at the annual meeting in 2006 and announcement of those for 2007. Particularly notable are the splitting of the Cromwell Prize into two prizes, the Cromwell Book Prize and the Cromwell Dissertation Prize, both under the Society's Advisory Committee on the Cromwell Prizes, and the new joint application process for the Cromwell Fellowships and the Murphy Award under a combined Committee for Research Awards and Fellowships

Surrency Prize

The Surrency Prize, named in honor of Erwin Surrency, a founding member of the Society and for many years the editor of its publication the *American Journal of Legal History*, is awarded annually, on the recommendation of the Surrency Prize Committee, to the person or persons who wrote the best article published in the Society's journal, the *Law and History Review*, in the previous year.

The Surrency Prize for 2006 was awarded to Andrea McKenzie of the University of Victoria (British Columbia, Canada) for "'This Death Some Strong and Stout Hearted Man Doth Choose': The Practice of Peine Forte et Dure in Seventeenth- and Eighteenth-Century England" in LHR 23:2. The citation read as follows: "Most historical accounts of punishment focus on those doing the punishing: the state and its agents. In this insightful and original article, Andrea McKenzie examines the meaning of the choices made by those enduring punishment. This account of the use of peine forte et dure in seventeenth- and eighteenth-century England argues that courts interpreted the refusal of criminal defendants to answer charges against them as an attack on their own authority and legitimacy. Often, in fact, some defendants intended exactly that. In capital felony cases, judges subjected the uncooperative accused to the peine forte, the most gruesome method of physical torture at their disposal. Famously employed against an accused wizard in late seventeenth-century Salem, Massachusetts, the peine forte usually killed slowly and horribly. Those subjected to it either bore their fate stoically or quickly changed their minds and agreed to plead. McKenzie's account emphasizes the nature of legal and

judicial authority and, just as important, the motives of those who willingly chose the peine forte, knowing it probably meant death. For some, the chance to invert the inherent power structure of the criminal process was the opportunity to assert the ultimate moral authority in society. Moreover, the display of manly courage and resolve in the face of torture could be read as a rejection of the deferential, passive role thrust upon [such offenders] by the courts. McKenzie employs an expressive literary style, in keeping with the pathos of her sources, while unsentimentally exposing the power of the judicial process in the lives of ordinary people. This piece contributes fresh insights to the history of capital punishment, the meaning of pain and suffering, the interweaving of legal authority and religious faith, and the representation of masculinity in the early modern period. Its skilful blending of cultural and legal history provides a model for many other areas of inquiry."

The Committee also awarded an honorable mention to Sally H. Clarke for "Unmanageable Risks: MacPherson v. Buick and the Emergence of a Mass Consumer Market" in LHR 23:1.

The selection of the winner of the Surrency Prize for 2007 is under the charge of the Society's Committee on the Surrency Prize:

Lauren Benton, Chair, New York University <lauren.benton@nyu.edu>
Philip Girard, Dalhousie University <philip.girard@dal.ca>
Dylan C. Penningroth, Northwestern University <dcp@northwestern.edu>
Richard Ross, University of Illinois (Urbana-Champaign) <rjross@law.uiuc.edu>, <RRoss10688@aol.com>
Victoria Saker Woeste, American Bar Foundation <vswoeste@abfn.org>

Sutherland Prize

The Sutherland Prize, named in honor of the late Donald W. Sutherland, a distinguished historian of the law of medieval England and a mentor of many students, is awarded annually, on the recommendation of the Sutherland Prize Committee, to the person or persons who wrote the best article on English legal history published in the previous year.

The Sutherland Prize for 2006 was awarded to Andrea McKenzie of the University of Victoria (British Columbia, Canada) for "'This Death Some Strong and Stout Hearted Man Doth Choose': The Practice of Peine Forte et Dure in Seventeenth- and Eighteenth-Century England" in LHR 23:2. (This was the first time in the history of these awards that the Surrency Prize and the Sutherland Prize were awarded to the same person for the same article.) The citation read as follows: "McKenzie's winning article is distinguished by both its chronological range and its analytical reach. The practice of the peine, the pressing to death with heavy weights of those accused criminals who impeded the normal course of justice by refusing to plead to their indictments, stands as an anomaly both in the English legal tradition and in English legal historiography. At odds alike with the English law's much-celebrated opposition to judicial torture and to its vaunted reliance

on jury trials to determine guilt and innocence, the peine has hitherto puzzled legal historians, who have conventionally attributed defendants' willingness to subject themselves to this horrific ordeal to the desire to transmit estates to heirs by avoiding criminal conviction. McKenzie's article not only exposes the limits of this received interpretation but also provides a convincing series of alternative explanations. Her interpretation illuminates the history of the peine by situating legal practice within the context of the counter-theatre of the law as well as a spectrum of popular attitudes and discourses that range from religious conceptions of the martyr to plebeian conceptions of masculinity. The result is a compelling analysis that weaves together first-rate legal, social and cultural history to provide a compelling resolution to the conundrum of why early modern men and women chose to subject themselves to death by pressing rather than appealing to the celebrated mercies of the English jury system."

The selection of the winner of the Sutherland Prize for 2007 is under the charge of the Society's Committee on the Sutherland Prize:

David Lemmings, Chair, University of Adelaide (Australia) <david.lemmings@newcastle.edu.au>
Joseph Biancalana, University of Cincinnati <biancaj@ucmail.uc.edu>
David Sugarman, Lancaster University (UK) <d.sugarman@lancaster.ac.uk>

J. Willard Hurst Summer Institute in Legal History

The Society's J. Willard Hurst Memorial Committee is charged with task of appropriately remembering the late J. Willard Hurst, who was for many years the dean of historians of American law. On the Committee's recommendation, the Society, in conjunction with the Institute for Legal Studies at the University of Wisconsin Law School has sponsored three biennial J. Willard Hurst Summer Institutes 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 young scholars from law, history, and other disciplines in pursuing research in legal history.

The fourth Hurst Summer Institute will be held this summer in Madison, Wisconsin, with tentative dates from June 10 through June 22. Applications are being accepted through January 15, 2007. Barbara Welke, Associate Professor in History and Law at the University of Minnesota and an active member of the Society, will lead the Institute. Guest scholars will include Lawrence Friedman, Dirk Hartog, Holly Brewer, and Margot Canaday. 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 Society's Committee on the Willard Hurst Memorial Fund is charged with the

responsibility of selecting up to twelve fellows to participate in the Institute. Further information and an application form is available at:
http://www.law.wisc.edu/ils/hurst_summer_institute/2007application.htm.

The members of the Committee are:

Rayman L. Solomon, Chair, Rutgers University <raysol@camlaw.rutgers.edu>
Lawrence Friedman, Stanford University <lmf@stanford.edu>
Robert W. Gordon, Yale University <robert.w.gordon@yale.edu>
Hendrik Hartog, Princeton University <hartog@princeton.edu>
Laura Kalman, University of California, Santa Barbara <kalman@history.ucsb.edu>
Jonathan Lurie, Rutgers Newark <jlurie@andromeda.rutgers.edu>
Arthur J. McEvoy, University of Wisconsin (Madison) <amcevoy@facstaff.wisc.edu>
Chris Tomlins, American Bar Foundation <clt@abfn.org>
Aviam Soifer, University of Hawaii, <soifer@hawaii.edu>
Barbara Welke (*ex officio*) (Hurst Institute Leader), University of Minnesota <welke004@tc.umn.edu>

Committee for Research Awards and Fellowships

Paul L. Murphy Award

The Murphy Award, an annual research grant of $1,500, is intended to assist the research and publication of scholars new to the field of U.S. constitutional history or the history of American civil rights/civil liberties. To be eligible for the Murphy Award, an applicant must possess the following qualifications:

(1) be engaged in significant research and writing on U.S. constitutional history or the history of civil rights/civil liberties in the United States, with preference accorded to applicants employing multi-disciplinary research approaches;
(2) hold, or be a candidate for, the Ph.D. in History or a related discipline; and
(3) not yet have published a book-length work in U.S. constitutional history or the history of American civil rights/civil liberties, and, if employed by an institution of higher learning, not yet be tenured.

The Murphy Award was not made in 2006.

Cromwell Fellowships

The William Nelson Cromwell Foundation makes available a number of awards intended to support research and writing in American legal history.[1] The number of awards to be made, and their value, is at the discretion of the Foundation. In the past two years, three to five awards have been made annually by the trustees of the Foundation, in amounts up to $5,000. Preference is given to scholars at the early stages of their careers. The Society's Cromwell Fellowships Advisory Committee reviews the applications and makes recommendations to the Foundation.

In 2006, Cromwell fellowships were awarded to:

Christopher Beauchamp, Ph.D., University of Cambridge (UK), to begin postdoctoral research in turning his dissertation on patent litigation in the late nineteenth century into a book.

Kenneth W. Mack, J.D. Harvard Law School, Ph. D. Princeton University, a member of the Harvard Law School faculty, for archival research in connection with completing his book on African-American lawyers and their legal practice during the first half of the twentieth century.

Kunal Parker, J.D. Harvard Law School, Ph.D. candidate at Princeton University, a member of the faculty of the Cleveland-Marshall School of law and a Golieb Fellow, New York University Law School, for support for his dissertation research on changing understandings of history and of custom in nineteenth century legal thought.

Nicholas Parrillo, a J.D./Ph.D. candidate at the Yale Law School and a Golieb Fellow, New York University Law School, to continue his doctoral dissertation research on the legal history of governmental salaries and pay.

Daniel J. Sharfstein, J.D., Yale Law School and Golieb Fellow, New York University Law School, for archival research in connection with his book-length study of families whose racial identities shifted from African American to white from the eighteenth to the twentieth centuries.

Application Process for 2007

This year there will be a single application process for both the Cromwell Fellowships and the Muphy Award. Applicants should submit a three to five page description of their proposed project, a curriculum vitae, a budget, a timeline, and two letters of recommendation from academic referees. There is no application form.

Applications must be received no later than June 30, 2007. Successful applicants will be notified in mid-November.

To apply, please send all materials to:

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[1] The Cromwell Foundation was established in 1930 to promote and encourage scholarship in legal history, particularly in the colonial and early national periods of the United States. The Foundation has supported the publication of legal records as well as historical monographs.

Professor Hendrik Hartog
Chair, Committee for Research Awards and Fellowships
History Department
Princeton University
Princeton, NJ 08544

In addition to Professor Hartog, the members of the Committee are:

Barbara A. Black, Columbia University <bab@law.columbia.edu>
Robert W. Gordon, Yale University <robert.w.gordon@yale.edu>
Maeva Marcus (ex officio) (President-elect), George Washington University <maevamarcus@verizon.net>
Christopher L. Tomlins, American Bar Foundation <clt@abfn.org>
Sandra VanBurkleo, Wayne State University <svanbur@comcast.net>

Advisory Committee on the Cromwell Prizes

Cromwell Book Prize

The William Nelson Cromwell Foundation awards annually a $5000 prize for excellence in scholarship in the field of American Legal History by a junior scholar.[2] 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 Foundation awards the prize on the recommendation of the Cromwell Prize Advisory Committee of the American Society for Legal History. In 2006, the Committee considered books and articles published, or dissertations accepted, in the previous calendar year.

The prize for 2006 was awarded to Professor Holly Brewer of North Carolina State University for her book, *By Birth or Consent: Children, Law, and the Anglo-American Revolution in Authority* (Published for the Omohundro Institute of Early American History and Culture by University of North Carolina Press). The Committee's citation read: "Brewer's study places children and childhood at the center of a fundamental shift in the meaning of consent in seventeenth and eighteenth century Anglo-America. In taking seriously evidence from sixteenth century England that other scholars have ignored, seen as anomalous, or mistaken and then scrupulously following the changing evidence relating to children's consent in a whole range of relationships vis-à-vis church, God, nation and relations with others, including baptism, allegiance, military service, jury service, testimony, transfers of property, labor contracts, and marriage through the seventeenth and eighteenth centuries, Brewer captures the shift from status (birth) to reason as the foundation of consent. In doing so, she breathes a new and deeper meaning into the fundamental social, cultural, and political transformation captured by well-worn

[2] For a brief description of the Foundation, see above Cromwell Fellowships.

phrases such as "from status to contract" and "the age of reason" and highlights the religious roots of this transformation that begins with the Reformation and sees its full flowering in the political ferment of the American Revolution. This is a book about the legal creation of modern childhood as much as a book about how the child became a metaphor in eighteenth century political theory for those without the capacity to reason. Brewer thus captures how in a moment in which the consent of the people became the foundation for political authority, children in fact lost both personal and political power. And in turn, she highlights the power of children as an example that could be and was applied to exclude others, including women and African Americans, on the grounds that they too lacked the capacity to reason required in a government based on reasoned consent. Brewer weaves her powerful argument with grace and erudition, taking her reader from the Reformation through the American Revolution, crafting an Anglo-American legal history and drawing with equal facility on religious texts, political theory, legal treatises, and legal cases."

Cromwell Dissertation Prize

The Cromwell Book Prize, even without the name "book" in it, has had a tendency to go to "first books." Although dissertations and student-written articles (e.g., in law reviews) were eligible for the prize, two successive committees felt that such works did not stand much of chance of winning the prize when faced with the competition of a substantial monograph. The Cromwell Foundation agreed, and this year has generously offered to fund a $2500 prize for dissertations accepted or student articles written in the previous year (i.e., 2006) in the general field of American legal history (broadly conceived), with some preference for those in the area of early America or the colonial period.

Nomination Process for 2007

Anyone may nominate works for the prizes. The Committee will accept nominations from authors, dissertation advisors, presses, or anyone else. Nominations for this year's prizes should include a *curriculum vitae* of the author and be accompanied by a hard copy version of the work (no electronic submissions, please) sent to each member of the committee and postmarked no later than July 15, 2007:

Professor Tony Freyer, Chair
University Research Professor of History and Law
306 Law Center
University of Alabama
Tuscaloosa, AL 35487-0382

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 Holly Brewer
History Department, North Carolina State University
350 Withers Hall, Campus Box 8108
Raleigh, NC 27695-8108

Professor Cornelia H. Dayton
Associate Professor History
University of Connecticut
241 Glenbrook Road
Storrs, CT 06269-2103

Professor Philip Hamburger
Maurice and Hilda Friedman Professor of Law
Columbia Law School
435 West 116th St.
New York, New York 10027-7297

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

Professor Richard Ross
Professor of Law and History
University of Illinois College of Law
504 E. Pennsylvania Avenue
Champaign, IL 61820

Kathryn T. Preyer Scholars

Named after the late Kathryn T. Preyer, a distinguished historian of the law of early America known for her generosity to young legal historians, the program of Kathryn T. Preyer Scholars is designed to help legal historians at the beginning of their careers. At the annual meeting of the Society two younger legal historians designated Kathryn T. Preyer Scholars will present what would normally be their first papers to the Society. (There will be a Kathryn T. Preyer Memorial Panel at the meeting; whether both Preyer Scholars present their papers at that panel [or only one] depends on the subject-matter of the winning papers.) The generosity of Professor Preyer's friends and family has enabled the Society to offer a small honorarium to the Preyer Scholars and to reimburse, in some measure or entirely, their costs of attending the meeting.

The first two Preyer Scholars were chosen in 2006. They were Sophia Z. Lee, a J.D./Ph.D. student at Yale University, for her paper, "Hotspots in a Cold War: The NAACP's Postwar Labor Constitutionalism, 1948-1964" and Karen M. Tani, a J.D./Ph.D. student at the University for Pennsylvania, for her paper, "*Fleming v. Nestor*:

Anticommunism, The Welfare State and the Making of 'New Property.'" The first Preyer Panel, held at the annual meeting in Baltimore, featured the work of both. The panel was well-attended. The Society's president was in the chair. Comments were provided by Dan Ernst and Laura Kalman.

Application Process for 2007

The competition for this year's Preyer Scholars will be organized by the Society's Kathryn T. Preyer Memorial Committee. Submissions are welcome on any legal, institutional and/or constitutional aspect of American history. Graduate students, law students, and other early-career scholars who have presented no more than two papers at a national conference are eligible to apply. Papers already submitted to the ASLH Program Committee, whether or not accepted for an existing panel, and papers never submitted are all equally eligible for the competition.

Submissions should include a curriculum vitae of the author, contact information, and a complete draft of the paper to be presented. The draft may be longer than could be presented in the time available at the meeting (twenty minutes) and should contain supporting documentation, but one of the criteria for selection will be the suitability of the paper for reduction to a twenty-minute oral presentation. Each Preyer Scholar chosen will receive an award of $250 and up to $750 to reimburse expenses for attendance at the annual meeting.

The deadline for submission is June 15, 2007. The Preyer Scholars will be named by August 1. Electronic submissions(preferably in Word) are strongly encouraged and should be sent to the members of the Preyer Committee:

Laura Kalman, Chair, University of California, Santa Barbara (kalman@history.ucsb.edu)
Lyndsay Campbell, University of California, Berkeley (lyndsay@iii.ca)
Christine Desan, Harvard University (desan@law.harvard.edu)
Sarah Barringer Gordon, University of Pennsylvania (sgordon@law.upenn.edu)
David Konig, Washington University in St. Louis (dtkonig@artsci.wustl.edu).

John Phillip Reid Book Award

Named for John Phillip Reid, the prolific legal historian and founding member of the Society, and made possible by the generous contributions of his friends and colleagues, the John Phillip Reid Book Award is an annual award for the best book published in English in any of the fields broadly defined as Anglo-American legal history.

The Reid Prize for 2006 was awarded to Daniel J. Hulsebosch, for *Constituting Empire: New York and the Transformation of Constitutionalism in the Atlantic World, 1664-1830* (University of North Carolina Press). The Committee's citation read: "Daniel Hulsebosch's book offers a sweeping reinterpretation of early American constitutional history that takes the reader from the imperial constitution of Lord Coke to the

constitutional imperialism of Chancellor Kent. The heart of the analysis reassesses the meaning of the American Revolution as a constitutional event. Bringing original sources to light, using canonical sources in new ways, and building on the work of John Reid that has forced historians to take the legal grievances of the eighteenth century seriously, Hulsebosch demonstrates that the state and federal constitutions were shaped by North America's imperial past. He shows how the raw material of the English constitution got remade by colonists and imperial agents on the ground, as well as by the British American lawyers who are now called Founding Fathers. He also illuminates the process by which legal practices were abstracted into formal ideas and how this formalization was a means to an end: first to unite a transatlantic empire, then to forge a more perfect Union. *Constituting Empire* does not pretend to have the last word on the American founding. But it may well have pioneered a new line of scholarship exploring the social politics of constitutionalism."

The Committee on the Reid Prize also announced that Stuart Banner was the runner-up for the prize for *How the Indians Lost their Land: Law and Power on the Frontier* (Harvard University Press).

Nomination Process for 2007

For this year's prize, the Committee will accept nominations from authors, presses, or anyone else. Nominations for this year's prize should include a *curriculum vitae* of the author and be accompanied by a hard copy version of the work (no electronic submissions, please) sent to each member of the committee and postmarked no later than May 31, 2007:

William Nelson, Chair
New York University School of Law
40 Washington Square South
New York, NY 10012
<nelsonw@juris.law.nyu.edu>

Christian G. Fritz
University of New Mexico, School of Law
1117 Stanford Drive, N.E.
MSC11 6070
Albuquerque, NM 87131-0001
<fritz@law.unm.edu>

Richard Helmholz
University of Chicago, School of Law
1111 East 60th Street
Chicago, IL 60637
<dick_helmholz@law.uchicago.edu>

Annette Gordon-Reed
Department of History
Rutgers-Newark
306 Conklin Hall
175 University Avenue
Newark, NJ 07102-1814

ASLH ANNUAL MEETING 2006

NOVEMBER 16–18, 2006
BALTIMORE, MARYLAND

The ASLH traveled to the Baltimore-Radisson Hotel for its annual meeting on November 16-19. Despite some challenging weather on the 16th (the President spent four and half hours on the tarmac in Boston when the Baltimore Airport was closed), more than 300 people registered for and attended the conference. Professor Robert Gordon of the Yale Law School and former president of the Society gave the plenary address in Westminster Hall of the University of Maryland Law School on "From Private Practice to Public Involvements: Pathways to Republican Lawyering." The address was followed by a splendid reception co-sponsored by the Maryland Law School, the Baltimore Law School and Johns Hopkins University. The full program is available online at: http://www.h-net.org/~law/ASLH/conferences/2006conference/program_final.doc.

Results of Elections

Lauren Benton of New York University, Christine Desan of Harvard University, William Forbath of the University of Texas, Sally Hadden of Florida State University, and Robin Chapman Stacey of the University of Washington were elected to three-year terms on the Board of Directors. They replace Stuart Banner of the University of California, Los Angeles, Philip Hamburger of Columbia University, Victoria D. List of Washington & Jefferson College, David Seipp of Boston University, and James Q. Whitman of Yale University, whose terms have expired. Our thanks are owing to the outgoing members of the board for their years of faithful service, and congratulations to the new members!

Christopher Capozzola of the Massachusetts Institute of Technology and David S. Tanenhaus of the University of Nevada, Las Vegas, were elected to three-year terms on the Nominating Committee. They replace Adam Kosto of Columbia University and Tahirih Lee of Florida State University, whose terms have expired. Once more our thanks are owing to the outgoing members of the committee for their years of faithful service, and congratulations to the new members!

A complete list of the current Officers and Directors and the committee members who have already been chosen for 2007 may be found at: http://www.h-net.org/~law/ASLH/officers.htm .

Bill LaPiana to Step Down as Secretary

At the annual meeting Charlie Donahue announced that Bill LaPiana would be stepping down as Secretary of the Society as of the first of January. Bill is willing to continue as Treasurer. The Board will be submitting a By-Law amendment to the membership allowing the offices of Secretary and Treasurer to be split. "This job is just too big for one person," Donahue said.

Prizes, Awards and Fellowships

The prizes, awards and fellowships that were announced at the annual meeting are listed above under the name of the prize, award or fellowship, with the following important exceptions:

Anne Lefebvre-Teillard Named Corresponding Fellow

Corresponding Fellow is the highest award that the Society gives to legal historians outside the U.S. and Canada. Professor Anne Lefebvre-Teillard easily meets the very high standard the Society has set for this honor. She received the degree of Docteur en Droit in 1970, after receiving a Diplôme d'Études Supérieures (D.E.S.) in legal history and a Diplôme d'Études Supérieures (D.E.S.) in private law. She was an Assistante with the Faculty of Law at Paris from 1967 to 1970 and was appointed Professeur at the University of Paris-XIII in 1970. She has been Professeur at the University of Paris-II (Panthéon–Assas) since 1986. Her two principal fields of research are canon law history and its influence on European legal systems and the history of French private law, especially family law.

Professor Lefebvre-Teillard is President of the Société d'Histoire du Droit, Directeur of the Centre d'Histoire du Droit et de l'Economie, and an associate member of l'Institut Michel Villey. She has also been elected to the Institut de France, a very prestigious honor, and is a member of the Selden Society. Professor Lefebvre-Teillard is the author of a great number of articles and books. Her book *Introduction historique au droit des personnes et de la famille* (*An Introduction to the History of the Law of Persons and the Family*) (PUF, 1996) was designated as "*couronne*" by the Center for Legal History at Paris II. Her other major works include *Le nom : droit et histoire* (PUF 1990) and *La société anonyme au XIXe siécle : du Code de commerce á la loi de 1867, histoire d'un instrument juridique du développement capitaliste* (PUF 1985).

Morton J. Horwitz Named Honorary Fellow

The other nominee really needs no introduction. Morty Horwitz is one of the premier historians of American law in the country, indeed the world. Morty has been a member of the Harvard Law faculty since 1970 and the Charles Warren Professor of the History of American Law at Harvard Law School since 1981. He received a Ph.D in History from Harvard in 1964 and an LL.B. from Harvard Law School in 1967. His first book, *The Transformation of American Law, 1780-1860* (Harvard University Press 1977), received

the prestigious Bancroft Prize in 1978. Other books include *The Warren Court and the Pursuit of Justice* (Hill and Wang, 1998) and *The Transformation of American Law, 1870-1960: The Crisis of Legal Orthodoxy* (Oxford University Press, 1992). He is the recipient of a National Endowment for the Humanities Fellowship, a Rockefeller Foundation Fellowship, and a Guggenheim Foundation Fellowship. His work has had a profound impact on American legal history. It seems more than fitting that the Society recognize Morty's contributions by awarding him the highest honor we can give to a legal historian in North America.

ASLH Observes its Fiftieth Anniversary

The ASLH was founded in 1956, fifty years ago in 2006. At the annual lunch Charlie Donahue asked three members who were at the lunch and who were "there at the founding" to stand: Herb Johnson (University of South Carolina), Joe McKnight (Southern Methodist University) and John Phillip Reid (New York University). Enthusiastic applause followed. Later, at a round table on publishing, Herb Johnson shared his experiences, which may be found at: http://www.h-net.org/~law/Herbjohnson.htm.

Update Your Membership Profile

Also at the annual meeting, Charlie Donahue urged members to update their profiles on the membership directory that is maintained at the University of Illinois Press. "We are in particular need of current email addresses of the members, since this is the most efficient method for us to communicate with you," Donahue said. "Also, many of the fields of interest that you checked on the membership application form when you joined are now out of date." The directory is searchable by members (by name, location, or fields of interest, etc.) by going to http://www.press.uillinois.edu/journals/lhr/directory/directory.html. To update your information go down to the bottom of the search page and click on "Log into the update area." In order to change your data you need to have your member number, which appears above your name on the mailing label of the *Law and History Review* or of this Newsletter.

In Memoriam

Legal historian and State University of New York at Albany President Kermit Hall died on August 13, 2006 in a swimming accident in Hilton Head, South Carolina. Hall contributed greatly to the field, both in terms of academic scholarship and public history. He wrote several classic and award winning works on legal and judicial history, including, *The Magic Mirror: Law in American History* (Oxford UP, 1989, with a revised edition this year), the *Oxford Companion to the Supreme Court of the United States* (2nd

ed., rev., Oxford, 2005), the *Oxford Companion to American Law* (Oxford, 2003), and, most recently, *The Judicial Branch* (Oxford UP, 2005) with Kevin McGuire.

At the 2006 ASLH Annual Meeting, a special panel was held on Saturday, November 18, at 6:15pm, entitled "Remembering Kermit Hall: Friends, Students, Collaborators." Panel participants included the following:

Sandra VanBurkleo, convener, Wayne State University (PhD, University of Minnesota)
John Johnson, University of Northern Iowa (PhD, University of Minnesota)
Joel Grossman, The Johns Hopkins University
James Ely, Vanderbilt University School of Law
Arnita Jones, American Historical Association
Leonard Slade, Africana Studies at the University of Albany
Students (including Tim Huebner, Lou Faulkner Williams, Eric Rise, Steve Noll, Liz Monroe, and others with Ph.D.'s from University of Florida)

Chronicle of Selected Sessions

Of 29 sessions at the 2006 annual meeting, to date we have received 10 reports from the session chairs. They are reproduced below as received, with only very light editing to achieve some consistency in format.

Black Lawyers in Early Twentieth-Century America

KENNETH W. MACK (Harvard Law School) reported: This session was well-attended, despite being an early-morning session on the first day of the meeting following weather-related travel delays. All three panelists presented papers that attempted to recast the dominant historical interpretation of black lawyers and civil rights history in the late nineteenth and early twentieth centuries.

ROBERT STRASSFIELD (Case Western) presented a paper that is part of a book project on the history of the black bar in Cleveland. Drawing on extensive archival research into docket records, census data, and other sources and accompanying his presentation with PowerPoint, Strassfield argued that the bar in Cleveland was relatively integrated in the late nineteenth century. Some white lawyers practiced with their black counterparts. Moreover, black lawyers drew white clients and often located their offices in the central business district. By the late 1920s, however, the city's black attorneys tended to have only black clients and were located in the city's black residential / business district.

J. GORDON HYLTON (Marquette) presented a paper that grew out of his book project on the history of the black bar in Virginia. Hylton argued that early twentieth-century Virginia black lawyers often achieved similar success and prestige at practice as many of their white counterparts and were deeply engaged in civil rights activity. They accepted certain aspects of racial segregation and exclusion (such as school segregation)

but were quite aggressive in challenging others (for instance voting and public accommodations).

TOMIKO BROWN-NAGIN (Virginia) presented a chapter from her forthcoming book on the post-World War II civil rights movement in Atlanta. Brown-Nagin's paper documented the emergence of a "bi-racial elite" in Atlanta that desired change in race relations during the 1950s, but sought to achieve that change through bureaucratic, negotiated and carefully crafted civil rights compromises. Her subsequent chapters will explore the challenges that a more mass-based and aggressive movement presented to this bi-racial elite during the 1960s.

KENNETH MACK'S comments focused on the ways that all three papers challenge the dominant interpretation of the field. Strassfield and Hylton, for instance, question the assertion by lawyers such as Charles Houston and Thurgood Marshall that their predecessor black lawyers were either too incompetent or too accomodationist to take on Jim Crow. Brown-Nagin blurs the line between protest and accommodation, seeking to understand the Jim-Crow-era movement on its own terms. All three papers also challenge recent revisionist civil rights history by de-centering the Supreme Court and that national NAACP and showing how blacks and whites interacted in diverse and counter-intuitive ways that do not fit within the standard narrative or the revisionist accounts.

A short question-and-answer period ensued; questions focused on topics such as the relationship of the papers to the whiteness/racial formation literature and the representativeness of the particular papers to the general structure of race relations in the Jim Crow era.

Roundtable: Citizenship and the Law in 19th Century America

MICHAEL VORENBERG (Brown University) reported: This panel sought to generate a conversation about the state of scholarship on citizenship in the 19th-century United States by bringing together scholars from various academic disciplines and with varying interests.

LAURA EDWARDS (Duke University) began by discussing her current work on the American South in the period of 1787-1840. In contrast to later periods, when changing rules and definitions of citizenship at the national and state levels became increasingly important, in this period, Edwards contended, localized legal processes framed conceptions of citizenship in both law and popular culture. Specifically, the localized legal system of time privileged social "order" over individual "rights." The emphasis on order had several, important implications: it drew a wide range of southerners--including slaves, free blacks, and white women without the full range of individual rights--into the legal system; it encouraged all these people to see "law" as a process for maintaining "order," however that might be defined; and it meant that the legal system regularly dealt with a wide of issues that would later be labeled "private" and therefore outside the reach of law or government. In this political culture, many

ordinary people approached the legal system with the assumption that their "private" concerns could and should be matters of "public" law and governance.

If *time* was a central theme in Edwards's presentation, *space* was the determinative element in the discussion of KATE MASUR (Northwestern University), who drew on her work on African Americans in Washington, D.C. during the Civil War and Reconstruction era to highlight the protean nature of citizenship during the period. After discussing how the existing historiography on Reconstruction and the emergence of Jim Crow fails to account for some of the day-to-day ways in which African Americans interacted with instruments of the state, Masur suggested that a fruitful avenue of inquiry would be into the way that various spaces (domestic, public) shaped citizenship in distinctive ways.

Like Edwards and Masur, WILLIAM NOVAK (University of Chicago) emphasized that formal categories of citizenship did not really begin to emerge until after the Civil War, and even then they were fluid and not as important in shaping people's identity as other categories. Informal categories of citizenship, such as membership in a particular ethnic group or voluntary association, at times held primacy over formal citizenship in the nineteenth-century, but historians should not take that fact as license to conflate formal and informal citizenship. In other words, historians need to do more work in delineating the boundaries between formal and informal citizenship and interrogating the meanings of those boundaries. Finally, Novak stressed the centrality of birth in formal categories of citizenship: there is something remarkable and curious about the resiliency of the idea of birthright citizenship in post-Civil War United States citizenship.

ROGERS SMITH (University of Pennsylvania) provided the valuable perspective of a political scientist on the subject. Political scientists have increasingly come to share with historians a vision of competing notions of citizenship flowing together in nineteenth-century America from such diverse sources as civic republicanism, with its emphasis on civic homogeneity; social citizenship, with its emphasis on egalitarianism; and popular discourse, with its emphasis on shared cultural identity. Political scientists never had assumed that American citizenship in nineteenth-century America was somehow uniform and egalitarian, and they now have much in common with historians in appreciating that differentiated citizenship was the norm. Smith nicely tied together the comments of the other panelists as he presented his own overview of the subject. His discussion was followed by a lively discussion among the members of the audience and the panelists.

Comparative Histories of Economic Organization

VICTORIA LIST (Washington and Jefferson University) reported: This panel featured three papers – which, though dealing with China, the Middle East and other exotic ports of call, melded quite nicely, each examining the differences between western European business organization and those of the Middle and Far East. The panelists, TIMUR

KURAN (USC) ("The absence of the Corporation in Islamic Law: Origins and Persistence) MADELINE ZELIN (Columbia) ("Informal Law and the Firm in Early Modern China") and RON HARRIS (Tel Aviv) ("The Institutional Dynamics of Early Modern Eurasian Trade: The Corporation and the *Commenda*") each discussed the cultural, political, and legal organizations in their respective areas as a means of explaining the differences in approaches to business development. NAOMI LAMOREAUX (UCLA), the commentator, offered a thorough discussion of each paper and the themes which pulled them together. The audience, as always, asked probing questions, and an enlightening time was had by all.

Economic Development and Business Failure

VICTORIA SAKER WOESTE (American Bar Foundation) reported that this session featured three engaging papers on the history of laws pertaining to the status of debtors and creditors in western Europe. They covered the period from roughly 1600 to 1815. Two of the papers employed quantitative data in their papers, generated impressive Power Point presentations, and thus insisted on challenging the chair's ability to connect a laptop to a projector. Happily, that technological bridge, eventually, was crossed and we proceeded to hear the papers. The commentator, CLAIRE PRIEST (Northwestern University Law School), put the projector to an alternative use, one probably not envisaged by its manufacturer; it served as a podium while she read her remarks.

The first paper, by JEROME SGARD (Centre d'Etude Prospectives et d'Informations Internationales (CEPII), Université de Paris-IX-Dauphine), raised a fundamental question, one historians have been trying to answer for a long time: can economic development be attributed to the existence of specific laws and practices? The paper presented an ambitious summary of European bankruptcy law; a series of colorful slides showed how England and Scotland often led the way with new statutory innovations, and continental nations were fairly quick to adapt these laws to their own legal systems. Here, Sgard noted, the difference between civil and common law systems matters a lot less than historians have believed. At one time, countries initially had one system that was harsh on the bankrupt; then, nearly simultaneously, they switched to a model based more on rehabilitating the debtor and preserving the value of the property and other assets. Priest noted in her comments how ambitious this paper is; it makes a valuable contribution by giving us a comprehensive outline of European bankruptcy law. She questioned whether bankruptcy was the best choice of subjects when entering the debate over whether law creates economic development, because bankruptcy is a pretty universal phenomenon that cannot be addressed through the normal processes of common law courts, and she suggested that Sgard think about possibly venturing into another area of law in order to fulfill the promise of his exciting theory.

DAVID SMITH (Harvard University, Department of History) presented work from his soon-to-be-completed dissertation. Like Sgard, he is interested in the problem of the common law origins of economic development and change, but unlike Sgard, he

chooses a much earlier time in the modern period to explore the possibilities. Smith shows how jealously English institutions guarded their authority when it came to bankruptcy. In the early 17th century, statutory law permitted creditors to petition the Chancellor to form a creditor's commission that would sell the debtors' assets and divide the proceeds. The law did not compel all creditors to participate, however, and some craftily resorted to common law courts, had their claims ratified, and secured the seizure of debtors' assets before the chancery courts could stop it. Debtors resorted to petitioning the King for relief, but the King's own authority here was limited, too. Eventually, the Chancery was empowered to hear debtors' cases, and it had the authority to punish debtors who refused to appear and agree to abide by the rulings of the creditors' commission. Priest encouraged Smith to think about bankruptcy here as a struggle over remedies and to continue the story through 1732, when Parliament passed a new law giving debtors a "fresh start."

GARY RICHARDSON, whose co-author is Dan Bogart (both of the University of California, Irvine, Department of Economics), presented data from a new digital collection that they plan to make available to other researchers once they have gotten rid of the bugs they have encountered. This new database demonstrates that after 1689, Parliament passed increasing numbers of acts altering property rights and encouraging the provision of public goods. The acts enabled individuals to sell, mortgage, lease, and improve land that previously were restricted by legal legacies; granted rights to organizations, such as turnpikes and canal companies, which supplied infrastructure and public services; and replaced traditional agricultural rights with enclosed fields and individual property. The depth and detail of the database led to an extensive analysis of the impact of these laws and their effects on English economic development and the Industrial Revolution prior to 1815. Priest challenged Richardson to explain whether these laws resulted in a net gain of law released from settlement and other restrictions, since they provided that other land or assets had to be provided as a substitute. She also asked whether there was a Charles River bridge story in England: did Parliament destroy even as it made property available for new uses? Finally, she encouraged him to consider comparative perspectives; in the U.S., entail was abolished after the Revolution, while in Europe, many countries did not provide even as much release as England did. Once general incorporation became widely available, legislatures stopped regulating private uses nearly so closely, and it would be interesting to see how this dynamic played out during the period this data cover.

The session was well attended, despite the early-morning hour, and the audience obligingly produced engaging and challenging questions for the presenters in the time remaining.

Governing Globalism: The U.S. and the World

PETER LINDSETH (University of Connecticut School of Law) reported: This extraordinarily cohesive panel addressed, from three related perspectives, the legal

constitution of the United States *qua* nation-state in the second half of the nineteenth century.

LUCY SALYER (University of New Hampshire) began with a discussion of "The Reconstruction of American Citizenship: The Fenian Brotherhood and Expatriation Act of 1968." Salyer posited the Expatriation Act as the flipside of the Fourteenth Amendment; that is, as an outward expression of the same nation-building program through the nationalization of citizenship (recognizing the right of naturalized citizens to renounce foreign sovereigns and, in turn, obligating the United States to defend their rights as citizens internationally). By 1872, the United States had entered into eleven treaties recognizing the right of expatriation, which Salyer identified as a crucial stage in national definition to which even the most resistant foreign sovereigns (notably England) eventually succumbed.

ADAM McKEOWN (Columbia University) drew from his work on Asian migration in his presentation, "Equality, Indemnities and Extraterritoriality: Formulating U.S. Border Control, 1885-1894." McKeown challenged the conventional wisdom that control over who can migrate into the territory has always been understood as a "traditional" prerogative of sovereignty. McKeown argued this power did not become fully established until the 1930s, and that the late-nineteenth century was a key period of development, driven by Asian migration to the United States. Echoing Salyer, McKeown suggested fascinating linkages to the internal development of citizenship and the justification for extraterritoriality in Asia. We see these linkages in the emergence of the notion of border control as essential to maintaining equality internally, and in the idea of a 'self-governing people' that must necessarily be able to determine membership.

ANDREW COHEN (Syracuse University) presented "Smuggling and Empire: International Trade and the American State, 1870-1917," which offers the history of smuggling and its interdiction as another revision to old ideas about the liberalism of the Gilded Age. Cohen shows how Congress (through legislation), the Supreme Court (through interpretation of the Constitution), and the executive branch (through a burgeoning administrative apparatus), used the tariff system and the custom house as a means of shaping the late nineteenth-century economy. Indeed, rather than courts impeding intervention in a *Lochner*-ite way, they in fact granted significant deference to the political choice in favor of control, as well as to the administrative agents charged with its effectuation. Cohen finally suggested that this deference explains the Supreme Court's willingness to validate American imperialism in the *Insular Cases* of 1901.

JOHN FABIAN WITT (Columbia Law School) concluded with comments linking the papers to recent work (notably the Brighton and Gyer essay in the collective volume edited by Bender) on the late nineteenth-century nation-state as a "leaky container" whose boundaries were shaped through law. Witt further suggests that the papers may evidence a broader trend, in which historians are moving away from the traditional law-and-society emphasis on a law as a 'dependent variable' (even a

'relatively autonomous' one). The new historiographical paradigm seems to be one exploring how legal categories influence or shape even deeper social or political categories. All in all, a fascinating panel and discussion, particularly for those of us interested in the emergence and development of the nation-state, whether in America or elsewhere.

Law and the Changing 20th Century American State

FELICE BATLAN (Chicago-Kent College of Law) reported that the panel "Law and the Changing 20th Century American State" was well attended and provided keen insights into the nature of the twentieth-century U.S. state.

AJAY K. MEHROTA (Indiana University School of Law – Bloomington) presented "The Paradox of Retrenchment: Post WWI-Republican Ascendancy and the Triumph of the Modern Fiscal State." Mehrota explored how, in the post-World War I period, Republicans, controlling Congress and the White House, sought to significantly roll back war time taxes and other state interventions into the economy. Instead of wide-spread support for a return to normalcy, some Republican politicians, business leaders, and key players in the administration sought to maintain a progressive income tax. Thus the 1920s represented continuity rather than change and continued to build on reforms that had occurred in earlier decades. Ultimately this fiscal policy served to shift tax burdens significantly from ordinary citizens to wealthy individuals and businesses and functioned to continue to construct the proto-administrative state.

In "'Attacking Administration' The Second Hoover Commission's Task Force on Legal Services and Procedures" JOANNA L. GRISINGER (Clemson University) examined the second Hoover Commission, which Congress established in 1953 in an effort to address the problem of the "administrative lawlessness" of the New Deal state and excessive state intervention. Part of the Commission's goal was to identify areas where the state should relinquish control to private enterprise. A Committee task force, charged with examining legal services and procedures, ultimately proposed to radically remake administrative hearings, governed by the Administrative Procedures Act, so that they more closely resembled judicial procedures. Even the larger Commission, however, could not agree with many of the task force's conclusions. Although the Commission ultimately issued nineteen reports which identified waste and inefficiency in government, they met with strong criticism from the White House, government bureaucrats, and citizen groups. Ultimately little came from the Commission's work demonstrating how the administrative state had already become deeply enshrined.

In "A Disabled State: How Blind Activists Created Modern Social Welfare Policy" FELICIA KORNBLUH (Duke University) analyzed how beginning in the 1940s the National Federation of the Blind, led by Jacobus tenBroek, insisted that the blind had a right to organize and participate in full rights of citizenship. The group sought to be heard on multiple issues regarding benefits to the blind, the ability of the blind's voices to be heard on a wide-range of matters concerning them, and the right to join the NFB. The

NFB encountered significant criticism, especially regarding the NFB's demand that it be consulted and that the blind had a right to be heard. Kornbluh concludes that disabled people played an important role in shaping the Post-war administrative state.

BARBARA Y. WELKE (University of Minnesota) provided incisive comments. She first remarked that issues regarding "the state" were of significant concern to historians yet raise the question of where we look for the state or states and how we account for individual agency. Further all three papers spoke about state activism in periods of Republican control and how concepts of the administrative state had, in these periods already become almost naturalized. Indeed efforts to significantly reconfigure the administrative state as discussed by Grisinger and Mehrotra failed. Welke wondered whether such failure was the result of inertia and how historians can take account of this. Welke also pointed out that all three papers were about men functioning in manly environments but that the papers did not discuss gender. She posited that an analysis of gender would be important for further understanding the twentieth century administrative state.

Law of the British Empire & Atlantic World Seminar Panel: Law, Authority, and Empire in the Early Modern British Atlantic

JACK P. GREENE (Johns Hopkins University) chaired this three-paper session, which was attended by about forty people and featured an incisive commentary by DANIEL J. HULSEBOSCH (New York University Law School) and a lively discussion by the audience.

Presenting a paper titled "Conquest Theory and the Metropolitan Assertion of Authority in the First British Empire," CRAIG B. YIRUSH (UCLA), focusing on a number of important legal cases and treatises (from Coke's decision in *Calvin's Case* to Mansfield's in *Campbell vs. Hall*), argued that English jurists used conquest theory to provide the metropole with a way of thinking about the legalities of empire and to justify its claims in such crucial issues as the extension of English law and rights outside the realm, the sovereign authority of the Crown and later Parliament in the empire, and the legal status of conquered peoples.

Examining "Colonization as Commonwealth Building: The Constitutional and Legal Implications of an Early Seventeenth-Century Anglo-American Political Discourse," ALEXANDER HASKELL (Omohundro Institute of Early American History and Culture) asked why leaders of England's early seventeenth-century colonies so eagerly identified colonization as commonwealth-building and explored the link between that self-perception and these men's tendencies to seek corporate status for their colonies. Before Cromwell imbued the word commonwealth with negative connotations of kingless government, Haskell argued, it held positive Christian humanist implications of a careful balance between liberty and authority formed by the mutually beneficial relationship between king and subjects. Contending that historians have not recognized the extent to which colony followed an ideological trend present in English state-building

since Henry VIII by identifying colonial polities as miniature commonwealths within the broader commonwealth of England. Examining the differential use of commonwealth discourse in Virginia, Bermuda, Massachusetts, and Connecticut, Haskell argued that they all shared those elements of the discourse that seemed useful in overcoming the problem of disorder on England's distant periphery by linking colonists to the benefits they had enjoyed at home.

In his paper "Provinces, Dominions, and Colonies, oh my! Edmund Burke, Thomas Pownall, William Knox, and the Colonial Problem," Richard Samuelson (Claremont McKenna College) asked why British territories outside Britain, which had interchangeably been called *provinces, dominions, plantations, islands*, and *colonies,* among other designations, came during the third Quarter of the eighteenth century to be called simply colonies. Exploring Burke's arguments with Pownall, as seen in the former's marginalia of the latter's *Administration of the Colonies,* and with Knox, in Knox's *Present State of the Nation*, Samuelson suggested that the change in nomenclature had to do with the rise of the idea that Parliament was a sovereign, law-making body and the legal positivism that accompanied it. With a simplified understanding of law came a simplified idea of what constituted a *colony*.

Law of the British Empire & Atlantic World Seminar Panel: Sovereignty, Empire, and Resistance

DANIEL J. HULSEBOSCH (New York University School of Law) reported: The panelists ranged over the eighteenth and early nineteenth centuries, and from Massachusetts and Georgia to Madras and New South Wales, to characterize and analyze colonial governance.

APARNA BALACHANDRAN (Columbia University, Department of History) argued that Madras's poly-lingual and multi-ethnic character forced and permitted the East India Company to rule the city as a corporation distinct from the rest of the continent: at once separate from India and closely related to the global market. The more diverse membership of the corporation (which only required residency) distinguished the City from the Company - which retained oversight - and made it a more effective dispute resolution and administrative authority. The corporation exercised jurisdiction over an array of groups (though not Englishmen) while claiming to govern according to traditional customs, though it also undermined traditional mechanisms of authority in the process.

LISA FORD (Columbia University, Department of History) argued that early nineteenth-century settler governments in both New South Wales and the state of Georgia struggled to extinguish indigenous jurisdiction within their borders in order to bolster their own claims to territorial sovereignty against an overarching imperial or federal authority. Indigenous and local settler communities, however, behaved in ways that frustrated the governments' attempts to establish jurisdictional control. Consequently,

court cases involving indigenous rights became key sites in the negotiation of colonial and central power.

ALISON LaCROIX (University of Chicago Law School) argued that the famous debate between Governor Thomas Hutchinson and the Massachusetts colonial legislature over Parliament's power to legislate for the colonies laid bare a widening gap between metropolitan British ideas of sovereignty and nascent North American ideas of federalism. It also allowed the colonists to refine their notions of how to divide governmental powers along subject-matter rather than territorial lines.

In her comment, LAUREN BENTON (New York University) asked the presenters to hesitate before applying modern notions of sovereignty to early modern actors. Instead, she encouraged the presenters to treat ideas about sovereignty as forming a discourse that historical actors used to leverage authority in specific situations. Because the panelists had delivered their papers efficiently, there was much time for Q & A, and a rich discussion between the large audience and the panelists followed.

Market Culture(s) in the Early Modern Atlantic World

THOMAS P. GALLANIS (Washington and Lee University) reported: The panel on "Market Culture(s) in the Early Modern Atlantic World" contained three excellent papers and produced a stimulating discussion.

In the first paper, "Reconceiving the Creation Story: Money, Credit, and the Advent of Capitalism in the Anglo-American World," CHRISTINE DESAN (Harvard Law School) argued for a new understanding of the development of credit and money, shifting the narrative from these as products of private merchants to products of governmental (in other words, political) institutions. The paper then linked capitalism as an economic order to the efforts of political actors to produce a circulating medium of exchange.

Addressing "The Dangers of Commerce in Urban Cultures of Northern Europe, 1300-1600," MARTHA HOWELL (Columbia University, Department of History) examined the increasingly fungible nature of property in the late medieval and early modern periods. This fungibility made commerce more elusive and dangerous (e.g., it was easier to commit fraud). The response to increasingly stealthy commerce, the paper argued, was found in new narratives and laws calling for increased transparency in commercial transactions. Howell's paper is a preview of a booklength project now in progress.

In "Making Profit Patriotic in Eighteenth-Century France," JOHN SHOVLIN (New York University, Department of History) focused on the decades from the 1750s to the 1780s, which saw a political economy in France that was profoundly animated and shaped by patriotic impulses. This theme of patriotism, he argued, enabled the promotion of economic activity despite fears that commerce would be no more than the pursuit of private interest.

The panel's commentator, LIANA VARDI (University of Buffalo, Department of History), was unable to attend, but her written comments were read aloud. The panelists then engaged in a lively discussion with the audience and with one another.

Preyer Scholars' Panel

CHARLES DONAHUE (Harvard Law School) reported:

Named after the late Kathryn T. Preyer, a distinguished historian of the law of early America known for her generosity to young legal historians, the Society's Kathryn T. Preyer Scholars Program is designed to help legal historians at the beginning of their careers. At the annual meeting of the Society, two younger legal historians whom the ASLH names as Kathryn T. Preyer Scholars will present what will normally be their first papers to the Society. The generosity of Professor Preyer herself and of her friends and family has enabled the Society to offer a small honorarium to the Preyer Scholars and to reimburse, in some measure or entirely, their costs of attending the meeting. This year's Kathryn T. Preyer Memorial Committee (Laura Kalman, University of California, Santa Barbara, Chair; Christine Desan, Harvard University; Sarah Barringer Gordon, University of Pennsylvania; Maeva Marcus, George Washington University, and Lyndsay Campbell, University of California, Berkeley) chose two Preyer Scholars, whose papers dealt with the same time-period: SOPHIA Z. LEE (a J.D./Ph.D. student at Yale University) for her paper, "Hotspots in a Cold War: The NAACP's Postwar Labor Constitutionalism, 1948–1964," and KAREN M. TANI (a J.D./Ph.D. student at the University of Pennsylvania) for her paper, "Flemming v. Nestor: Anticommunism, the Welfare State and the Making of 'New Property'." The first Preyer Panel featured the work of both. Despite the fact that the panel had four competitors, it was well attended. The Society's president was in the chair. Comments were provided by DAN ERNST (University of Chicago Law School) and Laura Kalman.

Lee's paper challenged the view that the NAACP largely abandoned activism on behalf of labor in general and African-American workers in particular in response to the anticommunist crusade of the post-war period. She carefully outlined a series of cases that the NAACP (but not the Legal Defense Fund) pursued both politically and administratively, particularly before the NLRB. These efforts culminated in the NLRB's decision in Hughes Tool (147 NLRB 1573 [1964]) in which the Board held that it could not constitutionally aid unions that discriminated against African-Americans, not only in admission to the union but also within the union. The paper demonstrated that this decision was not the result of the NAACP's newly discovered interest in labor issues but was part and parcel of a campaign that it had been pursuing throughout the post-war period, both before and after Brown v. Board of Education.

Tani's paper emphasized the contrast between the messy and ambiguous story of Ephraim Nestor and the grand issues to which his case gave rise, particularly in having stimulated Charles Reich's influential article "The New Property" (Yale Law Journal, 73 [1964] 733–87). Nestor was a victim of McCarthyism. A Bulgarian immigrant who

could barely hold a job, he embarrassed his wife at Communist meetings by his lack of knowledge of Marx and spent most of his time working on an invention of a perpetual motion machine. Had his wife not applied for Social Security benefits as Nestor was in the process of being deported and had a conservative District Court judge not chosen to frame the issue in the case in terms of property (an argument that Nestor's counsel does not seem to have raised), there would certainly not have been a Flemming v. Nestor as we know it, and there might not have been a "New Property" (though Tani made a strong case for the proposition that Barsky v. Board of Regents, 347 U.S. 442 [1954], a case decided while Reich was clerking Justice Hugo Black, may have been more influential in stimulating Reich's own thought).

The comments were learned and largely beyond the ken of the chair, who was probably the person in the room least well informed about the historiography of this period. A lively discussion followed in which it was clear that many of the participants knew the primary materials that lay behind these papers well. The chair had to leave the room to prepare for the annual lunch just as Risa Goluboff with whom Lee had openly disagreed in her paper was posing the last question. The chair was later informed that all remained civil, but that two continue to disagree about the significance to the attached to the fact that Legal Defense Fund turned its attention elsewhere in this period.

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(See above, page 13.)

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(See above, page 15.)

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(See above, page 16.)

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(See above, page 12.)

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Committee on the Surrency Prize

(See above, page 8.)

Committee on the Sutherland Prize

(See above, page 9.)