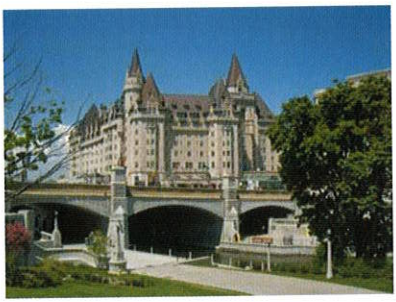
ASLH NEWSLETTER

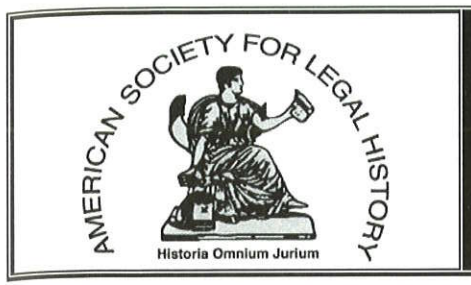
AMERICAN SOCIETY FOR LEGAL HISTORY

Historia Omnium Jurium

2008 Annual Meeting in Ottawa, Canada
November 13-16, 2008



Winter 2008



ASLH Newsletter

Winter 2007 – Spring 2008

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NOTE FROM MAEVA MARCUS

It is not the style of the ASLH, or of its newsletter, for the president to wax philosophical about some subject dear to her heart in these pages. The purpose of this introduction is simply to inform members about the society's affairs since the last newsletter. For those of you who attended the Tempe meeting, it will come as no surprise to read in the following pages about the good things that happened there. Arizona State University could not have been a better host: the hospitality extended by the university and its law school helped to create a wonderful environment for the meeting. I also want to applaud especially the work of two ASLH committees, the 2007 program and local arrangements committees. Risa Goluboff chaired the program committee, and Jonathan Rose chaired local arrangements, while serving as co-chair of the program committee. Every member of those committees deserves the society's gratitude for a job well done, and I extend special thanks to Risa and Jon, who performed their tasks with both grace and competence.

I hope that many of you will follow their example and volunteer to serve on one of the society's committees. We have many, and we would like to see new faces on them each year. If you have any interest, please write to me at mmarcus@law.gwu.edu

Last year we divided the office of secretary-treasurer into two positions because of the tremendous amount of work involved. At the October meeting, we went even further. The board of directors approved the appointment of a treasurer-elect to assist the treasurer, whose workload far exceeds that of anyone else connected with the ASLH. We chose Craig Klafter, the Associate Vice-President International at the University of British Columbia, to be the treasurer-elect. Craig earned an M.A. in history from the University of Chicago and a D.Phil. in Modern History from the University of Oxford, where he studied under J. R. Pole. He has published several books and articles (e.g., *Reason Over Precedents: Origins of American Legal Thought* (London: Greenwood Press, 1993)), but, more to the point, he has been an officer of a number of small foundations – experience that will be helpful to his work for the ASLH. In the next few months, Bill LaPiana will work with Craig, so that he can take over some of the duties of treasurer. This will ensure a smooth transition to the position of treasurer, when the time comes, and will permit the affairs of the ASLH to go forward without a break.

As you heard in Tempe, the society's endowment campaign came to a glorious finish thanks to the generosity of many of you and to the prodigious work of Jane and Harry Scheiber and Sally Gordon. An ASLH committee is developing a plan for spending the income from the endowment, and you will hear more about it at our meeting next fall in Ottawa. One fact was immediately apparent to the committee: there are more activities to undertake than funds to support them. We will continue to look for ways to make our endowment grow and ask for the assistance of our members: money and ideas will be gratefully accepted.

One initiative that we have taken that will not cost the society any money is to join the American Council of Learned Societies' humanities e-book project. This electronic resource includes 1700 full-text, cross-searchable books in the humanities selected for their continuing importance to students and scholars. The project includes both in-print (85%) and out-of print (15%) books and is now adding 500 titles a year. By collaborating with various constituent members of the ACLS and over 90 publishers, the archive currently covers the following areas: comparative/world, Africa, America, Asia, Latin America, Europe (ancient, medieval, Renaissance, and modern), the Middle East, Byzantium and the Mediterranean, and Australasia/Oceania, as well as the history of economics, science and technology, religion, women's studies, native peoples of the Americas, archaeology, art history, folklore, musicology, and political science. The ASLH will now be added as a cooperating society. The ACLS site (http://www.humanitiesebook.org) allows for simultaneous multi-user access; individual books can be added to e-reserve; and you can link from a syllabus to books/chapters. A print-on-demand feature allows for users to directly purchase print copies of about 300 out-of-print titles. I will appoint an *ad hoc* committee to recommend 100 titles to the ACLS for inclusion in the electronic collection. Names of committee members will be placed on the ASLH website, so that members of the society can contact them with suggestions. I hope that all of you will find the ACLS Humanities E-Book project a useful resource.

I very much look forward to seeing many of you in Ottawa in November. Our president-elect, Connie Backhouse, her local arrangements committee, and the 2008 program committee are working very hard to make the meeting one you will not want to miss.

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 2007 and announcement of those for 2008.

Surrency Prize	Sutherland Prize	Hurst Summer Institute
Murphy Award	Cromwell Fellowships	Cromwell Book Prize
Cromwell Dissertation Prize	Preyer Scholars	Reid Book Award

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.

Alison Morantz and John Wertheimer share the 2007 Surrency Prize:

In "There's No Place Like Home: Homestead Exemption and Judicial Constructions of Family in Nineteenth-Century America" (Vol. 24, No. 2, 2006), Alison Morantz uses a careful and original analysis of homestead exemptions in state law to weave a new national story about the relationship between land ownership and family. The article argues persuasively that seemingly straightforward homestead statutes, originally designed to protect the family home, raised questions about the mechanisms for state intervention and opened a process that helped to redefine the family. Exposing the links between the contours of private law and modern state structures, Morantz's story suggests that the nexus of gendered legal norms and state regulation - often associated by historians with the emergence of the welfare state in the twentieth century - arose earlier and in overlooked legal arenas. Her piece forces a reconsideration of some of the most fundamental assumptions about the intersections of private and public in nineteenth-century law.

John Wertheimer's "Gloria's Story: Adulterous Concubinage and the Law in Twentieth Century Guatemala" (Vol. 24, No. 2, 2006) is a captivating account of the legal construction of property and family in Central America. The article masterfully juxtaposes the story of two peoples' social and legal relations over several decades and an analysis of broad trends in Guatemalan law that influenced and constrained these subjects' choices. The approach reveals the emergence of unintended consequences from the combination of haphazardly composed individual legal strategies and well-intentioned shifts in legal policy. Wertheimer argues that progressive reforms in family and property law can inadvertently facilitate retrogressive social arrangements - in this case, adulterous concubinage. In blending micro-history with a careful attention to wide political and social contexts, Wertheimer provides a methodological map for exploring the workings and construction of everyday legal consciousness.

The selection of the winner of the Surrency Prize for 2008 is under the charge of the Society's Committee on the Surrency Prize:
Victoria Saker Woeste, Chair, American Bar Foundation <vswoeste@abfn.org>

Annette Gordon-Reed, New York Law School <agordon@nyls.edu>
Michael Grossberg, Indiana University <grossber@indiana.edu>
Edward A. Purcell, Jr., New York Law School <epurcell@nyls.edu>
Richard Ross, University of Illinois (Urbana-Champaign) <rjross@law.uiuc.edu>

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 2007 was awarded to Professor Sara M. Butler of Loyola University, New Orleans for her article "Degrees of Culpability: Suicide Verdicts, Mercy, and the Jury in Medieval England," published in the *Journal of Medieval and Early Modern Studies* 36:2, Spring 2006. As the committee declared:

"Butler's article is an exhaustive and imaginative study of the verdicts passed by coroners' inquests in cases of suicide recorded by the courts of late medieval England. It is remarkable for several outstanding features.

"First, the research is wide-ranging and precise: she has studied every coroner's roll that has survived from the period up to 1500 and also all the eyre and assize rolls from this period for the counties of Essex and York. Together they yield a database of over 700 cases in all where the jurors pronounced a verdict of felonia de se. Second, it is empirical history at its best because the author has reflected carefully but creatively upon the few words that describe the circumstances of each case and is thereby able to elucidate the complex attitudes of medieval people towards common experiences of everyday life such as child-rearing, insanity, the death of loved ones and old age. Indeed Butler's analysis delights the reader with her ability to explain the apparently paradoxical: for example, why did the apparently accidental death of a baby boy by stabbing himself with a pair of shears generate a verdict of suicide in a fourteenth-century coroner's court, given the severe consequences for his parents of a shameful burial in unconsecrated ground and failure to set his soul to rest? Answer: because the jurors wanted to send a public message to the community that parental negligence was unacceptable.

"It is this imaginative ability that generates the article's significant and sometimes revisionist conclusions, which are its third outstanding feature. Butler argues that medieval jurors could be compassionate in exceptional circumstances, but insists they were more concerned about mortal sin; she suggests in general that they exhibited complex attitudes towards life-events which were very different from those a modern reader would expect; and most importantly, she demonstrates that the decisions of late medieval law courts represented the values of local communities, as much as the doctrines of the law."

The selection of the winner of the Sutherland Prize for 2008 is under the charge of the Society's Committee on the Sutherland Prize:
James L. Oldham, Chair, Georgetown University Law Center <oldham@law.georgetown.edu>
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 the 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 was held from June 10 through June 22 in Madison, Wisconsin. Barbara Welke, Associate Professor in History and Law at the University of Minnesota and an active member of the Society, led the Institute, with guest scholars including 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. The fifth Hurst Summer Institute, again to be chaired by Professor Welke, will take place on June 14-27, 2009. Further information on the Hurst Institute in general and plans for the 2009 institute will be available at: http://law.wisc.edu/ils/hurst_institute.htm
The members of the Committee are:
Rayman L. Solomon (2006), Chair, Rutgers University <raysol@camlaw.rutgers.edu>
Edward Balleisin (2008), Duke University <eballeis@duke.edu>
Lawrence Friedman (2007), Stanford University <lmf@stanford.edu>
Robert W. Gordon (2007), Yale University <robert.w.gordon@yale.edu>
Hendrik Hartog (2006), Princeton University <hartog@princeton.edu>
Laura Kalman (2008), University of California, Santa Barbara <kalman@history.ucsb.edu>
Jonathan Lurie (2006), Rutgers Newark <jlurie@andromeda.rutgers.edu>
Arthur J. McEvoy (2008), University of Wisconsin (Madison) <amcevoy@facstaff.wisc.edu>
Aviam Soifer (2007), University of Hawaii, <soifer@hawaii.edu>
Barbara Y. 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.

In 2007 the Award was made to Jennifer Uhlmann, for a project entitled, "The Communist Civil Rights Movement: Radical Legal Activism in the United States, 1919-1956."

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.

At the 2007 ASLH convention, President Charles Donahue announced the Cromwell awards for junior scholars:

"The William Nelson Cromwell Foundation of New York City is, so far as I am aware, the only foundation that supports work exclusively in American legal history. Over the past few years, we have developed a close working relationship with the Cromwell Foundation, and the Foundation has, among other things, agreed to entertain recommendations from our Research Fellowships Committee for awards for junior scholars of up to $5000. These are normally given junior scholars who are working on their dissertations or who are in the immediate post-dissertation stage of their work. The Cromwell Foundation's Board meets in the first week of November, and since the Foundation is older than we are, we are in no position to ask them to act in time for an October meeting. But act they did, much to my delight, and they accepted our committee's recommendation that research fellowships be awarded to four junior scholars:

"Lindsay Campbell, who holds law degrees from the University of British Columbia and is a Ph.D. candidate in the JSP Program at Berkeley for her work on the meaning and scope of rights to free expression and a free press in Massachusetts and Nova Scotia in the early nineteenth century.

"Christopher Schmidt, who has recently been awarded a J.D. from the Harvard Law School and a Ph.D. in the History of American Civilization from the Harvard Faculty of Arts and Sciences, for his work reinterpreting the origins of *Brown v. Board of Education* to show the emergence of racial liberalism as a ruling ideology.

"Hilary Soderland, a Ph.D. in Archaeology from Cambridge University, and, I believe, a first-year law student at Berkeley, for her work on how the first century of archaeology law has shaped the study of Native American cultures; and

"Joshua Stein, a Ph.D. candidate in the UCLA Department of History, for his work studying assault and battery prosecutions in New York City from 1760-1840, in order to understand local systems of justice and changing attitudes towards violence."

Application Process for 2008

This year there will be a single application process for both the Cromwell Fellowships and the Murphy 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, 2008. Successful applicants will be notified in mid-November. To apply, please send all materials to:

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

[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.

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), George Washington University <mmarcus@law.gwu.edu>
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 Cromwell Book Prize for 2007 has been awarded to Professor Roy Kreitner of Tel Aviv University, for *Calculating Promises: The Emergence of Modern American Contract Doctrine* (Stanford, CA: Stanford University Press, Stanford, CA, 2006).

Kreitner incisively analyzes the theories of leading contract scholars--J. B. Ames, W.R. Anson, J. H. Beale, A. L. Corbin, O. W. Holmes, C. C. Langdell, J. F. Pollock, and S. Williston--to argue for revising prevailing views that contract doctrines have evolved incrementally over centuries. During the closing decades of the nineteenth century, courts came under considerable pressure to fashion doctrines limiting the long-established system granting juries wide discretion.

Kreitner finds that the eight scholars revolutionized theories about the rules governing contract agreement and enforcement within a wider cultural transformation in which individuals confronted the risks and opportunities of a new American industrial society. These scholars fashioned theories that within a century would be identified with the law and economics movement. Chapters "revisiting" gifts and promises, perceptions about insurance contracts and gambling conceived of as "speculations of contract," and the varied texts of "incomplete contract" reveal, in Kreitner's probing narrative, how established contract "metaphysics" gave way to the assumption that contracting parties were rational calculating persons. Thus, by the end of the century, "The assumption of calculation is encapsulated in the theory of consideration, which at once strips the past of meaning (past consideration is no consideration) and at the same time assumes equivalence while denying the law's capacity for examining consideration's adequacy (233)." Even so, Kreitner's book asks legal academics, practicing lawyers, and judges to deeply rethink their assumptions about the origins of American contract theory.

Cromwell Dissertation Prize

The Cromwell Foundation has also established a $2500 prize for dissertations accepted or student articles written in the previous year 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. The Cromwell Dissertation Prize Committee considered dissertations of remarkable quality on a wide range of topics and periods and adopting a variety of different methodological perspectives. Amid these dissertations, the one that stood out was Christopher Beauchamp's "The Telephone Patents:

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

Intellectual Property, Business and the Law in the United States and Britain, 1876-1900"--a dissertation submitted for a Ph.D. at Cambridge University in 2006. The dissertation uses complex corporate and legal records to examine the role of patents and patent litigation in the early struggles for control over the telephone businesses on both sides of the Atlantic, and it thereby explores the role of law in modern industrial development. Written with both an expansive understanding of the inquiry and a keen eye for detail, the dissertation opens up important questions in law, economics, and the relation between them. It will be an important book, admirable for its breadth of vision and its rich use of evidence, and the Committee is pleased that the first dissertation [recommended] to be awarded the Cromwell Prize is of such remarkable quality.

Application Process for 2008

Anyone may nominate works for the Cromwell 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 May 31, 2008:

Professor Charles McCurdy, Chair
Department of History
University of Virginia
Randall Hall, P.O. Box 400180
Charlottesville, VA 22904

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

Professor Tony Freyer
University of Alabama Law School
306 Law Center
Tuscaloosa, AL 35487-0382

Professor Risa Goluboff
University of Virginia Law School
580 Massie Road
Charlottesville, VA 22903

Professor Philip Hamburger
Columbia University Law School
435 West 116th St.
New York, NY 10027-7297

Professor Gerard Magliocca
Indiana University School of Law--Indianapolis
Lawrence W. Inlow Hall
530 West New York St
Indianapolis, IN 46202-3225

Professor Richard Ross
University of Illinois College of Law
504 E. Pennsylvania Ave
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.

This year's Preyer Memorial Committee received seventeen entries and reported that it had a very difficu1t time choosing among them. After extended discussion, they chose two 2007 Preyer Scholars: Gautham Rao, a Ph.D. student at the University of Chicago, for "The Federal Posse Comitatus Doctrine: Slavery, Compulsion, and Statecraft in Mid-Nineteenth Century America," (forthcoming, LHR) and Laura Weinrib, a Ph.D. student at Princeton University and a graduate of the Harvard Law School, for "The Sex Side of Civil Liberties, *United States v. Dennett* and the Changing Face of Free Speech." Maeva Marcus chaired the Preyer Panel at the annual meeting, and Linda Kerber and Bob Gordon served as commentators. A detailed description of the panel appears below.

Application Process for 2008

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, 2008. 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 John Phillip Reid Prize for the best book in legal history published during the calendar year 2006 was awarded to William M. Wiecek for *The Birth of the Modern Constitution: The United States Supreme Court, 1941-1953* (Cambridge, Eng., and New York: Cambridge University Press, 2006), volume 12 of the Oliver Wendell Holmes Devise History of the Supreme Court of the United States.

The Committee said of Wiecek's book: "*The Birth of the Modern Constitution* is characterized by the comprehensiveness, attention to sources, and concern for detail that we have come to associate with the Holmes Devise series. In addition, it reflects a wide and deep reading of the huge volume of scholarly literature that has been written about the Court during the fourteen years it studies and offers judicious judgments on the issues raised by that scholarship. Above all, Wiecek's volume is highly readable, displays a singular ability to distill and explain complex legal issues in an easily understood fashion, and has a clear interpretative focus. Wiecek makes a clear and convincing argument that the Court was in a period of profound transition between 1941 and 1953, and his volume provides one of the best contexts for understanding the jurisprudential challenges and shifts the Court encountered between the late-nineteenth and mid-twentieth century. Future teachers of constitutional law will be much in William Wiecek's debt."

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 postmarked no later than May 30, 2008 to:

Professor Craig Evan Klafter
336 36th Street, #372
Bellingham, WA 98225
604 822-5607
<cklafter@stcatz.org>

In addition, a copy of the book and curriculum vitae should be mailed to each member of the committee:

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

Professor Michael Les Benedict
Ohio State University
106 Dulles
230 West 17th Avenue
Columbus, OH 43210
<benedict.3@osu.edu>

Professor 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>

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

ASLH ANNUAL MEETING 2007
OCTOBER 25-28, 2007
TEMPE, ARIZONA

The ASLH traveled to the Tempe Mission Palms Hotel for its annual meeting on October 25-28. Despite some difficulty in finding rooms when Arizona State University changed its football schedule to make this homecoming weekend (a problem brilliantly solved by the Local Arrangements Committee and, in particular, by its member Amanda Breaux), almost 300 people registered for and attended the conference. Dr. Paul Brand of All Souls' College Oxford gave the plenary address in the Great Hall, Sandra Day O'Connor School of Law at Arizona State University on "Thirteenth-century English Royal Justices: What We Know and Do Not Know About What They Did" The address was preceded by words of welcome from Justice O'Connor herself. It was followed by a splendid reception at the University's Desert Botanical Garden sponsored by the School of Law. The full program is available online at: http://www.h-net.org/~law/ASLH/conferences/2007conference/program_final.doc.

Results of Elections

President-Elect

The president and president-elect of the American Society for Legal History 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. At the ASLH meeting in Tempe, President Charles Donahue handed his gavel to incoming president Maeva Marcus.

President Donahue announced that Professor Constance Backhouse had been elected president-elect, running unopposed. Prof. Backhouse is Distinguished University Professor and University Research Chair at the University of Ottawa. Professor Backhouse teaches in the University of Ottawa's Faculty of Law in the areas of criminal law, human rights, legal history, and women and the law. During her academic career to date Professor Backhouse has taught at four Canadian universities and colleges, and served as director of the University of Ottawa's Human Rights Centre from 2001 to 2003. She is a graduate of the University of Manitoba, Osgoode Hall Law School, and Harvard University.

Board of Directors

Alfred L. Brophy of the University of Alabama Law School, Tuscaloosa; Mary L. Dudziak of the University of Southern California and the School of Social Science of the Institute for Advanced Study, Princeton; Annette Gordon-Reed of New York Law School and Rutgers University (Newark); Adam Kosto of Columbia University; and Karen Tani, doctoral candidate at the University of Pennsylvania and a law clerk to the Hon. Guido Calabresi of the U.S. Court of Appeals for the Second Circuit were elected to three-year terms on the Board of Directors. They replace R. B. Bernstein, Lyndsay Campbell, Thomas P. Gallanis, James Oldham, and Reva Siegel, 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!

Amalia D. Kessler of Stanford University and Barbara Y. Welke of the University of Minnesota were elected to three-year terms on the Nominating Committee. They replace Kenneth

W. Mack and Wesley Pue, 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 already chosen for 2008 may be found at: http://www.h-net.org/~law/ASLH/officers.htm .

Tom Gallanis Appointed Secretary and Craig Klafter Appointed Treasurer-Elect

Pursuant to the by-law amendment that the membership adopted in April 2007, the board voted to split the offices of Secretary and Treasurer. Tom Gallanis agreed to serve as secretary for a three-year term beginning in January of 2008. The President, with the approval of the Executive Committee, also appointed Craig Klafter, of the University of British Columbia, as treasurer-elect, to succeed Bill LaPiana as treasurer when Bill's term expires at the end of 2008. Craig has considerable experience managing the finances of small non-profits, and his appointment now will allow for a smooth transition when Bill steps down.

ASLH Future Meetings

The 2008 meeting will be in Ottawa, ON, November 13-16, 2008. The society looks forward to a bracing stay at the historic Fairmont Chateau Laurier in the heart of Canada's legal and governmental capital.

The 2009 meeting will be in Dallas, Texas, November 12-14, 2009. Hosted by a partnership of SMU and the local bar, the ASLH anticipates a Texas-sized welcome at the Fairmont Dallas, located in the Arts District, near first-rate performing venues and the lively restaurants and nightlife of the West End Historical District.

-- Craig Joyce, Chair of the Annual Meeting Committee, ASLH.

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.

Update Your Membership Profile

The ASLH urges all members to update their profiles on the membership directory that is maintained at the University of Illinois Press. The membership 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.

ASLH 2007 CONVENTION: CHRONICLE OF SELECTED SESSIONS

Of 34 sessions at the 2007 annual meeting, we have received 12 reports from the session chairs. They are reproduced below as received, with only very light editing to achieve some consistency in format.

Kathryn T. Preyer Panel

MAEVA MARCUS (President, American Society for Legal History), Chair, reported: The Preyer Panel impressed all who attended. Kitty Preyer would have been proud to hear the two fine, young graduate students, who won the Kathryn T. Preyer Scholars competition. GAUTHAM RAO, a Ph.D. candidate at the University of Chicago, spoke on "The Federal *Posse Comitatus* Doctrine: Slavery, Compulsion, and Statecraft in Mid-Nineteenth Century America," and LAURA WEINRIB, a Ph.D. candidate at Princeton, talked about "The Sex Side of Civil Liberties: *United States v. Dennett* and the Changing Face of Free Speech."

Gautham Rao argued that in the early American republic, a moral economy of the local public good meant that citizens willingly submitted to service in the posse comitatus, in the belief that such compulsory service would guard their person and property. But the federal government lacked this direct relationship with the citizens, until the Fugitive Slave Law of 1850 and its key enforcement proviso, the Federal Posse Comitatus Doctrine. The subsequent debate over the Doctrine in the next several decades suggested the rise of a new paradigm of federal power in which the relationship between the citizen and the state was framed in terms of compulsory duties, and which was contemplated through the lens of chattel slavery. He concluded that the Posse Comitatus Act of 1878 symbolically repudiated this epoch of statecraft, while its governing principle quietly entered the mainstream of American law and policy.

LINDA K. KERBER offered germane and insightful criticism, emphasizing the need to rethink the reach of such compulsory structures of the posse comitatus into womens' lives. ROBERT GORDON's suggestions were equally important. Gordon's biggest point was the need to understand institutions like the federal posse comitatus, and state compulsion of the citizenry more generally, in the context of the development of the grand jury.

Laura Weinrib presented the context in which the *Dennett* case arose. By 1931, she stated, the ACLU was the undisputed leader of the anti-censorship campaign, an aggressive advocate not only of unfettered scientific discussion but also of artistic freedom and birth control. With that shift, a new model of civil liberties began to take shape—one that celebrated individual expressive freedom over substantive political reform. The catalyst for change, she argued, was a postal censorship dispute involving a sex education pamphlet, *The Sex Side of Life: an Explanation for Young People*, written by the former suffragist and outspoken birth control activist Mary Ware Dennett. Postal authorities declared the pamphlet obscene despite effusive praise by medical practitioners, religious groups, and government agencies for its frank and objective style. When Dennett continued to circulate it by mail in defiance of the postal ban, she was prosecuted for obscenity, and she responded by challenging the postal censorship laws. ACLU board members agreed to sponsor Dennett's case because it instructed the youth on an issue of social importance, thereby advancing the public interest in a direct and familiar Progressive way. Unexpectedly, however, the litigation unleashed a far more sweeping anti-censorship initiative. Dennett's heavily publicized conviction, overturned by the Second Circuit on appeal, generated popular hostility toward the censorship laws and convinced ACLU attorneys that speech should be protected regardless of its social worth.

Kerber offered extensive suggestions, advising Weinrib to emphasize Dennett's experiences of sexuality and her challenges to Margaret Sanger, to move rich material out of footnotes, to include more about the role of Jewish attorneys Arthur Garfield Hays and Morris Ernst in a predominantly Protestant movement, and to engage more explicitly with the division that the civil libertarians were drawing between "political" and "obscene." Gordon's critique pointed out what was missing from Weinrib's story, namely, the other side. What does the world look like from

the point of view of the censors? Why do they pick the strategies they do? They never really define the harm they fear, but they are very afraid of something. What? That their sons will fall into lives of profligacy? Relatedly, why do they go after this pamphlet in particular? After all, *The Sex Side of Life* is far more respectable than a huge array of material that they ignore. Perhaps its respectability is precisely what concerns them—it's the most respectable stuff that is most dangerous and most destructive.

The Preyer Panel was an example of the perfect panel: great papers, great comments, and great questions from the audience.

American Trials: Litigants, Lawyers, and Legal Strategies

MARY SARAH BILDER, Boston College Law School, Chair, reported: This splendid panel featured two papers on the general theme of litigants, lawyers, and legal strategies. As ROBERT WEISBERG, Stanford Law School, advanced in his splendid comment, both papers demonstrated the usefulness of Edward Purcell's concept of a social litigation system, the importance of engaging in both microhistory and quantitative studies of legal systems, and the insights provided by reading litigation and trials from a law and literature perspective as types of scripts.

CONSTANCE BACKHOUSE, University of Ottawa, delivered a fascinating paper, "'Don't You Bully Me; Justice I Want If There Is Justice To Be Had': The Rape of Mary Ann Burton, London, Ontario 1907." The paper was drawn from a chapter in Professor Backhouse's forthcoming book, *Carnal Crimes: A History of Sexual Assault Law in Canada, 1900-1970*, to be published by Irwin Law in 2008. Through an intriguing and meticulous reconstruction of the case, Professor Backhouse explored the assumptions about gender, class, and the legal system itself advanced and shared by various participants in the trial. Professor Backhouse's splendid delivery of the paper had the audience hanging on every word of Mary Ann Burton's effort to respond to the legal system, and in particular, the defense attorney. In the comment, Professor Weisberg raised additional questions about the motives of the various actors and puzzled over the overall purpose sought to be accomplished by a system that prosecuted rape in a manner that demeaned and diminIshed the female victim. Professor Weisberg and Professor Backhouse discussed the ways in which Mary Ann Burton's unwillingness to follow the conventional social script changed the various legal actors' responses to her.

CHRISTOPHER BEAUCHAMP, a Golieb Fellow at New York University Law School, delivered a similarly fascinating paper, "Technology's Trials: Patents in the United States Courts, 1865-1900." The paper was part of a book project tentatively entitled *Technology's Trials*. Through a careful quantitative study of nineteenth-century patent litigation, Dr. Beauchamp convincingly raised questions about the conventional account. Particularly intriguing were Dr. Beauchamp's charts demonstrating a surge in patent litigation during the late nineteenth century, as well as his attribution of part of that surge to a series of national litigation campaigns conducted by a few aggressive patent-holders. One such campaign took the form of mass litigation against dentists over rubber denture patents (Dr. Beauchamp's account of the plaintiff's violent downfall at the hands of a desperate dentist was equally intriguing). Professor Weisberg again raised additional questions, focusing in particular on the importance of exploring the motives and experience of the counsel in patent cases. Dr. Beauchamp and Professor Weisberg discussed the insights provided into litigation systems by studying legal areas such as patents which seem, at first glance, to be less dramatic.

The audience had many helpful suggestions and comments for both authors and appreciated the juxtaposition of these seemingly different, but provocatively similar, papers.

The Invention of Modern Anglo-American Intellectual Property

CHRISTINE DESAN (Harvard Law School), Chair, reported: The panelists were OREN BRACHA, University of Texas School of Law, "The Ideology of Authorship Revisited;" RONAN

DEAZLEY, University of Birmingham, "Walter Arthur Copinger and the Anglo-American Copyright Tradition;" and STEVEN WILF, University of Connecticut School of Law, "The Moral Lives of Intellectual Properties in 19th Century America." The commentator was MEREDITH McGILL, Rutgers University. Each paper challenged conventional histories describing the development of intellectual law during the eighteenth, nineteenth, and twentieth centuries. Instead of a smooth evolution in the field towards utilitarian considerations gathered around the organizing notion of authorship, these papers found unsettled moral debates, contradictory doctrinal tendencies, and odd moments of contagion and transference between England and America.

Thus Steve Wilf located copyright's American emergence in the republican culture of early America as part of a larger revolutionary project seeking to construct and cultivate a public sphere. His paper drew on federal and state sources to trace the use of copyright through the nineteenth century as it defined lines of morality in literary and other works. Wilf concluded with a provocative prescription that American intellectual property law recognize and reconsider its moral roots and implications.

Ronan Deazley's paper made personal the moral issues of intellectual property law, recovering the influence of treatise writer Walter Arthur Copinger on the Anglo-American copyright tradition. Copinger was instrumental in transmitting the jurisprudence of Joseph Story and George Curtis from the U.S. to the U.K. Even as he wrote about the sanctity of intellectual property, however, Copinger plagiarized heavily from other authors. Deazly thus explored the tensions between the Copinger's message and his medium.

Though Oren Bracha could not attend the Conference because of a family illness, his paper richly explored how the conception of authorship, taking hold at a thematic level in late-eighteenth-century intellectual property law, was transformed during the nineteenth century as courts sought to apply it at a doctrinal level. He argued, for example, that even as originality became a touchstone for copyright protection, it was transmuted into a matter measured primarily by price.

Meredith McGill brought rich insight to the panel as commentator. A literary scholar steeped in the history of the nineteenth century, she located the narrative in the papers in the larger story of America's efforts as a developing country to create doctrine that effectively allowed the diffusion of knowledge and transition of invention.

ROUNDTABLE: The Craft of Legal History Seminar: Documenting Legal History

LINDA K. KERBER (University of Iowa), Chair, reported: This Roundtable celebrated the completion of *The Documentary History of the Supreme Court of the United States, 1789-1800* under the editorship of MAEVA MARCUS and the completion of *The Papers of John Marshall,* edited by CHARLES HOBSON, who is now editing the legal papers of St. George Tucker. CHARLENE BANGS BICKFORD, director of *The Papers of the First Federal Congress* and ANN GORDON, editor of *The Selected Papers of Elizabeth Cady Stanton and Susan B. Anthony* – joined them on the panel, engaging in a wide-ranging discussion of documentary editing as an art form, of historical editions as *resources* for historians, and of the challenges of finding reliable funding for such projects. They also discussed the current context in which print editions compete with electronic resources and in which editors also develop electronic editions. At the Chair's request, each editor spoke briefly about how he or she had come to engage in documentary editing. About 30 people attended.

The *Documentary History of the Supreme Court* was begun in 1977; before computers. Maeva Marcus emphasized the difference between constructing a documentary history of an institution and a documentary history of an individual. Like other projects, the search for documents preceded the publication of the first volume by nearly a decade; even at the end, they made no claim to having found everything. Yet often they had to extend the boundaries of their assignment; the fourth volume, for example, describes *Organizing the Federal Judiciary*, not merely the Supreme Court. Ironies abound, notably the expectation at the beginning that this

project would not be controversial. The fifth volume, covering "Suits Against States," notably *Chisholm v. Georgia*, was especially controversial, its publication taking place when issues of Federalism were lively in current politics.

Charlene Bickford stressed the challenges of creating a three-dimensional dynamic for an enterprise as complex as the First Federal Congress. The continuing search for documents has gone forward in collaboration with the *Documentary History of the Ratification of the Constitution and the Bill of Rights*, edited by John Kaminski and others. The two projects were launched together and both focus on every collection with documents in the 1787-1789 time period. One member of the Senate, which met in secret, William Maclay of Pennsylvania, kept a diary – the only extant source for Senate debates. This diary, which the Project has published in paperback as well, ranks among the most important documents of American history. Among the rich subjects treated in the volumes published to date are many that are of compelling interest to legal historians: slavery; the Creek Treaty and early federal relations with Indians; and the development of Congressional rules and procedures. Those searching for original intent in the debates over the Amendments to the Constitution, which became known as the Bill of Rights will probably be frustrated. In a project as wide-ranging as this one, whose volumes are about to go on-line, the Index is how people gain intellectual access to the documents. One three volume set in the series has an index over 200 pages long – an indispensable aid to sorting subjects out.

Charles Hobson observed that by contrast, his task seemed relatively easy – St. George Tucker's legal papers are all together. Jurists' notes give us an understanding of interactions with fellow justices and lawyers. John Tyler, for example, hated technical reasoning; he disliked law books, "especially those of England." And jurists' notes help us understand the arduous work involved. As Hobson observed: "To plot the course of his circuits is to gain a sense of the dedication and sacrifice of Tucker and his fellow itinerants in bringing justice to the citizens of the far-flung commonwealth. To give but one example -- Tucker, whose home was in Williamsburg in the southeastern part of Virginia, on eight different occasions rode a circuit that began at Winchester in the northern Shenandoah Valley, proceeded westward over the first ridge of the Alleghenies to Moorefield in Hardy County (now West Virginia.), and ended in Morgantown in the far northwest county of Monongalia on the Pennsylvania border."

Ann Gordon observed that although neither Elizabeth Cady Stanton nor Susan B. Anthony were lawyers or officeholders, the Stanton-Anthony project is still a rich resource for legal historians. It is a history of a grassroots movement's efforts to *change* the law over the course of some 60 years. The forthcoming fifth volume, covering the years 1887-1895, is an uncommonly powerful account of efforts to enfranchise women through legislation, and women's effort to identify a common law right to vote grounded in colonial practice. The editions of papers of women, African Americans, and minorities have been subjected to stringent length requirements; for example, the voluminous Stanton-Anthony papers have to be reduced to 6 volumes. The final volumes have been denied their primary federal funding; Gordon and her colleagues are committed to bringing them to closure with increased private resources. Like the *Documentary History of the First Federal Congress,* the *Stanton-Anthony Papers* maintain a website that makes selected documents available and displays the differences between the original manuscripts and the edited versions.

A lively discussion followed, lasting some 40 minutes. Among the matters discussed were the transformation of the editor's role into fundraiser; the recent NEH decision not to send grant proposals for documentary editions for external peer review; the refusal of most journals to review published volumes except the first until the entire series is completed, many years later. Among the projects whose funding has been interrupted are the Papers of Margaret Sanger, Emma Goldman, and the Freedmen and Southern Society Project. Despite the pressures, all stressed the joys of documentary editing – as Ann Gordon observed, "historical editing in the short run liberated me from grading papers [and] attending faculty meetings.... In the long run historical editing promised pure research, a craft older than academic history, and publications that will outlive the monographs published in my lifetime."

Latin American Public Law

PETER L. REICH (Whittier Law School), Chair, reported: The session on Latin American public law, originally contemplated a panel with PETER L. REICH of Whittier Law School as Chair; ROBERT J. COTTROL of George Washington University, ERNST PJINING of Minot State University, and JUAN JAVIER DEL GRANADO of George Mason University as presenters; and RENZO HONORES of Western Washington University as Commentator. Unfortunately, Professors Cottrol and Del Granado were unable to attend, so presentations by Reich and by MATTHEW MIROW of Florida International University were substituted. The session's theme was the development of the Latin American state apparatus in its societal context from the late eighteenth century to the present.

The session began chronologically with Ernst Pijning's paper, "How Pernicious is the Trade? Smuggling and the Law in Eighteenth-Century Brazil." Using late colonial records of the Conselho Ultramarino (Portuguese Overseas Council), the Ministério do Reino (Portuguese National Archives), and the Arquivo Público do Estado do Bahia (State Archives of Bahia, Brazil), Pijning focused on the official application of commercial laws to foreign vessels in Brazilian harbors. Despite royal laws formally limiting direct trade between Brazilians and foreigners, local officials "changed the meaning of illegality" and permitted these transactions as long as ship captains respected the Brazilian authorities and used them as intermediaries with local merchants. Very few ships were actually confiscated, because colonial administrators flexibly regulated transatlantic commerce according to their personal interests. Unlike the British colonies in the same period, where royal attempts to tighten control and bypass local merchants sparked the Boston Tea Party, the Portuguese Empire's combination of authoritative legal statement and regional responsiveness manifested a state able to withstand centrifugal pressures, at least for the time being.

Peter Reich continued the discussion with a summary of his recently published review essay, "Recent Research on the Legal History of Modern Mexico," (*Mexican Studies/Estudios Mexicanos*, v. 23, issue 1, Winter 2007), surveying four monographs on legal constructions of crime in late-nineteenth- and early-twentieth-century Mexico. Until approximately the last ten years, modern Mexican legal history had largely ignored the integration of law and social science long practiced in France and the United States. Addressing this gap, Beatriz Urías Horcasitas's *Indígena y Criminal. Interpretaciones del derecho y la antropología en México, 1871-1921* (2000) illustrates the role of elite legal thought, in combination with official anthropology museum catalogs of "degenerate" indigenous races, in legitimating class and racial divisions. Robert Buffington, in *Criminal and Citizen in Modern Mexico* (2000), carries the story of this agenda further with his analysis of the successive penal code revisions that stigmatized lower-class "vices" like drunkenness, gambling, laziness, and consensual unions as necessarily criminal. Specifically targeting Mexico City, Elisa Speckman Guerra's *Crimen y Castigo. Legislación penal, interpretaciones de la criminalidad y administración de justicia (Ciudad de México, 1872-1910)* (2002) evaluates police gazettes and appellate sentence revocations as reflections of persistent elite class and gender prejudices despite liberal constitutional and statutory norms. And *City of Suspects. Crime in Mexico City, 1900-1931* (2001), by Pablo Piccato, examines 209 trial court case files to show that definitions of crime were contested between modernizing, even "revolutionary" elites seeking social control, and lower classes engaging in proscribed behavior and localized dispute resolution. Although all these works emphasize the sociological portion of the "law and society" equation, they demonstrate how elite legal constructions in a key Latin American country served to deflect potentially destabilizing forces and maintain the elite at the reins of modernization.

The final presentation, by Matthew Mirow, set forth his current research project, "The Social Function Obligation in Latin American Constitutions." He discussed the social function norm of constitutional property in a number of Latin American nations, where such a provision exists either explicitly, or implicitly (as in Mexico). This language or assumption has become a crucial tool for such state policies as agrarian reform, labor conflict resolution, and natural resource expropriation. Mirow's work on the earliest Latin American constitutions to incorporate this norm indicates that the accepted stories of this principle's transmission through the region need substantial revision. The social function obligation was most likely the product of various European and Latin American sources and influences.

Renzo Honores, Visiting Professor of History at Western Washington University, served as Commentator and led a stimulating discussion. Concentrating on Pijning's paper on colonial Brazil, Honores set it in the framework of legal pluralism, in which various actors competed to impose their own commercial legal and social rules. Brazil's geographic isolation and particularly the distances between her major ports, facilitated local political autonomy and economic independence. In such a pluralistic context, "contraband" did not exist so much within a legality/illegality paradigm as it did as a creation of local officials' option to exert or not exert authority within their respective spheres. From here the conversation widened to consider the state's anthropological construction of criminality and the constitutional definition of property. State actors both competed and collaborated to use the law for class or institutional interests, as did the Catholic Church in its conception of property as valuable for mediating social conflict. From the late-eighteenth century to the present, Latin American public law has been the site of a variety of legal devices developed to absorb and channel local and popular pressures for change.

Law at the Margins in the Early National South

CHRISTIAN G. FRITZ (University of New Mexico), Chair, reported: These papers focused on the existence and development of legal conceptions and dispute resolution in the early national South in arenas not heavily studied. By drawing on sources other than those produced by formal court systems (including Chamber of Commerce minutes, Congressional and press commentaries, and the records of the Cherokee Council), the papers cast light on how law at the "margins" operated to supplement and yet offer important benefits for persons who found themselves outside (or choose to avoid) established institutional forums.

SALLY HADDEN (Florida State University) examined the Charleston Chamber of Commerce after the American Revolution, looking at the revival of its function to resolve commercial disputes outside the court system. Hadden offered considerable detail to demonstrate the sophisticated job the Chamber did in providing an alternative dispute resolution system and the advantages such a system offered its members. Eventually this system went into temporary decline for reasons that remaining only suggestive, given the lack of sources after the mid-1790s.

DEBORAH ROSEN (Lafayette College) explored the questions raised by General Andrew Jackson's order to execute two British prisoners accused of aiding the Seminole Indians in April 1818, during the First Seminole War. Although a military tribunal heard the case, it denied the prisoners rights normally granted to prisoners of war. Rosen analyzed the commentary in Congress and in the press debating the executions' legality, identifying significant interplay between formal law and legal institutions and the "court of public opinion."

FAY YARBROUGH (University of Oklahoma) examined the disputed status of Molley (Chickaua), a slave woman offered to the Deer clan of the Cherokee Indians as a replacement for a dead clan member. Decades later, after a petition to turn Chickaua over as slave property was made to the Cherokee Nation, the Cherokee Council held that Molley's identity had been transformed from that of a black slave to a "native" Cherokee. Molley's story illuminates the tension between traditional Cherokee practice, Cherokee legal provisions, and federal and Georgia state laws during the early national period.

JOHN WERTHEIMER (Davidson College) offered exemplary commentary, seriously engaging the arguments and interpretations offered by each of the papers. He made constructive suggestions about how the papers could be strengthened by addressing further questions prompted by the research presented by the panelists. His careful reading and thoughtful reaction to the papers formed a model of commentary to which every session might well aspire. The papers also elicited considerable discussion among the audience.

Legal Issues in Feudal Society

PAUL BRAND (University of Oxford), Chair, reports: This was a well-attended session despite its unattractive and potentially misleading general title and its scheduling as the final session of the meeting. All three panelists presented lively, interesting papers reflecting their ongoing research on different aspects of twelfth and thirteenth century Western European social and legal history.

ROBERT STACEY (University of Washington) examined the emergence of a royal jurisdictional monopoly over Jews in England. He dated the successful achievement of this monopoly to the final decade of the twelfth century and related it to the disappearance of seigneurial Jewish communities and the emergence of a Jewish exchequer towards the end of that decade. He was also clear that this was a case of English "exceptionalism": no other Western European monarchy had achieved a similar monopoly by 1200.

DIRK HEIRBAUT (University of Ghent) re-examined the significance for our understanding of "feudalism" of the evidence provided by the account of Galbert of Bruges of the events surrounding the murder of Charles the Good. He argued that it remains a valuable source for the nature of the lord-vassal relationship in Flanders in 1127-8: how it was created, what the obligations were understood to be; and what sanctions there were for breaches. It cannot be taken as a general text-book guide to Western European medieval feudal institutions, but it remains of real value to the historian of social and legal institutions in Flanders.

JOSHUA TATE (Southern Methodist University) presented a paper related to his ongoing work on the development of remedies for the assertion of rights over the advowson of churches in the early English common law. He showed that the action of *quare impedit* may well go back to 1186 and was certainly in existence by 1196 and that its creation had destroyed the previous conceptual clarity and simplicity of the common law advowson remedies in a way resembling the effect of the creation of writs of entry on common law remedies for the recovery of land. Both were of importance for the evidence they provided of the limited influence of the ideas of the learned laws on the early common law.

Religion and Activism in Twentieth-Century Law

LINDA PRZYBYSZEWSKI, Notre Dame University, Chair, reported: This panel was slightly mistitled because VICTORIA SAKER WOESTE (American Bar Foundation) was unable to offer her paper on Louis Marshall; as a result. the panel offered two papers looking at religion and activism in the 19th century and one on the 20th century.

NATHAN OMAN (William and Mary Law School) told the story of the court system set up within the church of the Latter-Day Saints, or Mormons, during the nineteenth century which determined cases involving both spiritual issues and more mundane issues relating to property and debts. The latter sort of cases soon led to practical problems as non-Mormons moved into the Utah area and land title disputes multiplied. The church courts also brought the church into conflict with officials from federal and state courts when there were competing rulings. Oman reported that these problems brought on the demise of non-spiritual matters cases within the Mormon courts by 1908.

LINDA PRZYBYSZEWSKI (Notre Dame University) asked "Who won the Bible War?" to identify the origins of religious liberty in modern America. She explained that the Cincinnati Bible War of 1869 began when the city's school board removed the King James Bible from the public

schools in an attempt to bring in the many parochial school children. The ensuing outcry among conservative Protestants led to a lawsuit against the school board which the board won on appeal before the Ohio Supreme Court in 1873, *John D. Minor et al v. Cincinnati Board of Education*. This decision did not mark a moment of secularization. Rather, the court, following the lead of anti-Bible attorney Stanley Matthews, an evangelical convert, cited the Gospel according to Matthew to stress that faith must be given freely and not compelled.

SARAH BARRINGER GORDON (University of Pennsylvania Law School) began by noting how few people remember the power wielded by Beverly LaHaye, wife of Tim LaHaye, as founder in 1979 of the Concerned Women of America, an organization of conservative Protestant women dedicated to fighting the forces of secularism, feminism, and communism. LaHaye, a gifted organizer and propagandist, turned to the courts and lawyer Michael Parrish to defend first a CWA member who condemned the National Education Association (which dropped its defamation suit) and then the right of parents to prevent their children from being forced to read textbooks to which they objected. CWA won a victory at the lower court, but lost in *Mozert v. Hawkins County Public Schools*, when the Sixth Circuit Court determined that children were only compelled to read and not to believe the textbooks and so parents had no Free Exercise Clause complaint.

PHILIP GOGG (Indiana University Purdue University Indianapolis) began his comment by noting that Scripture and law are both referred to as touchstone yet are both interpreted in multiple ways. He suggested that the Mormon courts might be profitably compared to other church courts systems to see if they shared the same problems and evolution. He wondered whether the religious pluralism of Cincinnati affected the Bible War case, and also reminded us of the competing claims of different authorities evidenced by Chief Justice Morrison R. Waite's citation of Jefferson in the *Reynolds* case on polygamy. He was curious whether black Christians joined the CWA, and also suggested that the early loss in the court prompted the CWA to turn to private education or home-schooling.

Making Places, Making People: The Legal History of the Southwest

JOHN PHILLIP REID (New York University School of Law), Chair, reported: This session can truthfully be described as a resounding and surprising success because there were moments when it had threatened to turn into a disaster. First of all, it was scheduled for the very hour that the chair of the program committee promised the chair of the session that it would not be scheduled. Second, it was not until two weeks before the annual meeting, that the chair of the session, obeying orders received from the chair of the program committee, asked the three panelists to send everyone involved their papers. It was then that the chair of the session was informed for the first time that the scheduled commentator had withdrawn from attendance. She would not be in Tempe that weekend. As the chair is completely incompetent to comment on any of the topics being discussed by the three participants, it appeared likely there would be be no comments. Happily, GORDON BAKKEN of the California State University at Fullerton was contacted and volunteered to be the commentator. This can only be described as an act above and beyond the called of academic duty as it meant that Professor Bakken had to fly that very morning from Ontario, California, for a session scheduled for 8:30 A.M., and then fly back to Ontario that afternoon. And third, when the meeting room was opened that morning, it had no table or chairs for the participants. These items were provided less than two minutes before the session should have begun.

ALLISON TIRRES (DePaul University) delivered the first paper, addressing the topic, "Reconfiguring Borders in Nineteenth-Century El Paso;" her submitted paper was entitled, "Chapter Three: Civil War, Reconstruction Politics, and Contested Legal Space, 1860-1870." Particularly enlightening to the audience was her discussion of the contribution made by Mexican Americans fighting in the Civil War, especially on the side of the Confederate States.

The second participant was LAURA GOMEZ (University of New Mexico). Although her talk had a title, "Manifest Destinies: The Making of the Mexican American Race," there was no

submitted paper. Instead of a typed version of her talk, she sent the commentator Chapter Four of her new book, which has the same title as her talk. She also passed around a copy of the book which drew much attention from the audience. Of particular interest was her emphasis on jury duty in the making of American citizenship.

TOM I. ROMERO (Associate Professor at the Law School in Hamline University) gave the third paper, addressing the topic, "Multiracial Dissonance, Cold War Containment and Municipal Boundaries in the Metropolitan West." His discussion examined the relationship between demographic change, wartime ideology, and the spatial reorganization and containment of multi-centered color lines during the 1950s, with emphasis on the cities of Phoenix and Denver. He related this material to recent decisions of the United States Supreme Court.

Considering the difficulties and the limited time he had to prepare, Gordon Bakken's comments were remarkably extensive, revealing, and comprehensive. He pointed out, for example, to the astonishment of many, especially to the very uninformed chair of the session, that as a distinctive group in the national population, Mexican Americans contained the highest percentage of slave holders – an explanation, he suggested, for why so many supported the Confederate rebels. The audience showed both their appreciation of the papers and their interest in all that was said by taking up the remainder of the session by asking questions or commenting. The questioners included Hendrik Hartog, Christian Fritz, Peter Reich, and at least one person whom the chair did not know.

The Legal System in Late Medieval and Early Modern Europe

JANET LOENGARD (Moravian College), Chair, reported: These three papers ranged over three centuries and three countries. In "Fear, Torture, and the Law of Duress in the Nullification Trial of Joan of Arc, 1455-1456," BLAIR NEWCOMB (independent scholar) argued that the trial was not simply politically driven but had serious legal arguments. Concentrating on Joan's treatment in prison, Newcomb discussed the various forms of abuse that the Maid endured: chains, derision by guards, and most seriously, the threat of rape – the last important as a factor in Joan's decision to re-adopt male attire while in prison although part of her earlier abjuration involved not doing so. These factors were presented at the nullification trial, where it was argued that such treatment and the threat of torture, though never carried out, involved duress, thereby invalidating certain points in Joan's testimony which led to her conviction. The heart of the nullification argument was that the threat of torture was itself torture, which would render invalid a confession which was not freely repeated.

MARIE SEONG-HAK KIM (St. Cloud State University) gave a paper, "Michel de L'Hôpital, Legal Humanism, and Ideals of Legal Unification in Sixteenth-Century France" discussing de L'Hôpital, the 16th-century French chancellor who advocated coexistence of differing religions and who crusaded unsuccessfully for legal reform. His goal was to achieve uniformity of laws by means of royal legislation. Such reform was badly needed, as law of the time mixed custom with royal ordinances, together with elements borrowed from canon and civil law. However, his proposed reforms were resisted by the law courts, which either interpreted the new edicts and ordinances in a way which diverged from their intended meaning or refused to register them at all. De L'Hôpital's efforts show an early vision of the goal much later pursued by Bonapartist redactors: codification of French law.

MIA KORPIOLA (University of Helsinki) began her paper, "Pastime or Professionalism? Legal Riddles in Sixteenth and Early Seventeenth Century Swedish Manuscripts," by pointing out that in sixteenth-century Sweden, the judiciary was in the hands of laymen and the law applied was two centuries old. Some 250 manuscripts exist containing one or another of three early codes as well as other material; their owners needed practical help. Provincial laws, glossaries, instructions for judges in the form of legal maxims, verses on justice, forms for oaths, and other potentially useful documents were included, as well a few examples of what look like riddles or enigmas. So far, 18 manuscripts including such riddles have been found; none apparently predating the second

half of the 16th century. The riddles appear to be in contrast to the law; the point is that they form exceptions to the normal rules. The Swedish riddles may in a sense be a kind of sixteenth-century legal Sudoku but also may have had educational value for non-university trained legal professionals, as stimuli for thinking of larger issues in the law.

The papers were skillfully connected by KJELL A. MODEER (Lund University), who noted that all demonstrate the increasing trans-Atlantic interest in late medieval and early modern European legal history. He commented on the need for more extensive comparative European legal history, diverging from the national perspective which has existed for centuries. The ongoing connection between continental European and British legal cultures have been thoroughly demonstrated; it is almost impossible to write current legal history without comparative perspectives and that point is relevant for all three papers. All describe legal phenomena during a turbulent time-period which saw a judicial revolution in France and the German empire, the professionalization of the judiciary, and intimations of the forthcoming absolute nation-state.

Evolution and Institutions of the Medieval Ius Commune

CHARLES DONAHUE (Harvard University), Chair, reported: Three generations of students of medieval canon law were represented at this well-attended panel.

KEN PENNINGTON (Catholic University of America) began with a discussion of "The Beginnings of the Ius commune: The Big Bang." The issue was whether a Saint Gall manuscript, (Sankt Gallen, Stiftsbibliothek 673) long thought to have been an abridgement of Gratian's influential *Concordance of Discordant Canons*, was, in fact, a preliminary draft of the work. The reason why this question is important is that the staid world of history of medieval canon law has been shaken in the last decade by the discovery by another of our speakers, Anders Winroth, that other manuscripts long thought to be abridgements of Gratian are, in fact, versions of a first recension. This, in turn, has caused a redating of the beginnings of canon-law studies at Bologna, and, perhaps, a redating of the beginning of law studies generally. If the Saint Gall manuscript is even earlier than Winroth's first recension, the beginnings of canon-law studies at Bologna must be placed even earlier, perhaps as early as the 1120's, and that in turn means that all legal historians must revisit the question why at this particular time a group of men should have turned their attention to careful academic analysis of legal texts from the past, an event that was to have a profound effect on western law generally. Making use of projected digital images of the Saint Gall manuscript (these may be viewed at http://faculty.cua.edu/Pennington/-EriceTempe2007/EriceTempe2007.html), Pennington presented a powerful argument for the early date of the Saint Gall manuscript and for the use of Roman law in it. Winroth was clearly not convinced.

ANDERS WINROTH (Yale University) turned to "Law Schools in the Twelfth Century." The thesis of the paper was deceptively simple. In the thirteenth century, the study of law was bureaucratized. Standard curricula, standard texts, and formal appointments of teachers all came into being. It was not like that in the second half of the twelfth century. There were many minor law schools that were prepared to give students some training in less time than it took to study at Bologna, and, it would seem, at cut rates. The evidence for this is scattered: an occasional letter from a student or erstwhile student, abbreviations of longer works, and excerpts from longer works that bear a depressing resemblance to Cliff Notes. Most of this material has been known for some time, and its dating and provenance is controversial. We look forward to a fuller version of Winroth's paper.

JAMES A. BRUNDAGE (University of Kansas) carried the story further in "Tools of the Trade: Medieval Lawyers and Their Libraries." This was a careful study, derived from his forthcoming magisterial book on the development of the legal profession in medieval Europe. A key to being a successful lawyer in the high and later Middle Ages was having access to manuscripts. Manuscripts were expensive, and libraries hard to find and not always accessible. Lawyers had their own manuscript libraries, the contents of which can be discovered from surviving

testaments and occasional surviving catalogues. Some of these collections were impressive indeed. Many, however, were quite modest, and they allow one to guess what might have been important for lawyers in their practice. As might be expected, pieces, not always complete, of the two *corpora* of canon and civil law dominate, with a few of the major treatises.

JAMES Q. WHITMAN (Yale Law School) offered a few radical comments. Important as the study of the dating of manuscripts and the institutions that used them is, he urged the participants to devote more attention to the substantive contents of the books that they were studying.

Literature as Legal History

CARLA SPIVACK (Oklahoma City University Law School), Chair, reported: Inspiring this panel was the quest to define the relationship between law and literature in new ways. Traditionally, literary works have been seen as reflecting developments in the law, or, less commonly, as contributing to the evolution of the law in such a way that law reflected sentiments expressed in works of literature. This overall approach - in which one term is subordinated to the other as mere mirror - seems unsatisfactory, and the call for papers asked for ways to explore the law and literature relationship as mutually constitutive. The result was three different, equally innovate and interesting approaches.

CHRISTOPOHER BUCCAFUSCO (Ph.D. candidate, University of Chicago) explored the nineteenth-century American phenomenon of Spiritualism and legal efforts to overturn wills of avowed Spiritualists on grounds of insane delusion and undue influence. He explains judicial reluctance to grant such suits, despite widespread anxiety about Spiritualism's threat to the American family, by turning to Realist novels of the time, specifically, Henry James's *The Bostonians* and William Dean Howell's *The Undiscovered Country*. Buccafusco argued that judges who declined to overturn "Spiritualist" wills were enacting the same disinclination to take a clear moral stance toward Spiritualism as the Realist novels themselves. Ultimately, he also shows the importance to legal history of an understanding of popular culture.

In "African-American Literature as Legal History," JON-CHRISTIAN SUGGS (John Jay College of Criminal Justice, CUNY) argued that legal history is as much to be understood through the traces it leaves in the literature of a time as through the cases and statutes regularly taught in law schools. Focusing on nineteenth-century African American novels such as Martin Delaney's *Blake*, Harriet Jacobs's *Incidents in the Life of Slave Girl*, Sutton Griggs's *Imperium in Imperio*, and legal texts such as *Dred Scott v. Sandford,* the Fugitive Slave Acts, the Fourteenth Amendment, and court cases from the Reconstruction era, Suggs shows that the law is central to the African American literary narrative. For example, he argues that every novel written by an African American since 1858 has been a reply to Taney's dictum in *Dred Scott v. Sanford* that Blacks had no rights that whites need recognize, and that this literary endeavor to constitute a cognizable legal identity shaped African American Literature for a hundred years. Suggs concluded by calling for a "History of American Legal Romanticism," an investigation of how romanticism shaped American "notions of personhood, property, autonomy, and desire," of which his study here is a part.

CHRISTOPHER TOMLINS (American Bar Foundation) presented a paper entitled "Revolutionary Justice in Brecht, Conrad and Blake," in which he asked what literature as a form can "tell historians about history as we practice it, and how might an inspection of literature not as source but as medium change the practice of legal historians?" Examining *ThreePenny Novel*, by Bertholt Brecht; *Heart of Darkness*, by Joseph Conrad; and the poem "London" from the *Songs of Experience* by William Blake, Tomlins performed a close reading of how these works envision time and justice, or, as he reframed the issue, "the time of justice." Interpreting passages in these three works in light of Walter Benjamin's *Theses on the Philosophy of History*, Tomlins finds in each of them a "folding" of past and present that allows for a messianic moment of what he calls "revolutionary justice." It is through this moment of "folding," then, that literature can offer access to

justice in a way that legal history, committed to a post enlightenment notion of law rather than justice, cannot.

In his comment, R. B. BERNSTEIN (New York Law School) noted that the three papers not only define a site of confluence for law, history, and literature, but also define a spectrum as to the ways that those fields interact. He called Buccafusco's paper a model of using literature as *evidence* of legal history for anyone seeking to explore similar interpretative and research strategies. Further, he hailed Suggs's paper as illustrating how literature can be a *subject* of legal history, relating Suggs's arguments to John Phillip Reid's concept of law-mindedness as a key feature of American legal history but suggesting that Suggs complicates that concept by positing African-American writers as voicing a dissenting variant of law-mindedness, taking American constitutional and legal culture to task for failing to live up to stated legal and constitutional ideals. Bernstein's final – and, it turned out, most controversial – comments focused on Tomlins's paper, which he saw as a meditation on literature as a *method* of doing legal history. Questions of how this method should work, of its relationship to the contested term "postmodernism," and of the relationship between literature and history proved the basis for most of the questions in the lively discussion session that followed.

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The Editor apologizes to the readership for the delay in producing this issue.

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The National Bankruptcy Archives was established in 2000 as national repository of materials relating to the history of debtor-creditor relations, bankruptcy and the reorganization of debt. The archives are located at Biddle Law Library on the campus of Penn Law School in Philadelphia, PA.

The National Bankruptcy Archives collects organizational records, personal papers, and other collections relevant to the history of bankruptcy and insolvency legislation, regulation, and administrative and judicial determination.

In recent years, the National Bankruptcy Archives has worked to improve access to its expanding repository. Significant collections in the National Bankruptcy Archives include:

- **The Lawrence P. King Papers.** New York University Law School Professor Larry King served on a number of congressional commissions that were convened to analyze and reform bankruptcy law. He served in important leadership roles in the National Bankruptcy Conference, an association of bankruptcy professionals that left an indelible impact on bankruptcy law. King also edited *Collier on Bankruptcy*, a reference series that became the leading treatise on bankruptcy law during King's 40-year tenure as Editor.
- **The Kenneth N. Klee Papers**. As Associate Counsel to the House Judiciary Committee during the late 1970s, UCLA Professor Ken Klee played a crucial role in drafting what became the Bankruptcy Reform Act of 1978, the most dramatic revision of bankruptcy law since the 1930s. The Klee papers include drafts of bankruptcy legislation, handwritten notes, and letters from members of congress who were central to the revision of bankruptcy laws.
- **The National Bankruptcy Conference Proceedings**. The National Bankruptcy Conference was perhaps the most important interest group advocating on behalf of bankruptcy reform in the 20th century. Many of its members, including Larry King, Vern Countryman, and Ken Klee, played a crucial role in shaping the Bankruptcy Code as we know it today.
- **The National Conference of Bankruptcy Judges Records**. The National Conference of Bankruptcy Judges was created in 1926 to provide continuing legal education for bankruptcy judges and to advise Congress on pending bankruptcy legislation. This collection contains records that reflect the judges' success in professionalizing and mobilizing the bankruptcy bench, including their efforts to gain federal judicial status.
- **The Randall J. Newsome Oral History Collection.** During the 1990s, Judge Randall J. Newsome conducted oral histories with some of the most important figures in the field of bankruptcy law, including Harvard Law Professor Vern Countryman, Lawrence P. King, Asa Herzog, and George Treister. This collection includes taped oral histories and transcripts of Newsome's interviews. It's a great collection for anyone who wants to gain a basic understanding of the major issues surrounding bankruptcy law.

All of the National Bankruptcy Archives' collections are fully organized and open for research. Finding aids are available via the Archives' website at http://www.law.upenn.edu/bll/archives/bankruptcy/.

The National Bankruptcy Archives continues to acquire collections of materials that reflect milestones in the history of bankruptcy law. If you have any additional questions regarding the National Bankruptcy Archives, you can contact Jordon Steele, Archivist, at steelej@law.upenn.edu.

Pre-Registration Form / ASLH Annual Meeting
November 14–16, 2008, Ottawa, Ontario

To pre-register, please return this form, with a check ($US only, payable to ASLH), or VISA/MasterCard (a 4% surcharge will be added), **to arrive no later than October 12**, to Craig E. Klafter, Treasurer-elect ASLH, #372, 336 36th Street, Bellingham, WA 98225. Fax: 604–822–8118.

Name:_____ Preferred First Name:_____

Address:_____ Email:_____

City:_____ State:_____ ZIP:_____

Institutional Affiliation:_____

I will be accompanied by*_____ Preferred First Name:_____

(affiliation/home city):_____

*Spouses/friends are welcome, but must pay the regular or student registration fee if they are going to attend any of the receptions, meals, coffee breaks, or program sessions.

Registration Fee _____ x $100 ($110 after 10/15/08) _____

Student Registration _____ x $15 (student ID required) _____

Saturday Annual Luncheon _____ x $35 ($25 for students) _____

Contribution toward expenses of graduate students attending annual meeting _____

TOTAL _____

Saturday Luncheon (indicate any special dietary restrictions) _____

I/We plan to attend (no additional charge beyond registration fee):

Thursday	Friday	Saturday
evening reception_____	continental breakfast_____	continental breakfast_____
plenary reception_____	evening reception_____	

If paying by credit card: Name on card: _____

Card type: VISA / MasterCard expiration date: ___/___ Number: _____ _____ _____

Card Security Number _____

Signature authorization: _____

This is not a room reservation form. For information about hotel reservations see: http://www.h-net.org/~law/ASLH/conferences.htm. *Receipts, charge slips, name tags, event tickets and programs will be held at the registration table at the Fairmont Chateau Laurier Hotel.*