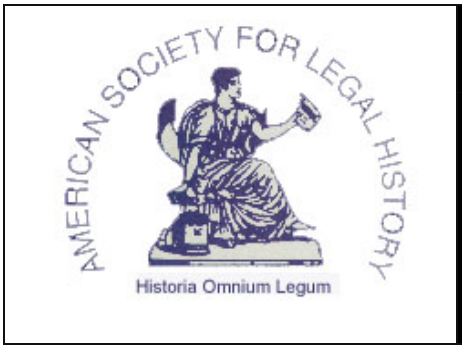

ASLH Newsletter

Winter 2005 – Summer 2006

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NOTE FROM CHARLIE DONAHUE

The November 16–18 Baltimore meeting date is not so very far ahead on the calendar now, and the Society is very much indebted to John Witt and Dan Klerman (co-chairs) and to their program committee for an exciting line-up of panels. The program is also spiced with some social events that will offer the time and relaxed atmosphere for informal conversation and seeing old and making new friends in the profession. The recent meetings have set a high standard, but all signs indicate that it will be matched by the Baltimore event.

With this Newsletter, the Society is beginning an experiment of making the Newsletter available on line and not burdening the Postal Service with all of it. Paper copies of the preregistration form and the room sharing form for the annual meeting, and the ballot and the biographies of the nominees for the directors and nominating committee members to be elected this year will be sent by post, but each of these may also be printed from this Newsletter. We hope that many members will take advantage of this opportunity.

NOMINEES FOR ASLH ELECTION 2006

Board of Directors (10 candidates; top 5 elected)

Lauren Benton is Professor of History at New York University. Benton received her Ph.D. in Anthropology and History from Johns Hopkins University, and her A.B. from Harvard University. Her research focuses on the comparative history of colonial law, especially early modern European empires in the Atlantic world. Recent publications include "Legal Spaces of Law: Piracy and the Origins of Ocean Regionalism," *Comparative Studies in Society and History* 47 (2005) and *Law and Colonial Cultures: Legal Regimes in World History, 1400–1900* (2002), which won the Book Award from the World History Association and the James Willard Hurst Prize from the Law and Society Association. Benton is currently working on a book about the relation of law and geography in the formation of sovereignty in European empires through the end of the nineteenth century. She has been an active participant in meetings of the ASLH since 1999, and has served for the past two years on the Surrency Prize Committee.

Christine Desan is a Professor of Law at Harvard Law School. Her current research tries to understand the arrival of modern market-based liberalism by exploring its constitution as a matter of political economy. She has published parts of that work in "The Market as a Matter of Money: Denaturalizing Economic Currency in American Constitutional History," *Law and Social Inquiry* 30 (2005) and "Money Talks: Listening to a History of Value," *Common-Place* 6:3 (2006), and is working towards a book on the history of the early American political economy, called *The Practice of Value: Early American Money and Finance as a Form of Governance*. She received her J.D. from Yale Law School and an M.A.L.D. from the Fletcher School of Law and Diplomacy, Tufts University, both in 1987, and has held fellowships from the Charles Warren Center, the American Philosophical Society, the ACLS, and the NEH. She has served on the ASLH Program Committee for the 1999 and 2005 meetings, the Willard Hurst Prize Committee (2000), the Preyer Committee, the Board of Editors of the *Law and History Review* (since 2001), and as Co-Chair of the Harvard Law School Legal History Colloquium (2003–2006).

William Forbath holds the Lloyd M. Bentsen Chair in Law and is Professor of History at UT Austin. He directs the Colloquium on Law, History, and the Humanities at UT, also has taught at UCLA and Columbia, and will be visiting at Harvard in 2007–2008. He holds degrees from Harvard (A.B.), Cambridge (M.A.), and Yale (J.D., Ph.D.). Current work addresses the role of law in the creation of the modern American state; the rise and fall and reconstruction of social citizenship in the USA and abroad; and race, nation-making, and state-building in the law and politics of European immigration to the USA at the turn of the last century. He is the author of *Law and the Shaping of the American Labor Movement* (1991) and about sixty articles, book chapters, and essays on social, legal, and constitutional history and theory. He has been active in the American Society for Legal History since the late 1980s, has served on the Program and the Future of the Society committees, and has been a member of the Editorial Board of *Law & History* since 2001. He also serves on the Editorial Board of *Law & Social Inquiry*.

Annette Gordon-Reed is a Professor of Law at New York Law School. She a graduate of Dartmouth College (1981) and Harvard Law School (1984). She has published *Thomas Jefferson and Sally Hemings: An American Controversy* (1997), written numerous articles and book reviews, edited *Race on Trial: Law and Justice in American History* (2002), and worked with Vernon Jordan on his memoir, *Vernon Can Read* (2001). Her book, *The Hemings Family of Monticello: A Story of American Slavery,* the first of what will be a two-volume work, is forthcoming from W.W. Norton in the Fall of 2007. Gordon-Reed is on the Advisory Committee for the Omohundro Institute of Early American Culture, where she serves on the Editorial Board of the *William & Mary Quarterly*; the Advisory Committee for the International Center for Jefferson Studies, the Executive Committee of *The Papers of Thomas Jefferson,* the Frederick D. Patterson Research Institute of the United Negro College Fund, and the Council on Foreign Relations. She previously served on the Nominating Committee for the American Society For Legal History and is currently serving as one of the judges for ASLH's newly created John Philip Reid Prize for the best book written on legal history.

Sally Hadden is Associate Professor of History and Law at Florida State University. She received her Ph.D. (1993) and J.D. (1989) from Harvard, and her B.A. from the University of North Carolina, Chapel Hill. Her book *Slave Patrols: Law and Violence in Virginia and the Carolinas* appeared in 2001. Other publications include "The Fragmented Laws of Slavery in the Colonial and Revolutionary Eras," in Christopher Tomlins and Michael Grossberg, eds., *Cambridge History of Law in America* (forthcoming), and "Benjamin Lynde, Junior: Servant of the Commonwealth," *Massachusetts Legal History* 9 (2003). She is currently writing a comparative study of legal cultures in eighteenth-century Boston, Philadelphia, and Charleston, which has received funding from the NEH. She is a life member of the ASLH, and has served the association in various capacities since 1994. She has worked on the Program Committee for the 1996 meeting and the Nominating Committee for 2002–2005 (chair for 2003-2005), and she currently leads the society's Membership Committee. She has served on the H-Law editorial board since 1997. Recently, she joined the *Law and History Review* editorial board (2005–2010). Previously, she was a member of the editorial board for *Law and Social Inquiry* (2000–2003).

Tamar Herzog is Professor of History at Stanford University. She received her Ph.D. from the Ecole des Hautes Etudes, Paris (1994), and both a J.D. and an M.A. in Latin American Studies from the Hebrew University of Jerusalem. She was a member of the Institute for Advanced Study, Princeton, and has taught in Madrid at the Universidad Complutense and the Universidad Autónoma and at the University of Chicago. She teaches European Legal History, as well as Early Modern Spanish and Spanish American History. She is the author of *Upholding Justice: State, Law and the Penal System in Quito* (2005), *Defining Nations: Immigrants and Citizens in Early Modern Spain and Spanish America* (2003), several other books (in Spanish) dealing with various aspects of Spanish colonial law, and numerous articles in American, English, Canadian,

Spanish, French, Italian, German, Colombian, Ecuadorian, Peruvian, Argentinian, and Brazilian journals and edited books.. She is the co-editor of *The Collective and the Public in Latin America. Cultural Identities and Political Order* (2000) and *Observation and Communication: The Construction of Realities in the Hispanic World* (1997) Her current project focuses on the relation between land-use, jurisdiction and territorial rights in eighteenth century Spain and Spanish America.

Carl Landauer, practicing as the international lawyer for Charles Schwab, taught in the history departments of Yale, Stanford, and McGill Universities and, most recently, international legal theory at the University of California, Berkeley (Boalt Hall). He received a B.A. from Stanford University, a Ph.D. from Yale University, and a J.D. from Harvard Law School. He writes on the history of modern legal thought, primarily international legal thought and U.S. legal thought. His articles in these areas include: "A Latin American in Paris: Alejandro Alvarez's *Le droit international américain*," *Leiden Journal of International Law* 19 (2006); "Antinomies of the United Nations: Hans Kelsen and Alf Ross on the Charter," European Journal of International Law 14 (2003); "From Status to Treaty: Henry Sumner Maine's *International Law*," *Canadian Journal of Law and Jurisprudence* 15 (2002); "Deliberating Speed: Totalitarian Anxieties in Post-War Legal Thought," *Yale Journal of Law and the Humanities* 12 (2000); and "Social Science on a Lawyer's Bookshelf: Willard Hurst's *Law and the Conditions of Freedom in the Nineteenth-Century United States*," *Law and History Review* 18 (2000). He has been on the editorial advisory board of the *Yale Journal of Law & the Humanities* since 1995.

Dylan Penningroth is Associate Professor of History at Northwestern, where he teaches courses in African American and U.S. history. He received a BA from Yale University (1993) and an MA and PhD from Johns Hopkins (2000). Before coming to Northwestern, he taught at the University of Virginia. His research focuses on African American history, with special interests in the history of slavery and emancipation, African history, and everyday legal experience. His book, *The Claims of Kinfolk: African American Property and Community in the Nineteenth-Century South* (2003), won the 2004 Avery O. Craven Award of the Organization of American Historians, and as a dissertation won the Allan Nevins Prize of the Society of American Historians. Honors include an OAH Huggins-Quarles Award, a Smithsonian summer fellowship, a Carter G. Woodson Predoctoral Fellowship, and a National Endowment for the Humanities Fellowship at the Newberry Library. From 2005–2008 he is serving as an OAH Distinguished Lecturer. A member of ASLH since 2002, he has presented papers at the annual meeting and currently serves on the Surrency Prize Committee. He also serves on the 2006 Program Committee for the Southern Historical Association, and the 2008 Program Committee for the Organization of American Historians.

Miranda Spieler is Assistant Professor at the University of Arizona in the Department of History. She holds an A.B. in History and Literature from Harvard University and a Ph.D. in History in 2004 from Columbia University, where she worked with Simon Schama, Isser Woloch, and David Armitage. She is an historian of France and of the French Empire whose work explores the relationship between law and violence against marginal groups such as enemies of state, convicts, slaves, and former slaves. She is completing a monograph based on her dissertation, "Empire and Underworld: Guiana in the French legal imagination, c. 1789–c. 1870," for Harvard University Press.

Robin Chapman Stacey is the Howard and Frances Keller Endowed Professor of History at the University of Washington. A specialist in medieval Irish and Welsh law, she is the author of several articles and two books: *The Road to Judgment: From Custom to Court in Medieval Ireland and Wales* (1994), and the forthcoming *Dark Speech: The Performance of Law in Early Ireland*. Her current book project, tentatively entitled *Law as Literature in Medieval Wales*, explores a new way of reading the lawbooks of 13th-century Wales, not merely as a repository of

native custom, but as a form of political literature and a forum for the discussion of contemporaneously controversial issues, such as divorce, royal succession, princely exactions, and the participation of women in Welsh political life. She has been a member of the editorial board of *Law and History Review* since 1996, is a Past President of the Celtic Studies Association of North America, and was recently elected a Councillor of the Medieval Academy of America. Her work has been supported by grants from the Guggenheim Foundation and the American Council of Learned Societies, and she just this year received the University of Washington's Distinguished Teaching Award.

Nominating Committee (4 candidates; top 2 elected)

Margot Canaday is the 2005–2008 Cotsen-Perkins Postdoctoral Fellow in the Society of Fellows at Princeton University. She hold degrees from the University of Iowa (B.A.) and the University of Minnesota (M.A., Ph.D.). Her 2004 dissertation, "The Straight State: Sexuality and American Citizenship, 1900-1969," won prizes from the Law and Society Association, the Organization of American Historians, and the University of Minnesota. It examines federal regulation of sex and gender non-conformity over the early- to mid-twentieth century to ask how homosexuality came to be a meaningful category for the state during those years. Other work has appeared in the *Journal of American History*, *Law and Social Inquiry*, *Feminist Review*. Her research has been twice funded by fellowships from the Social Science Research Council, and she was the recipient of the AHA's Littleton-Griswold Grant in Legal History and the OAH's Galbraith-Merrill Grant in Political History. She has served as a consultant to the Center for the Study of Sexual Minorities in the Military, and has just completed a three-year term on the Governing Board of the AHA's Committee on Lesbian and Gay History. She is a recent graduate of the Hurst Institute, and has been a member of ASLH since 2003.

Christopher Capozzola is Associate Professor of History and Lister Career Development Professor at the Massachusetts Institute of Technology. He completed his Ph.D. at Columbia University at 2002, and has held fellowships from the American Academy of Arts and Sciences, the National Endowment for the Humanities, the Social Science Research Council, and the Carnegie Scholars Program. His research interests focus on the history of war and citizenship in the modern United States. He is the author of *Uncle Sam Wants You: The Politics of Obligation in America's First World War* (forthcoming, 2007); "Life and Limb: Pain, Capitalism, and Citizenship in Industrializing America," *Georgetown Law Journal* 93 (2005); and "The Only Badge Needed Is Your Patriotic Fervor: Vigilance, Coercion, and the Law in World War I America," *Journal of American History* 88 (2002); and has published in *The Boston Globe, Christian Science Monitor,* and *Washington Post.* He is currently beginning work on *Following the Flag,* a transnational history of law, military service, and citizenship in the United States and the Philippines in the twentieth century. He is a regular attendee and presenter at ASLH conferences and served on the 2006 Program Committee.

Julie Novkov is Associate Professor of Political Science and the Director of Women's and Gender Studies at the University of Oregon. From the fall of 2006, she will be Associate Professor of Political Science and Women's Studies at the University at Albany/SUNY. She holds degrees from Harvard-Radcliffe (A.B., 1989), NYU School of Law (J.D., 1992), and the University of Michigan (M.A., 1994; Ph.D., 1998). Her first book, *Constituting Workers, Protecting Women: Gender, Law, and Labor in the Progressive Era and the New Deal Years* was published in 2001; her second, *Racial Constructions: Regulating Interracial Sex and Building the White State in Alabama, 1865-1954*, will appear in 2007. She has also authored several articles in books and scholarly journals, including *Law and History Review*. She is currently working on two co-edited volumes, one on race and US political development and another on race, gender and militarization. Her next major research project will be a political

and developmental history of the legal regulation of child labor in the United States. She has been a member of the American Society for Legal History since 2001 and also belongs to the American Society for Legal and Political Philosophy and the Law and Society Association.

David S. Tanenhaus is the James E. Rogers Professor of History and Law at the University of Nevada, Las Vegas, where he teaches both in the Department of History and the William S. Boyd School of Law. He holds degrees from Grinnell College (B.A. in History) and the University of Chicago (M.A. and Ph.D. in History). He has written extensively on children and the law, including *Juvenile Justice in the Making* (2004) and co-edited, with Margaret K. Rosenheim, Franklin E. Zimring, and Bernardine Dohrn, *A Century of Juvenile Justice* (2002). He is currently working on the origins and development of federal juvenile justice policy. He has taught courses on American legal and constitutional history, the Gilded Age and Progressive Era, children and society, and introductory surveys of U.S. History. During 2000–2001, he was a Mellon Postdoctoral Research Fellow at the Newberry Library. In 2004, the American Society for Legal History appointed him to a five-year term as the Editor of *Law and History Review*.

ELECTION BALLOT 2006
American Society for Legal History

BALLOT MUST BE POSTMARKED NO LATER THAN OCTOBER 16, 2006 TO BE COUNTED

Board of Directors (vote for *five*)

Lauren Benton	[ ]	Tamar Herzog	[ ]
Christine Desan	[ ]	Carl Landauer	[ ]
William Forbath	[ ]	Dylan Penningroth	[ ]
Annette Gordon-Reed	[ ]	Miranda Spieler	[ ]
Sally Hadden	[ ]	Robin Chapman Stacey	[ ]

Nominating Committee (vote for *two*)

Margot Canaday	[ ]	Julie Novkov	[ ]
Christopher Capozzola	[ ]	David S. Tanenhaus	[ ]

Biographies of candidates are on the ASLH web site (aslh.net) and are enclosed

BALLOT MUST BE POSTMARKED NO LATER THAN OCTOBER 16, 2006 TO BE COUNTED

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

ASLH ANNUAL MEETING 2006

NOVEMBER 16–18, 2006

BALTIMORE, MARYLAND

This year the ASLH will head to Baltimore for its annual meeting. The meeting will be held at the Radisson Plaza Lord Baltimore on November 16–19. The headquarters hotel for the 2006 annual meeting is now accepting reservations. While the annual meeting room bloc will be available until October 26, 2006 , the earlier one makes reservations the more certain one is of obtaining the conference rate—$145 single or double occupancy plus applicable taxes (approximately $18.50 per night). (The rate is available beginning the night of Wednesday, November 15). For more information on hotel and travel options, please see travel tools, on the Society's website.

A preliminary program for the meeting follows:

2006 ASLH Tentative Program

	Panel 1	Panel 2	Panel 3	Panel 4	[Panel 5]
Friday A 8:30-10:15	War Powers: A Roundtable Discussion on War, the Presidency, and the American State	*Law and the American State Seminar:* The Limits of The State in Early America	Black Lawyers in 20th-Century America	Contract, Constitution, and Rhetoric in Biblical Law	
Friday B 10:30-12:15	Governing Globalism: The U.S. and the World	*Law and the American State Seminar:* American Law and the Private State	Judges, Juries, and the Law/Equity Line in England and America	Ancient Law "Codes"	Preyer Scholars Panel
Friday C 1:45-3:30	U.S. Criminal Justice and the Retributive Turn	*Law and the American State Seminar:* Law and the Changing Twentieth-Century State	Violence and the Law from the Middle Ages to the Early Modern Era	Prostitution and Concubinage in the Ancient and Medieval Periods	
Friday D 4:30-6:00	Plenary Address: Robert W. Gordon, Yale University				
Saturday A 8:30-10:15	Conservative Constitutionalism Outside the Courts	*Law of the British Empire & Atlantic World Seminar* Sovereignty, Empire, and Resistance	Economic Development and Business Failure	The Rise of the Judiciary: Race, Politics, and Judges in Nineteenth Century America	
Saturday B 10:30-12:15	Roundtable: The Future of the Legal History Book	*Law of the British Empire & Atlantic World Seminar* Law, Authority,	Protecting the Vulnerable in 18th and 19th Century England	Comparative Histories of Economic Organization	

		and Empire in the Early Modern British Atlantic			
Saturday C 2:15-4:00	Roundtable: Citizenship and the Law in 19th-Century America	*Law of the British Empire & Atlantic World Seminar* Market Culture(s) in the Early Modern Atlantic World	Litigiousness in English Legal Culture	Contested Discourse, Legal Identity, and the Language of Female Agency	
Saturday D 4:15-6:00	Rethinking the Early 20th-Century Supreme Court	*Law of the British Empire & Atlantic World Seminar* Law, History, and Constitutionalism in the Early Modern Atlantic World	Anglo-American Legal Education in the Eighteenth and Nineteenth Centuries	Norms in Medieval and Early Modern French Customary Law	

<u>Friday A</u> (8:30-10:15)

War Powers: A Roundtable Discussion on War, the Presidency, and the American State
Chair: Robert Ventresca, Kings University College, University of Western Ontario

Participants: Elizabeth Borgwardt, Harvard University, Charles Warren Center for Studies in American History
Louis Fisher, Congressional Research Service, Library of Congress
Robert David Johnson, History, Brooklyn College/CUNY
Mark Tushnet, Law, Harvard Law School

Law and the American State Seminar Panel
The Limits of the State in Early America
Chair: Bruce H. Mann, Harvard Law School

Panelists: Richard J. Ross (University of Illinois (Urbana-Champaign) College of Law and History Department): "Puritan Jurisprudence in Comparative Perspective: The Sources of 'Intensity'"

Holly Brewer (North Carolina State University History Department): "William Fitzhugh's Royalist Slave Code: Rethinking the Connections between Hereditary Status, Land, and Slavery in Seventeenth-Century Virginia"

Eliga H. Gould (University of New Hampshire History Department): "The Laws of War and Peace: Legitimating Plantation Slavery in British America, *circa* 1775"

Commentator: Gary Rowe, UCLA School of Law

Black Lawyers in Twentieth-Century America

Chair: Kenneth W. Mack, Harvard Law School

Panelists: Tomiko Brown-Nagin, University of Virginia
"Pragmatic Civil Rights Lawyering: Black Atlantans' Struggle for Equality In and Outside of the Courts, 1944-1959"

Joseph Gordon Hylton, Marquette University School of Law
"Negotiating the Boundaries of Jim Crow Before the Civil Rights Era: Black Lawyers in Virginia in the 1920's and 1930's"

Robert N. Strassfeld, Case School of Law
"How the Cleveland Bar Became Segregated: 1900-1930"

Commentator: Kenneth Mack

Contract, Constitution, and Rhetoric in Biblical Law
Chair: Theodore Lewis, Johns Hopkins University

Panelists: Pamel Barmash, Washington University, St. Louis
"Kinship and Contract in Biblical and Ancient Near Eastern Law"

Bernard Levinson, University of Minnesota
"The First Constitution: Rethinking The Origins of Rule"

James Watts, Syracuse University
"The Rhetorical and Ritual Contexts of Biblical Law"

Commentator: Geoffrey Miller, NYU School of Law

<u>Friday B</u> (10:30-12:15)

Governing Globalism: The U.S. and the World
Chair: Peter Lindseth, University of Connecticut

Panelists: Lucy Salyer, University of New Hampshire
"The Reconstruction of American Citizenship"

Adam McKeown, Columbia University
"Equality, Indemnities and Extraterritoriality: Formulating U.S. Border Control, 1885-1894"

Andrew Cohen, Syracuse University
"Smuggling and Empire: International Trade and the American State, 1870-1917"

Commentator: Gerald Neuman, Harvard Law School

Law and the American State Seminar Panel
American Law and the Private State
Chair: Jennifer Klein, Yale University

Participants: Peter M. Carrozzo, John Jay College, "A New Deal for the American Mortgage"

Scott G. Lien, University of Chicago, "So Poor as to Not Own Even Themselves"

Nicholas Parrillo, Yale University, "The Rise of Non-Profit Government: An Institutional and Intellectual Overview"

Commentator: Jennifer Klein

Judges, Juries, and the Law/Equity Line in England and America

Chair: Maeva Marcus, Documentary History of the Supreme Court

Panelists: Renée Lettow Lerner, George Washington University
"The Explosion of Equitable Remedies and the Diminution of the Jury After the Merger of Law and Equity Under the Field Code"

William Nelson, New York University School of Law
"Legal Realism in Colonial America: A Comparison of Jury Lawfinding Power in Massachusetts and Pennsylvania"

James Oldham, Georgetown Law Center
"Law Versus Equity As Reflected in Lord Eldon's Manuscripts"

Commentator: David Konig, Washington University

Ancient Law "Codes"

Chair: Clifford Ando, University of Southern California

Panelists: Michael Gagarin, University of Texas at Austin,
"The Organization of Provisions in the Gortyn Laws, Hammurabi's Laws, and Other Premodern Codes"

Samuel Greengus, Hebrew Union College-Jewish Institute of Religion/Cincinnati,
"The Selling of Slaves in Near Eastern Law Codes and Contemporary Contracts: Continuity of Tradition Across Boundaries of Genre, Time, and Place"

Calum Carmichael, Cornell University
"The Invention of Biblical Law"

Commentator: Raymond Westbrook, Johns Hopkins University

Preyer Scholars' Panel

Chair: Charles Donahue, Jr., Harvard University

Panelists: Sophia Lee, Yale University
"Hot Steps in a Cold War: the NAACP's Postwar Labor Constitutionalism, 1948–1964"

Karen Tani, University of Pennsylvania

"Flemming v. Nestor: Anticommunism, the Welfare state , and the Making of the 'New Property'"

Commentators: Dan Ernst, Georgetown University
Laura Kalman, University of California, Santa Barbara

<u>Friday C</u> (1:45-3:30)

U.S. Criminal Justice and the Retributive Turn
Chair: Elizabeth Dale, University of Florida

Panelists: Jonathan Simon, University of California at Berkeley
"Governing through Crime: The Origins of the War on Crime in the Crisis of the New Deal Political Order"

William Stuntz, Harvard Law School
"The Disastrous Decades: Crime and Punishment in the 1950s and 1960s"

James Whitman, Yale Law School
"The Pursuit of Equality through Criminal Law: Why Determinate Sentencing?"

Commentator: Roger Lane, Haverford College

Law and the American State Seminar Panel
Law and the Changing 20th-Century American State
Chair: Felice Batlan, Chicago-Kent College of Law

Panelists: Ajay K. Mehrotra, Indiana University School of Law – Bloomington
"The Paradox of Retrenchment: Post WWI-Republican Ascendancy and the Triumph of the Modern Fiscal State"

Felicia Kornbluh, Duke University
"A Disabled State: How Blind Activists Created Modern Social Welfare Policy"

Joanna L. Grisinger, Clemson University
"Attacking Administration: The Second Hoover Commission's Task Force on Legal Services and Procedure"

Commentator: Barbara Welke, University of Minnesota

Violence and the Law from the Middle Ages to the Early Modern Era
Chair: Emily Tabuteau, Michigan State University

Panelists: Richard Sims (Independent Scholar)
'To let the punishment fit the crime: gender, prosecution and sentencing in Tudor-Stuart England"

Trisha Olson, University of Illinois-Urbana
"The Medieval Blood Sanction and the Divine Beneficence of Pain"

Joseph David, Hebrew University
"'The One Who Is More Violent Prevails' - Law and Violence in Jewish Medieval Law"

Commentator: TBA

Prostitution and Concubinage in the Ancient and Medieval Periods
Chair: Ariela Dubler, Columbia Law School

Panelists: Adriaan Lanni, Harvard Law School
"Social Meaning, Social Norms, and Homosexual Prostitution in Classical Athens"

Thomas A.J. McGinn, Vanderbilt University and School of Classical Studies of the American Academy in Rome
"Late Antique Legislation on Prostitution"

Ruth Mazo Karras, University of Minnesota
"Concubines in Theory and Practice"

Commentator: Konstantinos Kapparis, University of Florida

Plenary Session **(4:30-6:00)**

Robert W. Gordon, Yale Law School
"From Private Practice to Public Involvements: Pathways to Republican Lawyering"

Saturday A (8:30-10:15)

Conservative Constitutionalism Outside the Courts
Chair: William Forbath, University of Texas

Panelists: Reva Siegel, Yale Law School
"Movement, Counter-movement, and the Family as Site of Constitutional Conflict in Late Twentieth-Century America"

Dennis Deslippe, Franklin and Marshall College
"Protesting Affirmative Action: *Defunis* (1974) and the Struggle over Equality in Post Civil Rights America"

Jefferson Decker, Columbia University
"The Conservative Non-Profit Movement and the Rights Revolution"

Commentator: Steven Teles, Brandeis University

Law of the British Empire & Atlantic World Seminar Panel
Sovereignty, Empire, and Resistance
Chair: Daniel Hulsebosch, New York University School of Law

Panelists: Aparna Balachandran, Columbia University
"Taxation, Sovereignty, and the East India Company in Late Eighteenth-Century Madras"

Lisa Ford, Columbia University
"'Where no Authority Prevails': Jurisdictional conflict and the making of the settler state"

Alison LaCroix, Harvard University / University of Chicago Law School
"*Drawing the Line: The Pre-Revolutionary Origins of Federal Ideas of Sovereignty*"

Commentator: Lauren Benton, New York University

Economic Development and Business Failure
Chair: Victoria Saker Woeste, American Bar Foundation

Panelists: Jerome Sgard, Centre d'Etude Prospectives et d'Informations Internationales (CEPII) / Université de Paris-IX-Dauphine
"Bankruptcy Law, Creditors' Rights, and Contractual Exchange in Europe, 1808-1914"

David Smith, Harvard University,
"The Bill of Conformity 1603-1621: Innovation in Bankruptcy Law"

Dan Bogard and Gary Richardson, University of California, Irvine
"Law and Economic Development in England: New Evidence from Acts of Parliament, 1600-1815"

Commentator: Claire Priest, Northwestern University School of Law

The Rise of the Judiciary: Race, Politics, and Judges in Nineteenth Century America
Chair: Jean H. Baker, Goucher College

Panelists: Jed Shugerman, Harvard Law School
"Free Soil, Free Courts, Free Men: Barnburners, Antirenters, and New York's Anti-Hunker Adoption of Judicial Elections, 1846"

H. Robert Baker, Marquette University
"*Bashford v. Barstow* and the Triumph of Judicial Supremacy in Wisconsin"

R. Owen Williams, Yale University
"Lincoln's Court and the Collapse of Reconstruction"

Commentator: Mark Graber, University of Maryland
Linda Przybyszewski, Notre Dame

<u>Saturday B</u> (10:30-12:15)

Roundtable: The Future of the Legal History Book

Chair: Laura Kalman, UC-Santa Barbara

Panelists: Alfred Brophy, University of Alabama School of Law
Peter Charles Hoffer, University of Georgia
Herbert Alan Johnson, University of South Carolina School of Law
Clive Priddle, PublicAffairs / Perseus Books

Law of the British Empire & Atlantic World Seminar Panel
Law, Authority, and Empire in the Early Modern British Atlantic
Chair: Jack P. Greene, Johns Hopkins University

Panelists: Craig B. Yirush, UCLA / Charles Warren Center
"Conquest Theory and the Metropolitan Assertion of Authority in the first British Empire"

Alexander B. Haskell, Omohundro Institute of Early American History and Culture / Southern Illinois University Edwardsville
"Colonization as Commonwealth-Building: The Legal and Constitutional Implications of an Early-Seventeenth-Century Anglo-American Political Discourse"

Richard Samuelson, Claremont McKenna College
"Provinces, Dominions, and Colonies oh my! Edmund Burke, Thomas Pownall, William Knox, and the Colonial Problem"

Commenter: Michael P. Zuckert, University of Notre Dame

Protecting the Vulnerable in 18th and 19th Century England
Chair: Janet Loengard, Moravian College

Panelists: Adam S. Hofri-Winogradow, Oxford University
"Estate Preservation and Preserving Estates: Protection of Family Property against Debtors in the Late Eighteenth Century Chancery"

Christopher J. Frank, University of Manitoba
"Anti-Truck Prosecution Societies in the Law in Nineteenth-Century Britain"

Karen Macfarlane, York University
"The practice of trials per medietatem linguae in England"

Commentator: Bruce Smith, University of Illinois College of Law

Comparative Histories of Economic Organization
Chair: Victoria List, Washington & Jefferson College

Panelists: Timur Kuran, University of Southern California
"The Absence of the Corporation in Islamic Law: Origins and Persistence"

Madeleine Zelin, Columbia University
"Informal Law and the Firm in Early Modern China"

Ron Harris, University of Tel Aviv Law School,
"The Institutional Dynamics of Early Modern Eurasian Trade: A Cross-Civilizational Comparison"

Commentator: Naomi R. Lamoreaux, UCLA

<u>Saturday C</u> (2:15-4:00)

Roundtable: Citizenship and the Law in 19th Century America
Chair: Michael Vorenberg, Brown University

Participants: Laura Edwards, Duke University
Kate Masur, Northwestern University
William Novak, University of Chicago
Kunal Parker, Cleveland-Marshall College of Law / Cleveland State University
Rogers Smith, University of Pennsylvania

Law of the British Empire & Atlantic World Seminar Panel
Market Culture(s) in the Early Modern Atlantic World
Chair: Thomas Gallanis, Washington & Lee

Presenters: Christine Desan, Harvard Law School
"Reconceiving the Creation Story: Money, Credit, and the Advent of Capitalism in the Anglo-American World."

Martha Howell, Columbia University
"The Dangers of Commerce in Urban Cultures of Northern Europe, 1300-1600"

John Shovlin, New York University
"Making Profit Patriotic in Eighteenth-Century France"

Commentator: Liana Vardi, University of Buffalo

Litigiousness in English Legal Culture
Chair: Allen D. Boyer, New York Stock Exchange

Panelists: Robert Palmer, University of Houston
"Lawyers and Litigiousness in Jacobean England and Wales"

Jonathan Rose, Sandra Day O'Connor College of Law, Arizona State University
"Litigation and Political Conflict in Fifteenth-Century East Anglia: Conspiracy and Attaint Actions and Sir John Fastolf"

Susanne Jenks, Independent Scholar
"Sureties of Peace"

Commentator: Paul Brand, All Souls College, Oxford University

Contested Discourse, Legal Identity, and the Language of Female Agency
Chair: Katherine Franke, Columbia University

Participants: Carla Spivak, Oklahoma City University School of Law
"Lady Anne Clifford's Legal Self Fashioning"

Patty Farless, University of Central Florida
"Unpacking the Meaning of 'Otherness' in Elizabeth Cady Stanton's and Susan B. Anthony's Newspaper, *The Revolution*"

Danaya C. Wright, University of Florida
"Power, Intimacy, and Rights: The Legalization of Family Discourse in the Victorian Marriage"

Commentator: Ariela Gross, University of Southern California

<u>Saturday D</u> (4:15-6:00)

Rethinking the Early Twentieth-Century U.S. Supreme Court
Chair: Risa Goluboff, University of Virginia Law School

Panelists: Michele Landis Dauber, Stanford Law School
"Ordinary Lawyering in Defense of the New Deal"

Barry Friedman, New York University School of Law
"The Supreme Court, Judicial Power, and the People"

Robert Post, Yale University
"Traditional Values and Positive Law: The Case of Prohibition in the Taft Court Era"

Commentator: Barry Cushman, University of Virginia

Law of the British Empire & Atlantic World Seminar Panel
Law, History, and Constitutionalism in the Early Modern Atlantic World
Chair: Barbara Black, Columbia Law School

Panelists: Mary Bilder, Boston College Law School
"Colonial Constitutionalism and Constitutional Law"

Constantin Fasolt, University of Chicago
"The History of Law and the Rise of Legal History in Early Modern Europe: Hermann Conring Reconsidered"

Johnson Kent Wright, Arizona State University
"Montesquieu and the Problem of the French Constitution Revisited"

Commentator: Bernadette Meyler, Cornell Law School

Anglo-American Legal Education in the Eighteenth and Nineteenth Centuries

Chair: John Langbein, Yale Law School

Panelists: John Cairns, University of Edinburgh
"The Origins of the Edinburgh Law School"

Julia Rudolph, University of Pennsylvania
"Law Books and Learning in Eighteenth-Century England"

Michael Hoeflich, University of Kansas
"Letters Home from Harvard Law: The Davies Family Correspondence of 1839-1841"

Commentator: David Ibbetson, University of Cambridge

Norms in Medieval and Early Modern French Customary Law
Chair: Sarah Hanley, University of Iowa

Panelists: Richard Keyser, Western Kentucky University
"'Agreement Vanquishes Law': Contract in Thirteenth-Century Customary Law"

Kathleen A. Parrow , Black Hills State University
"Kings, Lords, Bishops, and Bâtards: Legal Rights and Illegitimate Persons in Sixteenth-Century France"

Nadine D. Pederson, University of Texas at Dallas
"Printing Parisian Customary Law: Early Editions and Commentators"

Commentator: Timothy Sistrunk, California State University, Chico

PRE-REGISTRATION FORM/ASLH ANNUAL MEETING 2006

NOVEMBER 16–18, 2006
BALTIMORE, MARYLAND

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 15th** to William P. LaPiana, Secretary/Treasurer ASLH, New York Law School, 57 Worth St., New York NY 10013. Tel: 212-431-2883; Fax: 212-431-1830

Name: _____ Preferred First Name:_____

Address: _____ Email: _____

City: _____ State: _____ Zip: _____

Institutional Affiliation: _____

I will be accompanied by* _____ Preferred First Name: _____
of (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 $90 ($100 after 10/15/06) _____

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

Saturday Annual Luncheon _____ x $25 _____

Contribution toward expenses of graduate students attending annual meeting _____

TOTAL _____

Saturday luncheon menu options (please indicate choice of entree): chicken ( ) vegetarian ( )

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

THURSDAY	**FRIDAY**	**SATURDAY**
reception (9-11pm) _____	continental breakfast _____	continental breakfast ____
	plenary reception _____	evening reception ____

If paying by credit card: Name on card: _____

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THIS IS NOT A ROOM RESERVATION FORM. For information about hotel reservations see the information on the Society's web site, http://www.aslh.net/

Receipts, charge slips, name tags, and any required tickets will be held for pre-registrants at the registration table at the Radisson Plaza Lord Baltimore Hotel

ROOM SHARE PROGRAM FORM 2006

AMERICAN SOCIETY FOR LEGAL HISTORY
2006 ANNUAL MEETING
NOVEMBER 16-18, 2006
BALTIMORE, MARYLAND

If you want to share a room, you must complete this form. A valid credit card number is required for each occupant. Room charges will be billed directly to participants' credit cards.

If you do not want to participate in the room-share program, you must make your own reservation directly with the Radisson Plaza Lord Baltimore Hotel (by phone 800-333-3333 or 410-539-8400; on the web by going first to http://www.radisson.com/lordbaltimore. In the box labeled "check rates & availability" click on "more search options" which will take you to a page which allows you to enter not only your arrival and departure dates but also a "promotional code." Enter ASLH in the "promotional code" box to obtain the conference rate).

This form must be returned so that it is *received* by October 18, 2006. Participants will be notified of the name of roommate by October 25, along with contact information.

Name: _____ Gender: Male ____Female ___

Address: _____

City: _____ State: _____ Zip: _____

Institutional Affiliation: _____

Telephone: (home) _____ (office) _____ email: _____

Nights room needed: Thurs, Nov. 16 _____ Fri., Nov. 17 _____ Sat. Nov. 12 _____

Smoker: Yes ____ No _____ Willing to share with smoker: Yes ____ No ____

Credit card information (REQUIRED)

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57 Worth St.
New York, NY 10013
This form must be received at the above address by October 18, 2006

Prizes and Awards

The Society offers a wide range of awards, prizes and fellowships. See below for information about the ones that were awarded at the annual meeting in 2005 and the announcement of two new ones.

Surrency Prize | Sutherland Prize | Hurst Summer Institute
Murphy Award | Cromwell Fellowships | Cromwell 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.

The 2005 Surrency Prize was awarded to Professor Amalia Kessler of the Stanford University School of Law for her article, "Enforcing Virtue: Social Norms and Self-Interest in an 18th century Merchant Court," which appeared in volume 22 of the *Law and History Review* (2004). The citation read: "Amalia Kessler uses a case study of the work of the Paris merchant court to explore theories about economic development and behaviour and the influence of religious norms on commercial law. Her argument, securely anchored in extensive archival work, challenges the traditional narrative which lauds merchant courts as 'key to the emergence of modern commercial law because they provided a forum in which merchants could [avoid] the learned law so as to foster norms of capitalist self-interest.' In Kessler's reading of the evidence, mercantile jurisprudence relied on the ideal of the virtuous merchant which 'drew no line between his standing as a merchant, citizen, and good Christian.' In adding a religious dimension to the administration of early modern commercial law, Kessler's work is relevant to the history of law in many jurisdictions and at widely varying points in time."

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 2005 was awarded to Professor Danya C. Wright of the University of Florida, Levin College of Law for her article "'Well-Behaved Women Don't Make History': Rethinking English Family Law," which appeared in volume 19 of the *Wisconsin Women's Law Journal* (2004). The Committee's citation read: "Professor Wright's offers not only a compelling analysis of the historical experience of law by women in nineteenth-century England, but an ambitious, philosophically complex assessment of the limits of family law as a guarantor of women's rights. The article's arguments rest upon an impressive base of primary research in The National Archives (formerly the Public Record Office): Wright has used quantitative data on the operation of the Divorce Court in the 1850s and 1860s to examine legal outcomes with regard to issues such as separation and divorce, child custody and alimony. Her findings highlight the significance to legal outcomes of factors such as stage of marriage—which exerted

a crucial impact upon rates of judicial separation relative to divorce and the success of custody orders. In themselves, these data add significant new dimensions to our understanding of the operation of the reformed court systems of the Victorian era. But the importance of Wright's article is far more broad than this, for her article provides a sustained and trenchant critique of the "liberalization narrative" of family law, the dominant tradition of interpretation that celebrates the nineteenth-century evolution of legal practices that recognize and protect women's special interests in the family, as opposed to the public sphere. By scrutinizing data from the first decade of the Divorce Court's operation, Wright is able to mount a convincing attack on the liberalization narrative. Her data and analysis suggest that the legal reforms that gave rise to family law were ultimately destructive of women's legal and economic interests: by protecting women's special interests, the new family law tradition perpetuated their relegation to an inferior domestic sphere. This is a thought-provoking article that will doubtless provoke continued debate within legal history for years to come. It deserves a wide readership and amply merits the award."

J. Willard Hurst Summer Institute in Legal History

The Society's J. Willard Hurst Memorial Committee is charged with task of appropriately remembering the late J. Willard Hurst, who was for many years the dean of historians of American law. On the Committee's recommendation, the Society, in conjunction with the Institute for Legal Studies at the University of Wisconsin Law School has sponsored three biennial J. Willard Hurst Summer Institutes in Legal History. The purpose of the Hurst Summer Institute is to advance the approach to legal scholarship fostered by J. Willard Hurst in his teaching, mentoring, and scholarship. The "Hurstian perspective" emphasizes the importance of understanding law in context; it is less concerned with the characteristics of law as developed by formal legal institutions than with the way in which positive law manifests itself as the "law in action." The Hurst Summer Institute assists young scholars from law, history, and other disciplines in pursuing research in legal history.

A Hurst Summer Institute was held in the summer of 2005, and one is planned for the summer of 2007. Further details on the 2007 Institute will be forthcoming.

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 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.

In 2005 the Murphy Award was given to Jill Silos for her book-length project "Everybody Get Together: The Politics of the Counterculture" (an historical and legal analysis of the public events involving the1960s counterculture focusing on the political activities of selected groups and movements to exercise First Amendment liberties).

Cromwell Fellowships

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

In 2005, Cromwell fellowships were awarded to:

Ajay K. Mehrotra for his project "Sharing the Burden: Law, Politics and the Making of the Modern American Fiscal State" (a study of the political forces that led to the passage of the Sixteenth Amendment).

Bernie D. Jones for her empirical study exploring "the language of law and the perceptions developed by those contesting the wills of elite white men of the antebellum South who had had natural children by slave women and free women of color."

Robert F. Castro for his study analyzing federal efforts to free Indian-Mestizo captive servants in New Mexico during the Reconstruction Era, comparing the liberation of these captives with the liberation of slaves in the South.

Cromwell 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. The Committee considers books and articles published, or dissertations accepted, in the previous calendar year.

The prize for 2005 was awarded to Professor John Fabian Witt of the Columbia University Law School for his book, T*he Accidental Republic. Crippled Workingmen, Destitute Widows, and the Remaking of American Law* (Harvard University Press, 2004). The Committee's citation read: "Witt's study of the origins of the twentieth century's workmen's compensation regime for workplace accidents is superb history by any standard. Its title deftly integrates the notion of industrial accidents with the contingent nature of historical change to give dual meaning to the word "accidental." As Witt demonstrates in an elegantly written and exhaustively research empirical study, the shape of such a regime was not a foregone outcome of telic inevitability. Rather, it developed along one of many possible paths. As it did, a new regime of risk and insurance supplanted nineteenth-century free-labor ideology. Witt's book gains force – and what ultimately will be a wide and enthusiastic readership – by its ability to integrate his narrative and analysis within the broader trends in American legal and political history. Not only does it powerfully enhance our understanding of the common law tort regime, but it presents such figures as Theodore Roosevelt, Frederick Jackson Turner, and Frederick Winslow Taylor in a context hitherto unappreciated by historians."

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

[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.

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

designed to help legal historians at the beginning of their careers. At the annual meeting of the Society two younger legal historians designated Kathryn T. Preyer Scholars will present what would normally be their first papers to the Society. (There will be a Kathryn T. Preyer Memorial Panel at the meeting; whether both Preyer Scholars present their papers at that panel [or only one] depends on the subject-matter of the winning papers.) The generosity of Professor Preyer's friends and family has enabled the Society to offer a small honorarium to the Preyer Scholars and to reimburse, in some measure or entirely, their costs of attending the meeting. The competition for Preyer Scholars is organized by the Society's Kathryn T. Preyer Memorial Committee. Submissions to the competition are welcome in any of the fields broadly defined as American legal history. Early career scholars who have presented no more than two papers at a national conference are eligible to apply. On the basis of the topics of the papers, the Committee will select one or two more senior scholars to comment.

John Philip Reid Book Award

Named for John Philip Reid, the prolific legal historian and founding member of the Society, and made possible by the generous contributions of his friends and colleagues, this is planned as an annual award for the best book published in English in any of the fields broadly defined as Anglo-American legal history. This is a new award, and its further definition and the granting of the first award is in the hands of the Society's John Philip Reid Prize Committee.

Chronicle of Selected Sessions

Of 35 sessions at the 2005 annual meeting, we received 20 reports from the session chairs. They are reproduced below as received, with only very light editing to achieve some consistency in format. If you can read only one, read John Reid's ("Intellectual Origins of the United States Constitution"); Reid brings "the report of the session chair" to heights previously unimagined for the genre.

Actions and Interests in English Law

DANIEL KLERMAN (University of Southern California) reports: This panel explored several key issues in the history of English law.

In "Ownership and Possession in the Early Common Law: The Advowson Writs," JOSHUA TATE (Southern Methodist University) revisited the classic question of the influence of Roman and canon law on the development of English common law. Using heretofore unappreciated evidence from advowson writs, Tate argued that there may indeed have been influence. Like Roman and canon law, advowson writs distinguished between ownership and possession, a distinction which is much more debatable in the early land writs which had previously been the focus of attention. In addition, like Roman and canon law, advowson litigation operated under the assumption that possession is easier to establish than ownership and that a plaintiff should first obtain possession and then allow the other party to sue for ownership.

In "Bills of Custody," SUSANNE JENKS (Independent Scholar) presented the fruits of her ongoing research into the fifteenth-century development of King's Bench bill procedure. She presented evidence which overturned received wisdom in two key areas. (1) Plaintiffs frequently secured the arrest needed for a bill of custody by requesting sureties of peace, rather than by fictitious bills of Middlesex. (2) There were relatively few bills of custody even in the late fifteenth century, both in absolute terms and relative to the number of cases initiated by original writ. The small number of bills casts doubt, Jenks argues, on the idea that bill procedure was designed to be attractive to litigants and drew business away from Common Pleas.

In "The Trust Beneficiary's Interest before *R.* v. *Holland* (1648)," NEIL JONES (Cambridge University) shows that well before *R.* v. *Holland* (1648), which has been taken as opening the way for Lord Nottingham's work, for the development of the trust beneficiary's interest as an

interest in the land, trust beneficiary's interests in Chancery were not treated as mere choses in action. Through detailed examination of manuscript Chancery records, Jones shows that in areas as diverse as forfeiture, inheritance, devisabiltiy, notice, and assignment, Lord Nottingham's work in developing the trust beneficiary's interest as an interest in the land had roots in Chancery before 1648, when, if not yet interests in the land, trust beneficiaries' interests, despite Edward Coke's assertions, could be more than mere unassignable and undevisable choses in action.

Author Meets Readers: Michael Klarman, *From Jim Crow To Civil Rights*

JUDITH K. SCHAFER (Tulane University) reports: Michael Klarman's *From Jim Crow to Civil Rights: The Supreme Court and the Struggle for Racial Equality* is an important contribution to the scholarly literature on both the history of the civil rights struggle and the effect of judicial power. In a lively and sometimes contentious session, three scholars critiqued Klarman's book.

Using Progressive Era cases and the *Brown v. Board of Education* decisions, DAVID E. BERNSTEIN (George Mason University) argues that Michael Klarman overstates his case in arguing that the Supreme Court was not especially willing to protect the rights of minorities. He argues that the Supreme Court was more sympathetic to civil rights than the general population. Bernstein points out that judicial invalidation of Jim Crow legislation was a factor that significantly aided African Americans.

PAUL FINKELMAN (University of Tulsa) argues that there was a great deal of public sentiment for civil rights in northern popular opinion. He contends that this sympathy for minority rights can be seen in the North states, many of which passed their own civil rights acts after the United States Supreme Court invalidated the federal Civil Rights Act. Finkelman further argues that the *Brown* decision did not radicalize the South, as Klarman asserts, as the South was already radical on race issues. Finkelman further argued that the *Brown* decision stimulated the civil rights movement by signaling to African Americans that they would be protected. This signal, Finkelman believes, gave African Americans the courage to sit in at lunch counters and not to move to the back of the bus.

THOMAS KECK (Syracuse University) also contends that Klarman overstates his contention that legal ideas and legal institutions are shaped by public opinion and in that sense that the court follows the election returns. He disagrees with Klarman's assertion that the law is irrelevant and the court is powerless. He also accuses Klarman of wrongly neglecting the continuing impact of legal ideas on politics.

MICHAEL KLARMAN (University of Virginia) mounted a spirited defense of his work. He especially emphasized the "backlash" effect of court decisions. The backlash to the *Brown* decision, he argues, radicalized the South. A modern comparison, he contends, is the backlash to the Massachusetts Supreme Court case which legalized same sex marriage. This decision, he argues, resulted in fifteen states passing constitutional amendments to ban same sex marriages.

Author Meets Readers: Anders Winroth, *The Making of Gratian's Decretum*

R. H. HELMHOLZ (University of Chicago) reports: Almost ten years ago, Anders Winroth startled the world of scholarship in medieval canon law by announcing the discovery of a group of manuscripts containing an early version of the *Decretum Gratiani*. These texts, which had once been described as abbreviations of the text, were actually compiled a few years before 1140, the traditional date for the appearance of the *Decretum*, and contained a purer form of the famous work, with little if any reference to Roman law. Winroth subsequently published his findings in book form, arguing that the later manuscripts, which became the basis for the text known to later medieval jurists and also modern editions, were probably not compiled by Gratian himself.

The understanding presented by Winroth's book has won general, though not complete, acceptance among historians of canon law. That was evident in this session, in which three

experts on law of the eleventh and twelfth centuries addressed the book's basic argument and approach. The session was also valuable for raising larger questions about the character of legal texts before the age of printing.

CHARLES DONAHUE, JR. (Harvard University) agreed generally with Winroth's conclusions, vouched for by his own research in the origins of Causa 27, quaestio 2 of the *Decretum*. His agreement was more qualified on the subject of the absence of Roman law from the first recension, believing that the Roman law may have worked its way into some of the material without specific attribution to civilian sources.

KENNETH PENNINGTON (Catholic University of America) spoke next. His conclusions and method of approach were not at odds with Donahue's, though he emphasized several different points of agreement and qualification. He laid particular stress on the importance of the *Decretum* as a teaching tool, showing how that approach supported Winroth's arguments, and he suggested that the first recension might actually have appeared as early as the 1120s.

CHARLES RADDING (Michigan State University), the final speaker, took a different approach. He placed the uncertainties surrounding Gratian and his text within the context of contemporary Lombard and Roman law. He concluded that the living law of the time had engaged the attention of jurists in northern Italy and speculated that their systematic analysis of legal procedure may have had an effect on the compilation of the *Decretum*. He thus raised some larger issues about the nature of legal scholarship on the eve of the revival of study of Roman and canon law—a subject to which the contributions of Donahue and Pennington were also relevant.

ANDERS WINROTH (Yale University) commented briefly on the three papers, thanking the authors for their approval of his contribution to canonical scholarship and reflecting on his current research in the field.

The Bureaucracy of Slavery and Federalism: Federal Power and State-Building, 1800-1870

ALFRED BROPHY (University of Alabama) reports:

DANIEL HAMILTON (Chicago-Kent Law School), "Confiscation and Emancipation in the 37th Congress," explored the Civil War congressional debate over property confiscation, which quickly came to include a debate over property in slaves, and whether human property would continue to be constitutionally protected. Ultimately, slavery was implicated in the confiscation debates in two important ways. First, the congressional debates over confiscation helped begin a debate that challenged legal and constitutional status of property in slaves, a debate that culminated in the abolition of slavery without compensation by the 13th Amendment. One of the signal changes of the Civil War, and one of the major shifts in the history of American property law, was the legal removal of millions of slaves from established categories of property. The debates over property confiscation offer a window on the beginnings of this fundamental reorientation. Still, confiscation was only a beginning, and neither the first nor the second confiscation acts should be read as an attempt at broad emancipation on the part of a majority of the 37th Congress. Second, the outcome of the confiscation debates had significant implications for the treatment of freed slaves by the federal government after the Civil War. Attention to the confiscation debates shows, to a large extent, why the radical goal of land redistribution failed during Reconstruction.

GAUTHAM RAO (University of Chicago), "The Posse Principle: Federal Policing in Antebellum America," argued that federal enforcement of the Fugitive Slave Act of 1850, especially through systematic use of the *posse comitatus*, constituted a distinct chapter in the history of the American state. Rao suggested that the federal *posse comitatus* illustrates continuities between the so-called courts and parties antebellum state and the postbellum administrative state. Rao concluded by suggesting that the antebellum history of the *posse*

comitatus suggests a deeper connection between early federal statecraft and the problem of slavery than has been previously understood.

WILLIAMJAMES HOFFER (Seton Hall University), "A Tale of Two Departments: Debates in Congress Over Education and Justice During Reconstruction," examined the Congressional debates on the creation of the Departments of Education and Justice during Reconstruction. He laid out the case for the existence of a "second state" approach to the process of creating federal bureaucracies. The final paper in chronological order, it raised many central questions about the growth of U.S. government with regards to issues of race, slavery, emancipation, and intellectual predilections about the role of law and lawyers in American society.

MICHAEL VORENBERG (Brown University) provided commentary. He began with an observation about recent scholarship that is recovering the importance of the state (particularly the central government) in early American history and how current politicians seem intent on reversing centralization. All three papers are part of that trend in scholarship, Rau focuses on administration; the other two focus on Congress role in the creation of the modern American state. And after discussion of the nuances of each paper, Vorenberg concluded with three questions. First, was the Civil War at the beginning or end point of the making of the modern American state. Second, each paper focuses in certain ways on the local aspects of the administration of justice. Should, therefore, localism (as Hoffer calls it) be the focus of attention. Third, was slavery, as well as the unmaking of it . . . not simply a component within the American state but in fact constitutive of the American state.

Audience discussion with questions by Paul Finkelman, Jon-Christian Suggs, Michael Les Benedict, and Robert Goldman, as well as other folks, followed.

Children and the Courts in Latin America

M. C. MIROW (Florida International University) reports:

The paper of NARA MILANICH (Barnard College), "In the Shadow of the Law?: Children in Latin American History and Society," examines an important piece of early twentieth-century Chilean legislation for the protection of children. Milanich interprets the statute, its lack of enforcement, and the widespread practice of child circulation in light of Mnookin and Kornhauser's ideas of the "shadow of the law." She concludes that the positioning of children within the shadow not only had implications for the children themselves but also for the continuation of a particular social order. The paper was read by the chair.

In "Negotiating Patriarchy: Boys, Girls, Family and State in Nineteenth-Century Rio de Janeiro, Brazil," ERICA WINDLER (Michigan State University) explores custody cases before the administrative boards of Rio de Janeiro's institutions for children. Using sources from these institutions, Windler expands the scope of analysis of these disputes away from the decisions of the Orphans' Judges. While moving towards a fuller explanation of the relationship of the Orphans' Judge and these institutions, Windler demonstrates that patriarchal rights formed a central issue when fathers, slave masters, and mothers sought custody.

The paper of ARLENE DÍAZ (Indiana University, Bloomington), "Divorce, Patriarchy, and Nation Building: Some Comparative Remarks about Nineteenth-Century Venezuela and the United States," interrogates divorce actions in Venezuela during the long nineteenth century and compares them to divorce in the United States. Despite appearances that women would be better off under new civil legislation in mid-nineteenth-century Venezuela, Díaz asserts that this was not the case. Against the backdrop of studies of divorce in the United States, Díaz notes the influences of political rhetoric and legal concepts employed by litigants. These practices informed broader ideas of social order and the state.

LINDA LEWIN (University of California, Berkeley), in comments entitled "Children and the Courts: Reassessing Patriarchal Power in Colonial and Nineteenth-Century Latin America," highlights the different treatment girls and boys received in the cases studied by Windler and

raises questions about the Navy's need for labor in relation to the apprentice school. Turning to Milanich's paper, Lewin invites Milanich to reconsider the primary object of the legislation by characterizing the law as addressing "public decency" and "public space." Lewin also observes that if many of the court cases ended without "court-mandated resolution," then the function of these courts must be reconsidered to include, perhaps, a form of private arbitration of disputes touching on *patria potestad*.

Criminal Law in the Twentieth Century

Albert Alschuler (University of Chicago) reports: This panel explored changes in the substantive criminal law of three nations during the first third of the twentieth century.

LINDSAY FARMER (University of Glasgow) began with "The Age of Trial: Responsibility, the Proof of Guilt and the Criminal Process 1890-1930." Farmer focused on the development of the modern concept of mens rea, tying this development to changes in English criminal procedure and the law of evidence. He maintained that a new sort of trial—the "reconstructive" trial—emerged in the second half of the nineteenth century, and he illustrated this thesis with a description of the trial in 1910 of Dr. Hawley Harvey Crippen for the murder of his wife.

PAUL A. GARFINKEL (Simon Fraser University) presented "Criminal Law in Fascist Italy: A Reassessment." This paper challenged the view that the Italian Penal Code of 1931 was strongly influenced by the penology of Cesare Lombroso and departed sharply from the position of the liberal government that preceded Mussolini. Garfinkel showed that the 1931 Code largely tracked the position of moderate social-defense reformers of the pre-Fascist era.

The final paper was "Rule of Law Without Due Process: Punishing Robbers and Bandits in Early Twentieth Century China" by XIAOQUN XU (Christopher Newport University). This paper noted that, in the early twentieth century, the Republic of China attempted to establish a modern legal system but confronted substantial obstacles in doing so. In a bow to perceived necessity, the Law on Punishing Robbers and Bandits authorized local officials to punish one particularly threatening category of crime in a summary fashion. The paper examined the history of this law and its renewal, the character and meaning of the new legal category it created, and some issues that arose in its administration.

The discussant was MARK STAVSKY (Northern Kentucky University). Stavsky emphasized the contribution made by Xiaoqun Xu in exploring a neglected area and the contributions made by Lindsay Farmer and Paul Garfinkel in challenging currently prevailing historical understanding.

Episodes in Early Modern Law

David J. Seipp (Boston University) reports: This session was particularly well attended.

EMILY KADENS (University of Texas) spoke about "The Relationship between Code and Custom in Early Modern Commercial Law." The French Ordonnance of 1673, drafted by Colbert, was the first code of commercial law in Europe. Historians have long said that it simply reflected longstanding commercial practice or custom, and introduced nothing new. Relying primarily on four commentaries on the Code written in the decade after its promulgation, Kadens showed several respects in which the 1674 Code did not reflect merchant custom, but rather sidestepped some contentious matters (such as interest), and set out to reform existing customs and to unify or dispense with customs, as to such matters as bills of exchange and transfers in contemplation of bankruptcy, with the goal of promoting commerce generally.

SUSAN REYNOLDS (Oxford University) gave us "The Prehistory of Eminent Domain." Reynolds took issue with F.W. Maitland's remark that England had nothing like what Americans and natural law philosophers called "eminent domain." She considered that in any settled society there must be a way for the community's needs to override the vested rights of individuals. This is a field largely neglected by legal and political historians. Reynolds drew

examples of such ideas from ancient Greece and Rome, 10th-century India, 18th-century Turkey and anthropologists' accounts of African practices, as well as some scattered European sources before 1100. She challenged historians to fill in a history of expropriation by communities and rulers in the name of a public or common good from the twelfth century onward, independent of notions of sovereignty and seigneurial lordship.

JOSHUA GETZLER (Oxford University) spoke about "*Keech v. Sandford* and the Birth of Fiduciary Law." *Keech* was 1726 decision of Chancellor Peter King that set a strict honor-bound duty for trustees and other fiduciaries to promote only the beneficiary's interest and not deal for themselves. Getzler detailed Chancellor King's career and posited that King's religiosity, his political stand against sale of offices, and his reaction to the South Sea Bubble all informed his broad and strict rule requiring fiduciary honesty. Modern commentators, including John Langbein, have criticized and attempted to retreat from the rule in *Keech v. Sandford* to a "contractarian" approach, but Getzler outlined four bases on which Chancellor King's 1726 rule should continue to govern fiduciaries.

JAMES OLDHAM (Georgetown University) provided an abbreviated but learned commentary on all three papers and the sources on which they were based, followed by some questions from the audience.

Futures for United States Legal History

ROBERT W. GORDON (Yale University) reports:

In his paper, "Law and History in the US Case: Toward a Structural History of National Legal Practices," CHRISTOPHER TOMLINS (American Bar Foundation) explored possibilities for developing a new framework for historical research and writing about U.S. law and legal institutions based on Pierre Bourdieu's concept of the juridical field. Describing a project of research intended to identify distinctive American "legal practices," with particular reference to the transformative professionalization of law and legal education after 1870, the paper proposed an approach to legal history that examines the emergence of law as the disciplinary centerpoint of the processes that produce and reproduce the "rules for the production of the rules"—that is, set the terms for the form and substance of governance. In assessing law's disciplinary character, Tomlins' paper gave particular attention to history as frame, first examining the nineteenth century's "historical school" as the first grand scientific theory of national legal development, second turning to the serial attempts made during the twentieth century (by Pound and Hurst, for example) to reconstruct a history and a historiography (a theory of history) that might once again provide an authoritative narrative of American law. The paper culminated in critical commentary on Critical Legal Studies and its offshoot, Critical Legal History, as the century's final major attempt at such an authoritative narrative, and on CLH's general implications for the intersection of law and history.

HILARY SODERLAND (University of Cambridge) drew upon her doctoral research to present a paper on the historicizing of archaeology through law. While archaeology centers on the study of material remains of past human existence, that past is interpreted in the present, assessed according to contemporary mores and shaped by the law that contextualizes them. Law has a profound impact on the meaning and inferences ascribed to the archaeological record, but legal-historical inquiry is not generally pursued within the discipline of archaeology. By examining legislative histories and juxtaposing two statutes of significance to Native Americans, she discussed how the historiography of archaeology law demonstrates the shift in the balance of power that determines authority, authenticity and legitimacy over the past as well as the relative position of subjects within historical representation. Law has thus become of primary importance in defining heritage as it has transformed the discipline of archaeology from one focused on objects to one focused on cultures.

KUNAL PARKER (Cleveland-Marshall University) gave a paper on "Context in History and Law: The Late Nineteenth Century American Jurisprudence of Custom." Although scholars have long acknowledged the contributions of legal thinkers to the emergence of modern Western historical consciousness, they have also regularly castigated legal thinkers—especially common lawyers--for failing to develop an "adequate" historical consciousness. In this rendering, common lawyers are somehow unable to situate law in a fully-rounded historical context. This paper seeks to reverse the directionality of this analysis. Instead of judging the adequacy of common lawyers' historical consciousness from the perspective of contemporary historical consciousness, it attempts to use a fragment of late nineteenth century historicist American legal thought—the jurisprudence of custom—to reflect upon forms of context that are influential in contemporary historical thought and practice. Late nineteenth century American legal thinkers conceived of custom as a frame or context for law. However, influenced by Darwinist conceptions of time, life and death, they explicitly associated with custom with "life" and posited it as forever slipping ahead of law even as it operated as law's ground. In relation to custom/"life," in other words, law was always a little "dead." As such, custom was a form of context that was never fully equal to the object it allegedly contextualized. This late nineteenth century apprehension of a mismatch between custom and object stands in sharp contrast to our contemporary historical frames, which operate on the basis of an aesthetic of complexity and as such are infinitely extensible, capable of absorbing any and every object. In addition to using the late nineteenth century American jurisprudence of custom to reflect upon the forms and limits of contemporary historical consciousness, the article joins a body of literature on the significance of the historical sensibility of late nineteenth century American legal thinkers.

MARIANNE CONSTABLE (University of California, Berkeley) and the chair commented on the papers.

Grounds for Freedom: Slaves' Lawsuits for Freedom in the Atlantic World

MELANIE NEWTON (University of Toronto) reports:

The paper of SUE PEABODY (Washington State University), "'Free Soil': Emergence and Development of an Atlantic Legal Principle," examined the development of the legal principle of "free soil" in legal jurisdictions all over the Atlantic world between 1550 and the permanent abolition of Brazilian slavery in 1888. Professor Peabody presented a table of information on around 80 court cases, legal judgments and pieces of legislation in which the *free soil principle* was invoked. This legal concept, with roots in medieval and reformation Europe, was transformed by Atlantic world slavery, as different jurisdictions were influenced by legal and political developments elsewhere and as slaves and their lawyers sought to use 'free soil' in order to challenge either the enslavement of an individual or slavery as an institution. Professor Peabody argued that invocations of the free soil principle accelerated in the mid-18th to 19th centuries, particularly due to the 'problem' of what to do with slaves brought from the colonies to metropolitan Europe and there was a shift towards the principle's elaboration through legislation rather than judicial rulings. In the aftermath of the Parlement of Paris' groundbreaking 1759 decision freeing a slave from Pondichéry, India the use of the free soil principle exploded in jurisdictions around the Atlantic world. Professor Peabody illustrated the importance of this principle to the emergence of race as a component of national citizenship, as political actors sought to limit the potentially broad inclusiveness of free soil in Europe and the United States by elaborating exclusionary definitions of the nation and citizenship.

KEILA GRINBERG (Universidade do Rio de Janeiro), "Slavery, Manumission and the Law in 19th century Brazil: the 'Free Soil Principle' in the Southern Border of the Brazilian Empire": Professor Grinberg presented a significant rethinking of the historiographical orthodoxy regarding the role of the 1831 slave trade abolition law in Brazil. Historians have traditionally dismissed this law as having had no real effect on Brazilian slavery, since imports of enslaved

Africans continued in the hundreds of thousands until the 1850s. To challenge this view Professor Grinberg used the example of slavery in the borderland region of the southern state of Rio Grande do Sul, which shares a border with Uruguay, in the period 1868-69. She illustrated that, contrary to longstanding historiographical assumptions, slaves, slaveowners, politicians and abolitionists in nineteenth century Brazil took the 1831 law very seriously. Slaves and their lawyers used a combination of the free soil principle and the 1831 law in order to press their claims for freedom. Taking advantage of the fact that Uruguay had abolished slavery in 1840, these claimants based their freedom suits on the fact that the slaves in question had crossed the Brazil-Uruguay border, which would make them free under Uruguayan law and make their re-enslavement in Brazil a violation of the 1831 law. The paper demonstrated that the free soil principle, after being legitimized by the Brazilian courts, was used by abolitionist lawyers throughout the country in the 1870s, contributing to the political movement that ended the slave regime in Brazil. These freedom suits helped to further the assumption that one's legal status could change over time and according to where one lived and were a key factor in the definition of citizenship rights in modern Brazil.

BEATRIZ GALLOTTI MAMIGONIAN (Universidade Federal de Santa Catarina, Brazil), "Maintaining slavery on shifting legal grounds: Brazilian government policy towards illegally-imported slaves (1830s-1880s)," was also a major reinterpretation of the impact of Brazil's 1830s legal framework for the abolition of the slave trade. Under the treaty signed by Brazil and Great Britain for the abolition of the slave trade in 1830 and the 1831 Brazilian anti-slave trade law, Africans brought to Brazilian territory as slaves were to be considered "liberated Africans", emancipated and trusted to the Brazilian government for a 14-year apprenticeship. According to Professor Gallotti Mamigonian, only around 10,000 of the approx approximately 700,000 Africans brought to Brazil after 1831 were classified as "liberated Africans, while the majority remained enslaved. Nevertheless, the Brazilian imperial government recognized that the enslavement of Africans brought into the country after 1831 was in jeopardy as a result of the treaty and the law. For this reason, until the end of slavery in the 1880s, the government sought to limit the legal definition of a "liberated African" as narrowly as possible in order to limit the scope of the 1831 law. By contrast, Africans' freedom suits gradually expanded the definition of "liberated African." As those classified as liberated Africans petitioned for full freedom (the release from their apprenticeship) through a government-controlled process in the 1850s and 1860s many illegally-enslaved Africans went to court, seeking freedom on the basis of the 1831 law. Their right to freedom was potentially destabilizing for the whole slave system, for it applied to a great number of those still kept in slavery in the second half of the 19th century.

The commentator, LESLIE ROWLAND (University of Maryland), stated that, collectively, the papers showed the widespread use of the concept of free soil, its entanglement with specific local circumstances, and the contradictory meanings that were attached to it. She contrasted the rather positive representation of the free-soil principle presented in the three papers with the situation in the United States, where free-soil politics, which reached their apex in the 1850s, often took an exclusionary rather than emancipatory form, with free-soilers focused not on liberating slaves, but on preserving opportunity for white people by excluding both slavery and people of African descent. She also argued for the importance of remembering that individual freedom suits can serve to legitimize slavery as a system, and emphasized Professor Grinberg's point that it is political context that makes such suits a challenge to slavery as a system. The panel, she suggested, illustrated the importance of understanding slave emancipation as a process rather than a moment in time. Still, Professor Rowland wondered whether all of the instances discussed in the three papers were in fact examples of the free-soil principle at work. In the Brazilian case, should historians perhaps think about the post-1831 era as "free time" rather than "free soil"? Nevertheless, she asserted that this panel's attention to the free-soil principle and its

elaboration in various judicial and legislative contexts in the Atlantic world represented a promising new direction in the study of slavery.

History, Memory, Justice in the Trials of World War II

ROBERT O. PAXTON (Columbia University) reports: About thirty people attended this session.

SARAH SPINNER (Yale University), "Judges on Trial: History, Memory and Justice in Post-War France." Ms. Spinner examined the trial in 1945 of seven French judges who, as members of an emergency court set up in 1941 to combat "terrorism" (the Resistance), had condemned three arbitrarily selected persons to death. Their trial was lenient and gave the victims' families no voice, even though the jury sentenced more severely than the prosecutor had asked. Ms. Spinner considered this trial paradigmatic of a general tendency in French post-war trials to minimize collaboration during World War II.

LAWRENCE DOUGLAS (Amherst College), "History and Memory in Perpetrator Trials: Nuremberg, Eichmann, Milosevic." Professor Douglas examined ways in which trials of those accused of crimes against humanity could serve historical pedagogy, as well as ways in which those two aims could conflict. Unlike some, such as Hannah Arendt, he doubted that such trials can be insulated from political considerations. Historical pedagogy should not be excluded but introduced responsibly.

LEORA BILSKY (Tel Aviv University), "The Eichmann Trial and the Legacy of Jurisdiction: Lessons for the 'New Political Trial'." Professor Bilsky examined the different rationales for Israeli jurisdiction in the Eichmann trial. Unlike the Eichmann court, which based its claim on the community of victims, Hannah Arendt justified Israel's claim on the basis that in cases involving crimes against humanity, jurisdiction belongs to the community of humankind. Professor Bilsky sought a middle ground between the two.

ROBERT O. PAXTON provided further background about the postwar trials, noting that juries were drawn not from the citizenry at large but from resistance organizations and deportees. He observed that the prosecution of judges was an exceptional procedure everywhere.

HENRY ROUSSO (Institut d'histoire du temps présent, Paris) recalled that crimes against humanity entered French jurisprudence as an imprescriptable charge in 1964 because France feared that the statute of limitations for murder would soon halt all legal action against Nazi perpetrators in Germany. He examined issues of jurisdiction and pedagogy as exemplified in subsequent trials for crimes against humanity in France.

Intellectual Origins of the United States Constitution

JOHN REID (New York University) reports: The session was very well attended, and most of the audience remained for the entire program. There were three presenters of papers:

BARBARA BLACK (Columbia University) addressed the subject entitled, "Constitutionalism and the United States Constitution." She had originally been assigned the title "The Tradition of Constitutionalism as Reflected in the U.S. Constitution." Exercising her prerogative to speak on the original theme, she undertook to trace two traditions of constitutionalism, which, she described as "relative newcomers": separation of powers and the independence of the judiciary. She detailed the origins of both these constitutional traditions from their earliest beginnings in Massachusetts Bay. The dean's historical account may have surprised some of the audience, certainly the chair, who is currently writing the last two chapters of a book claiming that in neighboring New Hampshire, there was little "judicial independence" during the era of the Early Republic.

The topic of MORTIMER SELLERS (University of Maryland) was "Republicanism and the United States Constitution." By "republicanism" he meant primarily the principles of the governance of ancient Rome, which, he showed, to have been the controlling influences guiding the framers of the federal constitution. His conclusion also surprised the chair, who has,

apparently, written too many books about the constitutional ideas of the same generation of founders, without once mentioning Rome or Romans or Roman ideas.

The discussion of the final panelist, STEPHEN SHEPPARD (University of Arkansas, Fayetteville) was clearly summed up in the title of his talk: "The Common Law and the United States Constitution." That is exactly what he talked about: the impact of English common-law constitutionalism on the framing of the federal Constitution. There were no surprises in this paper for much of the audience, surely not for the chair. He could smile and agree with all that was said.

The stunning surprise of the session now had to be addressed. It was that AKIBA J. COVITZ (University of Richmond), the announced discussant, had not come forward to sit at the panel's table. His name was called several times, but he was unable to answer, for he was back in the Old Dominion, bedridden with sickness, unable to communicate with Cincinnati. Panic was starting to spread, especially for the chair, when Steve Sheppard spotted RICHARD BERNSTEIN (New York Law School) sitting in the tenth row. On the history of the drafting of the United States Constitution, Richard Bernstein can talk on any subject, at any time, in any place, quoting James Madison and James Wilson, day by day, and minute by minute. He cheerfully and bravely consented to be drafted as discussant, and carried on, up to his usual standards, saving the chair much anxiety and certain embarrassment. The questions from the audience that followed, and the answers of the panel, were so stimulating, that Professor Sheppard brought out his computer, and took notes.

The Law of Nations in the Eighteenth Century British Atlantic

DAVID ARMITAGE (Harvard University) reports: The three papers on this panel all addressed the changing norms of the law of nations in the mid-eighteenth century from the perspective of the British Atlantic world.

In "Rebellion, Criminal Law, and the Rules of War in Britain and Colonial North America, 1745-1757," GEOFFREY PLANK (University of Cincinnati), argued that the military suppression of the Jacobite uprising of 1745 had consequences for the whole Atlantic empire. Rebels became typed as savages, and "savages" as rebels, as the militarization of the empire proceeded apace in Britain and North America, and as veterans of the campaigns of the '45 gained greater influence over imperial policy. The lines between the zones of war and zones of peace thus became increasingly blurred around the British Atlantic, as violence became increasingly acceptable as a means of keeping order within the pale of settlement, as, for example, in Nova Scotia.

In "Atlantic Maritime Legal Culture and the Law of Nations," LAUREN BENTON (New York University) argued that a similar blurring of municipal and international law could be discerned in the multiple jurisdictions that were thrust by European powers into oceanic space over the course of the eighteenth century. She used the specific example of prize-cases to illustrate a discursive shift across the course of the century which increasingly brought such cases under the purview of the law of nations. This shift took place in tandem with a new politics of the sea under which imperial jurisdictions (whether British, Spanish, Dutch or French) increasingly extended the ability to adjudicate such cases under the rubric of the law of nations.

In "States, Statelessness, and the Law of Nations in the British Atlantic, circa 1756," ELIGA H. GOULD (University of New Hampshire) traced a parallel development in the extra-European Atlantic. He described the Atlantic as world of many legalities, in large part because it was an arena both inhabited by states and marked by indeterminate zones of statelessness. He used the example of the Seven Years War to show how the tension between states and statelessness ultimately helped to propel the integration of British America into the ambit of the law of nations while also extending toleration of the "uncivilized" practices of Britain's indigenous allies during the war itself.

In his concluding comment, LEONARD SADOSKY (Iowa State University) argued that all three papers exposed the shifting limits of the British Empire and he stressed the ongoing indeterminacy, even into the late eighteenth century, of the norms of the law of nations, as well as the uncertain boundaries of "civilized" status within a world torn apart and reconstituted by both war and revolution in the second half of the century.

Matters of Definition: Law and Meaning in Nineteenth Century America

POLLY J. PRICE (Emory University) reports:

In "Judging Freedom in Slave Transit Cases and Slave Narratives," EDLIE WONG (Rutgers University) explored the contested status of slaves, and particularly slave children, voluntarily brought into "free" territories by their masters. Until the landmark case of *Commonwealth v. Aves* (Mass. 1836), slaveholders assumed the right to travel freely in the north without risking their slave property. Beginning with Harriet Jacobs' autobiographical *Incidents in the Life of a Slave Girl* (1861), Wong compares slaves' stories with judicial narratives in freedom suits involving transiting slaves. Contrasting the issue of slaves transiting in free territories with the status of the fugitive slave, Wong suggests that the publicly contested travels of southern slaves helped construct and shape the regional identities of the "free north" and "slave south" as Anglo-American case law endeavored to delineate what were unavoidably overlapping geographies of freedom and slavery.

JOHN T. MATTESON (John Jay College of Criminal Justice) presented a paper titled "A New Race Has Sprung Up: Bartleby and the Prudent Person Standard." In this paper, Matteson proposed that the "prudent person" standard of the law of negligence competed with developments in the nation's literary culture, creating a struggle to preserve classical principles of order. "Bartleby the Scrivener," Matteson suggests, presents Melville's quarrel with prudence in the contrast between Bartleby and Melville's lawyer, who is not only averse to the energy that pervades much of his profession, but also is unable to evaluate conduct on any basis other than its prudent rationality. Melville's commentary on prudence is not limited to its moral inadequacy. Matteson suggests that the careful values of the narrator were already becoming obsolete in the legal culture at large. The standard of prudent action meant that law would no longer be regarded as an articulator of public morals, but as an amoral mediator among private appetites and ambitions.

JON-CHRISTIAN SUGGS (John Jay College of Criminal Justice) provided commentary for both papers. His discussion highlighted the contributions of careful literary criticism in both papers as a corollary to judicial narrative for historical inquiry. He suggested that definitions in nineteenth-century legal categories, such as freedom based upon geography and the reasonable prudent person standard, share a broader public understanding discoverable through these more particular inquiries.

The Nineteenth Century Constitution

KEITH WHITTINGTON (Princeton University) reports:

In "The Jacksonian Makings of the Taney Court," MARK GRABER (University of Maryland) details the appointments to the Supreme Court during the Jacksonian era and how those appointments shed light on the substantive constitutional commitments of the Jacksonians and their view of judicial power. Both contemporaries and historians have suggested that the Jacksonians were hostile to judicial review, an argument that is bolstered by the claim that the Jacksonian Court did not aggressively exercise the power of judicial review. Graber shows that the Jacksonians who were appointed to the Court did not come from the wing of the party that questioned the power of the federal judiciary but rather came from the wing of the party that looked favorably on the power of judicial review, properly exercised. The apparent passivity of the Taney Court resulted from the interaction of the substantive constitutional beliefs of the Jacksonian justices and the legislative agenda of the Jacksonian Congress, not from any doubts

about judicial power. The Jacksonian justices were overwhelmingly career politicians with established records committing them to orthodox Jacksonian principles of limited national power on issues such as the Bank but with little consensus on the proper scope of state power.

In "Paper Money and Medical Marijuana: An Old Test for Congressional Power," GERARD MAGLIOCCA (Indiana University, Indianapolis) offers a wide ranging analysis of the Court's use of *McCulloch* from the Legal Tender cases to the New Deal to the Rehnquist federalism revival. Magliocca emphasizes the John Marshall in *McCulloch* was concerned only with the power of incorporation, an implied power that could intrinsically only be a means but not an end, and that the Jacksonians in particular minimized the antebellum significance of *McCulloch*. In the postbellum Legal Tender cases, however, the Supreme Court revived *McCulloch* in a context in which Congress asserted an implied power that was less directly tied to any enumerated power and not as purely instrumental as the Bank had been in the early nineteenth century. In grappling with that problem, the Court offered three different readings of *McCulloch* in three different cases. In *Hepburn*, which struck down the legal tender laws, the Court read *McCulloch* narrowly as allowing only implied powers that did not contradict the "spirit" of the Constitution as represented in textual provisions, such as its several guarantees of private property against governmental manipulation. In *Knox*, which reversed *Hepburn*, the Court read *McCulloch* broadly as establishing a balancing test in which the necessity of funding the Civil War could expand the acceptable means that Congress could use to pursue the Constitution's national purposes. In *Julliard*, the Court offered yet another reading of *McCulloch* that upheld legal tender in peacetime as a policy decision not subject to judicial review. The New Deal Court embraced the highly deferential *Julliard* interpretation of *McCulloch* to further broaden congressional power. The Rehnquist Court has adopted a *Knox*-like reading of *McCulloch* in which congressional power can trump state interests when the national interest is strong (as in *Raich*) but not when it is weak (as in *Lopez*).

In "Habeas Corpus and Reconstruction: Race, Federalism and the Origins of the Exclusionary Rule," JUSTIN WERT (University of Oklahoma) examines the shift in the scope of federal habeas between 1867 and 1885 with reference to changing political and judicial commitments along the dimensions of federalism and racial egalitarianism. In 1867, Congress enlarged post-conviction review of state court decisions by the federal courts so as to better protect freedmen and Union soldiers from state proceedings in the South, and the Supreme Court initially read constitutional protections narrowly so as to limit their scope to issues relating to slavery and race. Concerned about the Supreme Court's potential intervention in military governance during Reconstruction, however, Congress stripped the Supreme Court of appellate jurisdiction over habeas cases from the lower federal courts. The result, however, was to leave the federal circuit courts free to intervene on a wide variety of rights claims in the 1870s and 1880s, spurring Congress to restore Supreme Court appellate jurisdiction so that it could clamp down on the lower federal courts. The Supreme Court promptly did by establishing the exhaustion rule.

KEITH WHITTINGTON (Princeton University), the discussant, noted that Wert's paper was particularly useful in its analysis of the interaction of Congress and the courts in adjusting its use in the Civil War and postbellum periods and in its attention to how Congress, somewhat counter-intuitively, granted additional powers to the Supreme Court to oversee federal habeas in order to reduce the overall amount of federal intervention in state judicial processes. He pressed Wert, however, to develop further the analysis of how federalism and racial egalitarianism jointly explain the shifts in habeas during this period and to consider the extent to which the move to pare back federal habeas review was motivated by a respect for state judicial processes (as opposed to federalism as such) and/or the desire to protect the federal courts from a flood of new litigants. In regard to Graber and Magliocca's analyses of the fate of *McCulloch* in the nineteenth century, he noted the utility of incorporating constitutional politics into our understanding of the development of constitutional law and practice and how in particular their

attentiveness to Jacksonian politics alters the Court's self-serving picture of the continuity of Marshallian doctrine. In the case of Graber's paper, he questioned the characterization of some members of the Taney Court as "swing" justices and suggested that the paper might give some additional attention to the ways in which the Jacksonians conceived of the Court as a *last* line of defense of constitutional principles and the ways in which constitutional philosophy and public policy were coextensive during this period, facilitating the Jacksonian strategy. In regard to Magliocca's paper, he questioned whether a "balancing" framework can too easily be a post hoc rationalization of the Court's political wanderings and prodded Magliocca to consider further why *Knox* was seen by contemporaries and historians as calling into question the Court's legitimacy.

Outliers, Objectors and the Modern American State

MICHELE LANDIS DAUBER (Stanford University) reports:

In "The World According to Thorpe," MICHAEL WILLRICH (Brandeis University) uses the story of Herbert A. Thorpe, a turn of the century Staten Island Customs Clerk to introduce us to his spellbinding new work on the history of compulsory smallpox vaccination. More properly, Willrich is interested in the history of resistance to compulsory vaccination, and through that story, the larger issue of citizen resistance to the expansion of the modern American state at the turn of the century into domains, like whether to have invasive medical procedures such as vaccinations. Willrich is interested in the ambivalence (and outright resentment) that ordinary people felt about what we might now in retrospect cast as an unproblematic good, such as expansion of the "public health" bureaucracy. We are of course accustomed to thinking to those who resisted speech restrictions of this period as the heroes of the civil liberties movement, while we think of those—well, if we think of them at all, which we frankly didn't before—who resisted vaccination as misguided and superstitious peasants at best and crackpots who endangered civilization at worst. Willrich shows that whatever we might think now, at the turn of the century, free speechers and antivaccinationists shared the same soapbox. This work is fresh, interesting, and so well-written that it should be excerpted in the *New Yorker*. Enough said.

CHRISTOPHER CAPOZZOLA (Massachusetts Institute of Technology) presented his work on conscientious objectors during WWI: "Objecting to the Wartime State: Conscientious Objectors in the United States, 1917-18." He investigated the work of the Board of Inquiry, including the role of then-Columbia Law School Dean Harlan Fiske Stone, which was charged with determining the sincerity of the over 2,000 men who refused to fight in the war. He concluded that the objectors, particularly those who were Mennonites, played a key role in nationwide debates at that time about conscription and fairness. According to Capozzola, the history of conscientious objection in the United States during WWI reveals a fragmented and contested state, a rapidly changing landscape of civil voluntarism, and finally, both an emerging vocabulary of individual rights and a set of political institutions to protect those rights. Given the current international and political developments, this paper was timely and its insights particularly trenchant.

The final contribution was a paper by graduate student EMILY RYO (Stanford University) on undocumented Chinese immigrants who crossed into the U.S. from Mexico and Canada during the exclusionary period: "Through the Back Door: Illegal Chinese Border Crossings During the Exclusion Era, 1882-1943." Ryo calls these border crossers "the first illegal immigrants," and she argues that while economic and law enforcement explanations are useful for understanding border crossing, they offer only incomplete explanations. She looked in addition at social factors that may have influenced the immigrants to cross the border, including the widely-held view among Chinese people in China and in the U.S. that the Chinese Exclusion Acts were racist and therefore illegitimate and unworthy of obedience. Indeed, Ryo shows that many Chinese felt they had a duty to break this particular law. Ryo also looked at networks and what she called

"opportunity structures" for legal violations. Her paper is an effort to apply sociolegal theories of the role of normative values and procedural justice to illegal immigration. Her conclusions, while limited of course to the Chinese case, cannot help but suggest the futility of the government's efforts to staunch the flow of illegal immigrants from Latin American, the Caribbean, and elsewhere: her research suggests that the more U.S. immigration policy appears to be targeted at particular groups (Mexicans, Arabs, Africans) the less likely those groups are to obey the law, and thus, the less able the INS is likely to be in excluding those very groups.

RON LEVI (University of Toronto) offered insightful and helpful commentary on all three papers. The audience also asked many interesting questions of all three panelists, and the discussion was intellectually stimulating and lively.

Political Economy as a Legal Form in Colonial American

CHARLOTTE CRANE (Northwestern University) reports:

In "Creating an American Property Law: Alienability and Its Limits in American History," CLAIRE PRIEST (Northwestern University) adds a significant new chapter to the debate about the distinct nature of property law in America by tracing the extent to which creditors' remedies in the colonies differed from those available under traditional English law. Under English law, unsecured creditors could not seize debtors' land to satisfy debts, and even secured creditors who had obtained pledges against the debtor's land found it difficult to realize much value from these pledges. This was far from accidental, given the role of land in establishing social and political stability in England, a stability that came at great cost, Priest asserts, to economic development. In the colonies, on the other hand, it was far more likely—as a result both of the colonies' own charters and legislation and of Parliament's 1732 *Act for the More Easy Recovery of Debts in America*—that creditors had remedies that could force debtors to relinquish completely their rights in land. (One aspect was an indirect effect of the 1732 Act: a reduction of the burden on the creditor of the equity of redemption—a reduction that Priest dates to a much earlier time than other accounts have suggested.) These innovations in creditors' remedies, although not uniformly adopted in all of the colonies, made credit (and the economic development that credit facilitates) easier in the colonies, and contributed to the development of modern markets for land.

In "The Politics of Paper: a Working Currency for a Middling Man's Market," CHRISTINE DESAN (Harvard University) explores the link between paper finance and popular sovereignty in the mid-eighteenth century in the colonies of the mid-Atlantic. By examining the writings of the pamphleteers of the 1720's and 30's, she uncovers the scope of the debate about currency finance. To the pamphleteers and their audience, debates about currency finance were not just the shrill claims of those hoping for emission of paper money and relief for debtors pitted against the stubborn indifference of those seeking payment in specie and the protection of creditors. Rather, according to Desan, the debate was about market access and shared opportunity. Underlying this debate was the acceptance, by both sides, that monetary control was an appropriate aspect of popular politics. Money and liquidity, and the underlying value they represented, was understood to be a localized, community function. This understanding, furthermore, allowed the debates to acknowledge the distributional aspects of currency finance in particular and public finance generally, aspects that would by the end of the century be at least partly displaced by the more individualized Hamiltonian conception of public finance.

In "Abigail Adams, Bond Speculator," WOODY HOLTON (University of Richmond) reveals that Abigail Adams was not always the compliant wife. Her independence, Holton asserts, was clearly revealed in the financial decisions she made when left in charge of the family finances in the decade that John was absent from Massachusetts. Abigail clearly refused to purchase land near their home in Braintree, despite John's express request that she do so; and, contrary to John's directions and even his announced public position, she purchased securities of the Massachusetts state government at substantial discounts. Abigail's positions, according to

Holton, were clearly the more financially astute. They are explained, Holton suggests, by the fact that, as a married woman in the late 18th century, she had none of the ties to the political world that might have led to restraint in her personal finance decisions, and none of the pride of ownership that might come with actually being able to own anything on her own. (Not insignificantly, she probably also felt helpless to get much value from additional land holdings should trustworthy tenants be scarce, especially given the fact that her social relations with many of her neighbors and tenants included benevolent support.) Holton also suggests that Abigail not only made her own financial decisions, insisted on an atypical degree of independence when she referred to some of her assets as "money which I call mine."

Discussant ALLAN KULIKOFF (University of Georgia) urged Desan to make clearer the role of self-interest and shared interest with specific reference to those who were only newly rich, and he took Holton's observations about Abigail Adams's success as something of a proof of the importance of the former; he urged Priest to be careful not to accept too unquestioningly the claims of 19th liberal thinkers regarding the importance of the legal innovations she outlines. Discussant CHARLES MCCURDY (University of Virginia) speculated that it would not be easy for Priest to find the kind of direct evidence of the effect of her innovations that others might want—since debtors facing the loss of their land are likely to do anything to avoid losing their land, the statute could have the claimed effects without a single piece of land actually being subject to execution at the request of a creditor; he hoped that Desan would consider further why popular sovereignty in matters of public finance seems to have been so easily displaced at the end of the century.

Public Authority and Private Matters in Early American Law

ELAINE FORMAN CRANE (Fordham University) reports:

The session explored several aspects of the darker side of American life in the colonies and early republic. RICK BELL (Harvard University), "Escaping the Hangman: Suicide in Legal Thought in the Early Republic," placed suicide and capital punishment in its cultural context. KIRSTEN SWORD (Indiana University, Bloomington), "Cried Down and Published: Newspapers, Neighborhoods, and the Regulation of Early America," showed how abandonment and divorce were formulaically aired in the media of the day. MICHELLE JARRETT MORRIS (Harvard University), "Sex for Cheese: An Unintended Consequence of Fornication and Paternity Suits in Puritan Massachusetts," discussed the intimate connection between sex, trade, and paternity suits. And with his usual panache, commentator MICHAEL GROSSBERG (Indiana University, Bloomington) offered insights and suggestions for advancing the panelists' arguments.

A Tribute to Kitty Preyer

CHRISTINE DESAN (Harvard University) reports: This panel paid substantive tribute to the scholarship, teaching, mentoring, and professional contributions of Kathryn (Kitty) Preyer. Along the way, participants celebrated as well the qualities of joy, curiosity, and friendship, which so marked Kitty's presence in the American Society for Legal History. Christine Desan made introductory remarks, focusing on the way a variety of scholars, students, and friends described Kitty Preyer's unique personal and professional contributions to the community.

MAEVA MARCUS (Documentary History Project of the United States Supreme Court) began with an analysis that captured the power of Kitty's scholarship on the Judiciary Act of 1801. Kitty's study, concluded Marcus, "demonstrated that the act was not a power grab by Federalists dismayed by their loss of the presidency and Congress." Rather, Kitty's work exposed the way that deficiencies in the Judiciary Act of 1789 triggered reform efforts and strategies before the political troubles of the Federalists began. Marcus also stressed the enormously erudite contributions made by Kitty to the documentary history project as a member of its editorial board.

JOHN GORDAN (Morgan, Lewis) reviewed Kitty's interests in law as a practice of everyday life, as reflected in her scholarship on the role of jury as well as her fascination with the ordinary legal texts of the eighteenth century. Exploring the first allowed her to uncovered the complex politics of the early national period; exploring the second led her to discover the authors, printers, and readers of books and the law in a new way. Laced through John's recollection was Kitty's enormous intellectual curiosity and immense humanity.

The history Kitty produced on the federal criminal law became the focus of MORTON HORWITZ (Harvard University). In a careful reconstruction of Kitty's argument, Horwitz demonstrated her intellectual courage in rejecting the conventional wisdom that a Federalist consensus in favor of a common law of crimes existed. Kitty parsed the historical context to reveal categories of judicial analysis that disaggregated much of that "consensus" and, in the process, cast the politics of the early Republic in a new light.

Approaching Kitty's work on American juries, PAULINE MAIER (Massachusetts Institute of Technology) emphasized the care and evenhandedness with which Kitty handled the explosive politics of the Early Republic. The most committed localists receive their due in this work as do the most single-minded Federalists. In the history that results are insights on matters from nation building to the human condition that remain terrifically relevant to our own fractured political course.

KENT NEWMYER (University of Connecticut) located Kitty's particular skill at capturing the creative process at the intersection of law and politics. From her portrait of John Marshall's appointment as chief justice, to her account of the federal jury and the federal Judiciary Acts, Kitty understood "history in motion" as a clash of "rational calculation and accident, greed and idealism." Kitty, as remembered here, gloried in the complexity of circumstance and the humans who encounter it.

Widows and the Law

BRUCE SMITH (University of Illinois, Urbana-Champaign) reports:

The first panelist, PAUL BRAND (All Souls College, Oxford), presented "Taking Thirteenth-Century Statutes Seriously: The Strange History of Remedies Based on Chapter Seven of the Statute of Gloucester (1278)." Chapter Seven of the Statute of Gloucester permitted an heir or reversioner to bring a writ of entry against a woman who gave or sold in fee or for a term of life land that she held in dower. Dr. Brand's paper demonstrated that, shortly after 1278, chancery began to issue writs to persons seeking to challenge purported alienations in fee by tenants for life by grant and curtesy tenants – classes of persons not specifically mentioned in Chapter Seven. Indeed, chancery did so before the enactment of the Statute of Westminster II (1285), which formally authorized chancery to grant remedies similar to those that already existed but where no writ was available. In the ensuing decades, as the paper reveals, chancery issued writs in circumstances that ventured considerably beyond both the "letter" and "spirit" of Chapter Seven. By the first decade of the fourteenth century, the Common Bench had sought to require chancery to clarify that the remedy offered was by way of *analogy* to Chapter Seven rather than by way of application of the provision's actual wording – a development that may have been designed to heighten scrutiny of such writs.

JANET LOENGARD (Moravian College), the second panelist, delivered "Deciding What a Widow Needs: Paraphernalia in the Courts." Professor Loengard's paper shed light on the medieval and early modern history of paraphernalia: those chattels—described by Maitland as "jewels, trinkets, and ornaments of the person"—claimed or retained by a widow (before the late nineteenth-century Married Women's Property Acts) after her spouse's death. Although a husband could sell or give away such items during his lifetime, and they were subject to the posthumous claims of his creditors, he could not leave them by will. Over the period surveyed in the paper, widows' property in paraphernalia proved to be both shifting and vulnerable, modified

(in London and York) by custom, targeted by grasping executors, and, increasingly, limited to those types of items deemed "appropriate" to the widow's station. In the seventeenth century, chancery increasingly shaped the law of paraphernalia, ultimately leading, in the ensuing century, to a more consistent and – for widows—more favorable body of law.

The discussant, HAMILTON BRYSON (University of Richmond) offered several succinct observations that allowed ample time for members of the audience, numbering close to 30, to pose a series of incisive questions to the two panelists.

Wives and Mothers

KRISTIN BRANDSER (Law, University of Cincinnati College of Law) reports: This well-attended early morning panel explored historical issues relating to women and the law. The three papers offered insights into women's legal roles and status, as well as called into question certain traditionally-held assumptions regarding women's real-life interactions with the law.

LLOYD BONFIELD (Tulane University) presented a paper entitled "The Myriad Roles of Women in Will-Making and Testamentary Litigation in Late Seventeenth Century England." Drawing on his extensive archival research into the records of the Prerogative Court of Canterbury, Bonfield presented data showing that women were active participants in the will-making process. Women, in significant numbers, made wills of their own and played important roles in directing the "testamentary destinies" of others. In his presentation, Bonfield presented fascinating examples of women as witnesses in testamentary litigation. He particularly noted that women were well-placed to make observations very relevant to disputes in probate because of the prominent roles they played (as servants, nurses, and care-givers) in the realm of the deathbed.

DANAYA WRIGHT (University of Florida) presented "Interspousal Custody Battles and the Unfulfilled Promise of the 1858 Divorce Court." In this paper, Wright offered three case studies of wives who filed for marital termination and unsuccessfully sought custody of their children. She used these examples to demonstrate observations she has made based on extensive research into the records of the 1858 Divorce and Matrimonial Causes Court. Specifically, Wright highlighted ways in which gendered stereotypes about proper female behavior clearly influenced decisions. She also noted a judicial willingness to give men (but not women) the benefit of the doubt with respect to previous bad acts, and an inability of even wealthy families to adequately protect women against husbands committed to exerting their control. Wright also identified a growing societal tendency to define marital relations around legal norms and in legalistic terms, which had the effect of forcing women to behave in narrowly constrained ways.

KEVIN MCCARTHY (University of Georgia) presented a paper entitled "Racializing Motherhood: Black and White Women's Experiences in Mississippi Chancery Courts, 1870-1920." This paper opened by positing the intriguing question of what might be the significance of the novel inclusion in the 1906 Mississippi *Revised Code* of a provision requiring that all divorce decrees specify the race of the parties to the suit. McCarthy then proceeded to offer a nuanced analysis of Mississippi's county chancery court records in support of his argument that this change symbolized a shift in the legal experiences of women at the turn of the century. Specifically, he documented a weakening of court protections previously granted to black women as mothers and a related enhancement of white maternal identity and associated protections.

LAURA EDWARDS (Duke University) offered a rich and insightful commentary on these papers. After noting that the research of these presenters moved beyond the consideration of women within a male historical narrative, Edwards identified and discussed thought-provoking ways in which these papers, by bringing women's experiences to the center, altered our view of legal history.