ASLH Newsletter

Winter 2003

2003 Annual Meeting, Washington, D.C.

The Society's thirty-third annual meeting will be held November 13-15, in Washington, D.C. The host hotel will be the Capital Hilton. Co-chairs of the local arrangements committee are LEWIS GROSSMAN and JAMES P. MAY, both of whom are at American University's Washington College of Law. ARIELA GROSS is chair of the Program Committee <aslhprogram@law.usc.edu>. Additional information about the meeting will be available on the Society's web page at <http://www2.h-net.msu.edu/~law/convention.htm>.

2002 Annual Meeting, San Diego

The Society's thirty-second annual meeting was held November 7-10, in San Diego. Special thanks go to the co-chairs of the local arrangements committee MICHAL BELKNAP and MICHAEL PARRISH.

Thanks also go to the Program Committee: DAVID RABBAN, University of Texas, chair; SUSANNA BLUMENTHAL, University of Michigan; ADRIENNE DAVIS, University of North Carolina; SARAH BARRINGER GORDON, University of Pennsylvania; MARK GRABER, University of Maryland; MICHAEL KLARMAN, University of Virginia; ADRIAAN LANNI, Harvard University; TAHIRIH LEE, Florida State University; REBECCA SCOTT, University of Michigan; STEPHEN SIEGEL, DePaul University; DAVID SUGARMAN, Lancaster University; CLAIRE VALENTE; and RICHARD WETZELL, German Historical Institute.

The Society is also grateful for the help with registration and other administrative details received from these students: JERALYN COX, LYNNE HULLER, DAVID PYE, JEREMY THOMAS, and RACHEL VAN.

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2002 Annual Meeting, Board of Directors

The full minutes of the Board of Directors meeting are posted on the Society's web page. Key announcements made at the meeting were these:

Approval of the following:

1. proposals to continue the digitization of back issues of the *Law and History Review*. As a result of Chris Tomlins' work, there will be no cost to the Society for the digitization process.

2. a life membership for Dirk Hartog as an expression of the Society's gratitude for his service as co-editor of the series published by the University of North Carolina Press.

Surrency Prize

The 2002 Surrency Prize went to Professor Maria Cgren for her article, "Asserting One's Rights: Swedish Property Law in the Transition from Community Law to State Law," which appeared in volume 19 of the *Law and History Review* (2001).

Sutherland Prize

The Sutherland Prize was not awarded in 2002.

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2002 Annual Meeting Sessions

Reports from the chairs of sessions at the 2002 Annual Meeting are reprinted below to provide a summary of the work currently being done across the range of the Society's membership.

Civil Liberties in Time of War: A Roundtable
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SANDY LEVINSON reports: I chaired a panel on Civil Liberties During Time of War, a topic of obviously more than "merely" historical interest. MICHAEL KENT CURTIS led off with a discussion of civil liberties during the Civil War, especially the attempts to stifle Clement Vallandingham. He was followed by JOHN SEMONCHE, who "stole the show" by including as a visual aid a number of fascinating political cartoons as part of his presentation on popular altitudes towards civil liberties during and following World War I. MARY DUDZIAK then concluded the panel by discussing World War II and the Cold War, together with a very recent essay she has written on the aftermath of September 11. As is generally true of good panels, the principal problem was that there was not enough time for discussion afterwards, though what discussion did take place was certainly interesting.

Law and Legislation in Greece and the Near East
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MICHAEL GAGARIN, University of Texas, reports: Despite the early hour a large audience (more than 20) heard two papers and a response that focused on similarities, differences, and possible connections between legislation in ancient Greece and the ancient Near East. MICHAEL GAGARIN began with a comparison of two large collections of inscribed laws, one from the city of Gortyn in Crete and the other from Babylonia (Hammurabi's laws). He argued that the Babylonian text was intended primarily to glorify Hammurabi himself as a "just king," but the Gortyn laws were intended for practical use in actual litigation, and were organized in ways that made it easier for the reader. He ended by comparing the sections on adoption in the two collections. At Gortyn, the general rule for adoption comes first, followed by the procedure for adopting someone, and then further rules for certain specific situations. Hammurabi, by contrast, presents nine individual provisions, that provide guidance for specific situations but say nothing about adoption as a whole or many fundamental issues that might arise in connection with it. Hammurabi¹s laws serve to illustrate just responses to specific situations but unlike the Gortyn laws, would be of little use for most cases.

EDWARD HARRIS, City University of New York, then discussed a wide range of material from Greece and the Near East that illustrated how the Greek attitude to law differed from that found in the Near-Eastern kingdoms, and what effect these different approaches had on the shape of their laws. Near-Eastern kings were primarily concerned with strengthening and legitimizing their power and ensuring their subjects loyalty to a just king. By contrast, Solon in his poetry envisioned the law as a way of creating the right relationship between the people and their leaders to promote freedom. This contrast between the different views of law and its role in society help to explain the different forms that laws took in the Near East and in Archaic Greece. The response by EVA CANTARELLA (who regrettably could not be present) was read by Adriaan Lanni (Harvard). She raised the issue of possible Near-Eastern influence on Greek laws and pointed to certain unanswered questions raised by the two papers. The response led easily into a lively discussion.

A Duty of Care: Being Responsible for the Mentally Incapable in the Eighteenth-Century Atlantic World

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Lloyd Bonfield <lbonfield@law.tulane.edu>

JOANNA GROSSMAN (Hofstra Law School) reports: Before a small, but intellectually engaged audience, this panel explored the little studied field of guardianships – the legal institution designed to protect the person and property of the mentally incapable. The papers and commentary examined the law and practice of guardianship from a comparative perspective. RAB HOUSTON (University of St. Andrews, History) presented “Capax and Incapax in the Civil Law of Eighteenth-Century Scotland,” exploring the law and practice of cognitions, the Scottish equivalent to the American guardianship. Based on a study of 222 cases filed between 1580 and 1818, Professor Houston presented demographic data about the guardians, wards, witnesses, and jurors, as well as data about the number of writs granted (most), contested (very few), and denied (almost none). He described the procedure for cognoscing someone alleged to be mentally incompetent and explained that it was openly designed not only to protect that person but to protect his heirs against dissipation of their inheritance. Professor Houston emphasized the role of jurors in these cases and the fact that they were expected to draw on personal and community knowledge in assessing the mental function of the person being cognosced. He also pointed out that there was little or no reliance on medical or scientific testimony in determining capacity; jurors instead based their decision on lay and legal testimony about capacity. Professor Houston’s paper was part of a larger project on madness in eighteenth-century Scotland. CORNELIA H. DAYTON (University of Connecticut, History) presented “Gender, Rights Talk, and Local Knowledge: Non Compos Mentis Guardianships as Legal Process in New England, 1725-1820,” exploring guardianships during their first century of existence in Massachusetts. Based on an empirical study of guardianship files in three counties, Professor Dayton presented data on the number of guardianships, the identity of wards and guardians, the success rates, and the procedure used for considering guardianship petitions. She described guardianship as a protective mechanism, reserved primarily for propertied, white New Englanders. Those outside the circle of protection relied on other means to protect the persons and estates of the incompetent such as incarceration, poor relief, and family aid. She focused on the use of local knowledge and the heavy reliance on community opinion in ascertaining mental capacity. She also cited examples of “Rights Talk” in the guardianship cases, in which the subjects invoked governmental promises of liberty to contest having their legal status stripped. She noted the unusually high number of never-married men as subjects of guardianship petitions. LLOYD BONFIELD of Tulane University Law School as commentator observed that in societies in which property is sacred, be it our own or those in the past, separating individuals from the use, enjoyment and disposition of their money is not a task that law undertakes lightly. Such a legal order therefore must tread lightly when it creates a system that allows us to determine “natural fools, mad-folks and luniticks” as John Brydall categorized those Non Compos Mentis in his late seventeenth century treatise and separates them from the full use their worldly goods. Professor Bonfield suggested that the social distribution of those hauled before the process of civil court cognition was strong evidence that the Scottish cases were about property. Yet what Scot’s law did not do, and what present day legal minds have also not done is to professionalise the process: lawyers, craftsman, and merchants were more likely to be deciding the issue of mental capacity as jurors than were doctors. Most of the evidence produced was “common opinion” or “common sense.” Professor Bonfield’s own work on testamentary litigation in the PCC in the later 17th century suggests the same pattern. When a contestant sought to set aside a will very little medical evidence was produced; very few doctors summoned to testify. Rather, the case was made by recourse to lay observation, much of it hearsay, focusing on the bizarre conduct of the will-maker. Professor Grossman, also as commentator, drew some comparisons between the studies presented and a study of guardianships in California in 1900 and several studies of modern day guardianships. She noted that the Professor Houston’s and Professor Dayton’s studies were surprising

in their finding that the process was openly designed to protect the community from obnoxious behavior of the mentally incompetent subject and to protect heirs from dissipation of their inheritance. Later studies of guardianship focus more exclusively on protecting the subject himself. She also commented on the lessening role for community opinion over time, as judges took over as decisionmakers and hearsay testimony was replaced with medical and scientific testimony. She noted the consistently small number of contested guardianships in each study and questioned whether that indicated an effective system that produced fair results or rather reflected a system in which the mentally incapable were simply unable to avail themselves of the procedural safeguards open to them. Finally, she questioned how guardianship proceedings have changed over time as an increasing number of subjects suffer from age-related disabilities rather than insanity and as an increasing number have spent time in institutional settings.

Religion and Law in Roman Republican Society

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W. JEFFREY TATUM (Classics, Florida State University) reports: CHRISTOPH KONRAD (Classics, Texas A&M) gave a paper entitled “Dictator Interregni Caussa,” in which he reconstructed, on the basis of a provocative but overlooked notice in the Capitoline Fasti and various literary references, the means by which the senatorial establishment manipulated constitutional procedure and augural law in order to induce Gaius Flaminius to abdicate his consulship in 233 BC. This incident illustrated the extent to which the political establishment regarded auspices as essential to the continuation of government in Rome and demonstrated the workings of the logic of augural law. HANS-FRIEDRICH MUELLER (Classics, University of Florida), gave a paper entitled “Restraints on Assembly: Religious and Legal Aspects of Nocturnal Conspiracy in Ancient Rome,” in which he emphasized the coincidence of legal and religious prohibitions on nocturnal assemblies for the lower classes, with special attention to the Bacchanalian conspiracy. W. JEFFREY TATUM (Classics, Florida State University), gave a paper entitled “The Role of the People in the Legislation of Roman Religion,” in which he employed a close study of the legal arguments of Cicero and Clodius over the religious propriety of restoring Cicero’s house and of the pontiffs’ and senate’s subsequent decisions on the matter in order to locate the role of the People in religious dedications. The paper argued that, despite an unchallenged and legitimate part to play in the authorization of dedications, the people were excluded from technical and legal assessments of their validity, which remained elite and senatorial monopolies, a conclusion that has implications for recent assertions regarding republican Rome’s democratic nature. PETER OH (Law, Florida State University) commented on all the papers, observing the extent to which religion in republican Rome, even when the source of conflict amongst elite, tended to maintain the status quo and also observing the significant political power that resided in the colleges of augurs and pontiffs. On this final point, he drew interesting comparisons with judicial expertise in American society.

New Perspectives on American Military Legal History, 1950-2000: Travails, Trials, and Tribulations

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BILL ECKHARDT reports: Three quite different papers and an insightful commentary captivated those attending the session on New Perspectives on American Military Legal History. Professor WILLIAM G. ECKHARDT, Clinical Professor of Law at University of Missouri Kansas City School of Law, a military law practitioner and a chief My Lai court-martial prosecutor, chaired the session. Professor MICHAEL R. BELKNAP's paper – "Political Manipulation of Military Justice – The Nixon White House and the Calley Court Martial, 1970-1974” – was based on his new book *The Vietnam War on Trial* and, because of his illness, was read by his former professor and mentor, University of Wisconsin Professor Stanley Kutler. As the title suggests, this paper dealt with the Nixon Vietnam era and that administration's handling of the Calley case in the My Lai massacre prosecutions. Professor Belknap, from California Western School of Law, persuasively made the point that the incident was exploited for political purposes to the detriment of unimpeded administration of justice. Drawing upon his distinguished service as Historian of the United States Court of Appeals for the Armed Forces and his ground-breaking book, *Military Justice in America: The U.S.*

Court of Appeals for the Armed Forces, 1775-1980, JONATHAN LURIE's paper was entitled "Appellate Military Justice, Civilian Control of the Military and Legal Scholarship: Why the Deafening Silence?" Professor Lurie, from Rutgers University, decried the lack of civilian scholarly interest in military justice and urged more rigorous Supreme Court oversight. His specific recommendations included an end to the isolation of the academic law community from military justice issues, a called for a congressional blue ribbon committee to evaluate fifty years of the Uniform Code of Military Justice and several recommended changes for the Court of Appeals for the Armed Forces. The Court of Appeals changes included screening future appointees and a discontinuation of the policy of using former military legal officers as judicial clerks. The third paper – "Chains of Command: Some Examples of the Uneasy Relationship between Reform in Military Justice and Courts-Martial, 1951-1973" – was presented by Professor ELIZABETH HILLMAN of Rutgers School of Law at Camden. She reported that the military justice system "remained a system marked by extraordinary discretion and taxed by the environment and culture in which it operated." She noted the tension between military culture and legal reform by using case studies involving gender and racial discrimination. Beth Hillman is currently revising a book manuscript entitled "Defending America: The Cold War Court-Martial and American Military Culture." Commentary was in the competent hands of Professor DIANE MAZUR of the University of Florida who has just published a lengthy law review article entitled "Rehnquist's Vietnam: Constitutional Separatism and the Stealth Advance of Martial Law."

The Constitutional and Legal Implications of the Long Parliament

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ALLEN D. BOYER, New York City, reports: Organized around the most celebrated parliament in English history, which was summoned by Charles I in 1640 and survived to restore Charles II in 1660, this session ranged across two continents and more than two centuries of history and historiography. MICHAEL MENDLE, presenting "D'Ewes' Diary of the Long Parliament and English Constitutional and Legal History," examined how the antiquary's personal account of the Long Parliament was created and how it was rediscovered during the Victorian era. Professor Mendle discussed the difficulties Sir Simonds D'Ewes' friction with the Commons has caused later scholars – leading to debates, for example, over whether he actually gave the speeches as he claimed. Visual aids illustrated the difficult handwriting which confounded Thomas Carlyle. On balance, Mendle concluded, internal evidence and external corroboration lend credibility to D'Ewes' narrative. ROBERT ZALLER spoke on "Impeachment in Stuart Parliaments 1621-41." His paper emphasized the way in which impeachment offered dissident MP's, so to speak, the opportunity to criminalize government policies with which they disagreed. Zaller highlighted the role of Sir Edward Coke in reviving the medieval procedure. He also illustrated how impeachment could initially be seen as a species of parliamentary self-discipline, with the Commons proceeding against monopolists who (coincidentally) happened to be among its members – and how popular it soon became with parliamentarians. MAIJA JANSSON, with her peventeenth-Century England," reviewed the enduring rivalry between the common-law courts of England and the English tribunals in which the civil law was applied, most notably the ecclesiastical courts and the regional prerogative courts. Her paper drew on the proceedings of the Long Parliament in the impeachment of the Earl of Strafford, recently published by the Yale Center for Parliamentary History. From England, Jansson looked to Virginia in the era of the Revolution, where Thomas Jefferson suggested that church courts were an injustice against which patriots should take up arms.

Law and Statebuilding in Modern America

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JIM WOOTEN (SUNY at Buffalo, School of Law) reports: BILL NOVAK (History, University of Chicago) presented "The Legal Origins of the Modern American State." Between 1877 and 1937, observes Novak, there was "a decisive . . . reconfiguration of the relationship between state, capitalism, and population in the United States." Although recent work by social scientists has illuminated American political development during these years, this scholarship gives a flawed view of the role of law in the process of state-building. Like the progressives before them, contemporary social scientists tend to view law as "an obstruction." Novak offers "an alternative story of law's positive force in

producing a modern state in America." This story emphasizes the ascendancy of federal constitutional law over common law, "the centralization of power" in the federal government, the increasing importance of individual legal rights as defined by the federal state, and new conceptions of government developed by theorists including John W. Burgess, Woodrow Wilson, and W.W. Willoughby. REUEL SCHILLER (Univ. of California, Hastings College of Law) presented "'Saint George and the Dragon': Courts and the Development of the Administrative State in Twentieth-Century America." Like Novak, Schiller praises recent social-scientific studies of state-building while attempting to correct a defect in this scholarship. Social scientists who study the development of the administrative state, says Schiller, "have essentially ignored the judiciary." This omission is important because studies by legal scholars show that judicial oversight often forces agencies to adopt procedures and styles of reasoning that will pass muster in the courts. In this way, Schiller observes, judicial interests and values "have shaped bureaucratic outcomes." To present an accurate account of the development and behavior of agencies, social scientists will need to gain a more fine-grained understanding of the interaction of agencies and courts. The main reason that social scientists have overlooked the courts, Schiller concludes, is that "legal historians have not generated secondary materials on administrative law." MICHELE LANDIS DAUBER (Stanford Law School) presented "The Sympathetic State," which is part of a broader study entitled "Helping Ourselves: Disaster Relief and the Origins of the American Welfare State." Like Novak, Dauber rejects the view that the Supreme Court "sharply constrained" federal intervention in the economy before the New Deal. The conventional view is that the Supreme Court was hostile to redistributive measures between 1865 and 1937. Dauber's research reveals a different pattern. In the nineteenth century, Congress regularly appropriated funds to aid victims of "disasters," while the Supreme Court did nothing to prevent this course of action. The practice of disaster relief, which reached a high point in Congress's post-bellum debates over the Freedmen's Bureau, was a key legislative and constitutional precedent for the Social Security Act. Seen in this light, says Dauber, the Social Security Act seems less the product of "an innovative legal or political strategy" than of arguments and values that were "routinely deployed" for decades before the New Deal.

The Politics of Law and Race: A Critical Look at the History of Federal Indian Law

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BETHANY BERGER, who serves as a research professor of Indian Law at the University of Connecticut School of Law, offered a provocative new look at *United States v. Rogers* (1846). Berger emphasized that Chief Justice Taney's brief opinion for a unanimous Supreme Court marked a turning point – perhaps deliberately orchestrated by the executive branch – that moved from vindicating broad federal power over Indian tribes toward power over individual Indians. *Rogers* involved a challenge to federal criminal jurisdiction that arose when one white man, who had married a Cherokee woman and been adopted by the tribe, allegedly killed another white man, who also had been adopted under similar circumstances. The Court was not fazed by the fact that the accused killer had died in the process of trying to escape from federal custody many months before oral argument. Instead, Berger explained, the Court was anxious to hold that federal jurisdiction trumped tribal jurisdiction and to emphasize that tribes were not to be dealt with as political entities, but rather as collections of individuals subject to federal regulation. Moreover, Taney somewhat anticipated his *Dred Scott* opinion by relying on concepts of race in defining Indians as a discrete category. This was linked to the importance of national citizenship for whites, which could not be renounced even unilaterally. Berger clearly explained the *Rogers* decision within the context of both the Cherokee removal and the subsequent "Cherokee Civil War." She also briefly described the paradoxical rise of bureaucracy and ethnology against the background of an ongoing national political debate over sovereignty and territorial expansion. Her emphasis, however, was on the Court's new definition of tribal boundaries as racial, thereby advancing federal control over tribes whose authority could be significantly diminished even without the need to claim racial inferiority. Leaping across a century and a great deal of geography, DALIA TSUK's paper focused on a dispute over valuable Alaska Native fishing rights. Tsuk, who is a professor at the University of Arizona School of Law, used the Supreme Court's divided opinion rejecting the claim of Native monopoly fishing rights in *Hynes v. Grimes* (1947) to underscore the choice of presumptive economic efficiency – presented by several large canning companies – over the values of tradition. Tsuk analyzed competing visions of protection, and she provided a clear description of how the Native story never surfaced when pitted against anti-monopoly rhetoric that benefitted the powerful packinghouses. In her view, *Hynes* demonstrates that efficiency easily could be and was utilized to mask deep hostility toward native cultures. Natives – regarded by the legal system as members of an "unprofitable race" – did not rely on occupancy, and fishing was a traditional way of asserting identity as well as assuring survival. Yet the Court rejected Justice Douglas's dissenting point that all groups are not similarly situated, and that New Deal Indian policy had recognized

and protected such differences. BRYAN WILDENTHAL of Thomas Jefferson School of Law and AVIAM SOIFER of Boston College Law School agreed in their comments that these two papers contained several important, mutually reinforcing themes. In particular, both papers demonstrated that racial categorization has been a crucial yet elusive component of judicial decisions dealing with Native claims, even when the racial elements are masked by neutral-sounding analysis of sovereignty, jurisdiction, and efficiency. The papers illustrated how consideration of the racial element within litigation about Native rights might supplement established understandings about both race and law. Audience members developed these themes and posed additional questions to both presenters.

The Unemployed, the Widowed, and the Crippled: Law and the Making of Twentieth-Century American Social Provision Policy

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GILLIAN LESTER (University of California, Los Angeles) reports: About 40 conference participants gathered Saturday morning to hear three stimulating papers focusing on early- to mid-20th Century developments in the American social welfare state. DEBORAH MALAMUD (University of Michigan) presented "'Who They Are - or Were': Delivering Public Relief to the White-Collar Unemployed in the Early Years of the New Deal." This case study of federal welfare relief programs during the early New Deal (1933-35) revealed exquisite sensitivity on the part of Harry Hopkins, head of the Federal Emergency Relief Administration, and his associates to protecting the interests of white-collar middle class workers from the indignities of unemployment and downward mobility. That the needs of the lowest skilled white collar workers were given priority over those of the highest skilled blue collar tradespeople brought into sharp relief the centrality of "preserving middle class-ness" to New Deal unemployment relief policy. JOHN WITT (Columbia University), in "From Free Labor to Actuarial Risk: Workmen's Compensation and the Statistical Revolution in American Law," showed how statistical thinking, by exposing the inevitability and predictability of workplace accidents, laid the foundation for state workman's compensation laws. Witt suggested that the statistical revolution in work accident law helped to usher in the beginnings of a halting and uneven paradigm shift from free labor ideology to the categories of the actuary and the manager. Even as the move away from particularity toward probabilistic abstraction enabled states to shift responsibility for workplace accidents to employers, it served also to de-emphasize the concepts of worker individualism and autonomy so central to free labor ideology, bringing in their place the scientific manager of workplace risks. ARIELA DUBLER (Columbia University) presented the final paper, entitled "'A New Charter of Rights for Women': Supporting Widows in the Age of Dower's Demise." Dubler argued that the rhetoric of sex equality accompanying the demise of dower in New York in 1929 masked the traditional underpinnings of the new private inheritance law that would replace dower, a law premised on the notion that the family alone should provide for a middle class woman's economic needs, even in widowhood. Even where the state did provide public support for the poorest of widowed mothers, it characterized cases requiring intervention as deviant cases, rather than exposing the ineffectiveness of the traditional gendered provider-dependent model of marriage. GILLIAN LESTER's commentary identified two themes running through the papers. First, the advent of social insurance (or state regulation of private social provision) to save unlucky individuals from loss in the face of catastrophe had a "dark side" variously manifested in entrenchment of class, domination of capital over labor, or gendered marital dependency. Second, conscious and subconscious forms of moralism influenced welfare state reformers and this moralism was sometimes at odds with the values of liberty and egalitarianism the reformers themselves purported to advance. A lively discussion between the audience and panelists filled the 30 minutes that remained.

The Twentieth-Century as Legal History

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RISA GOLUBOFF of the University of Virginia reports: Before a capacity crowd, this panel explored two path-breaking books in the expanding field of twentieth-century legal history. LAWRENCE FRIEDMAN of Stanford University discussed William E. Nelson's *The Legalist Reformation: Law, Politics, and Ideology in New York, 1920-1980*. He first marveled at Nelson's encyclopedic knowledge of New York caselaw. He noted that Nelson's focus on judges led him to overlook the importance of legislatures at several points, most notably in creating the legalist

reform that is the book's overarching subject. WILLIAM NELSON of New York University then discussed Friedman's *American Law in the Twentieth Century*. He too began with words of praise, especially for Friedman's pithy one-liners and fair historical judgment. Nelson emphasized that the most significant difference between the two books was in their treatment of doctrine and ideology – which he engaged more substantially than Friedman. Goluboff started what turned into a robust discussion by asking the first question, which concerned the methodological choices the two authors had made.

"Others" in Medieval Courts: Jews, Muslims, and Slaves in Medieval Iberia

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CLAIRE VALENTE reports "'Others' in Medieval Courts" resulted in a lively session on an unusual topic. Three younger scholars and first-time presenters at the ASLH, ELKA KLEIN of the University of Cincinnati, BRIAN CATLOS of UC Santa Cruz, and DEBRA BLUMENTHAL of the University of Kansas, provided insightful papers involving an area and subject rarely addressed at our meeting: Iberia, and minority populations in the medieval world. All addressed the extent to which "others" (Jews, Muslims, slaves) benefitted from and utilized royal Christian justice. Dr. Klein's paper focused on the interaction of Jewish and royal law, discussing the punishment of informants, a capital offense within the Jewish community, and the constraints, including the desire for royal sanction, which led to such punishment being extremely rare. Dr. Catlos considered the juridical status of Muslims, demonstrating the complexity of that status in Christian courts and arguing that they nonetheless were able to get justice and did not face the legal prejudice one might expect. Dr. Blumenthal considered the very real possibility of Christians bringing successful suits of wrongful enslavement, aided by the procurator of the miserable, while at the same time showing how such suits only reinforced the legality of supposedly "rightful" enslavement of non-Christians. TEOFILO RUIZ, chair of the history department at UCLA, pointed to several issues the participants could consider more closely, and the audience showed its appreciation by asking so many questions that I had to end the session, already slightly long, with hands still raised.

Victorian Law Reform Revisited

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RICHARD COSGROVE reports: A large and enthusiastic audience attended the session devoted to Victorian Law Reform Revisited. MICHAEL LOBBAN of Queen Mary College, University of London, started with a paper on "Politics and Principle in Chancery Reform 1830-1860." Lobban emphasized the incremental role played by various commissions and lawyers' culture in the making of reform rather than the broad sweep of general intellectual trends. LINDSAY FARMER of the University of Glasgow completed the session with a paper on "Private Litigation and Public Spectacle: The Making of the Criminal Trial 1848-1898." Farmer stressed the evolutionary transformation of the criminal trial in the era before sensational cases became fodder for the media and trials turned on dramatic uses of evidence. DAVID LIEBERMAN of the University of California, Berkeley, provided a witty, erudite commentary in which he paid tribute to the authors for their thorough research and effective presentation of arguments. The audience then engaged in a discussion with the panelists that continued till time expired, with the audience full of praise for the session.

Sex, Race, and the Law: Segregation, Sexual Practice and Racial Formation in the Post-Brown Era

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Adrienne Davis <davisad@email.unc.edu>

ARIELA GROSS reports: In this lively session, a brave audience of 20-25 hardy souls who made it to the end of Saturday afternoon were rewarded by two provocative papers on Southern white practices of resistance to integration in the 1960s and 1970s, and engaged in thoughtful discussion of the intersections of race and sex in these

practices. ANDERS WALKER presented a paper entitled "Bastards out of North Carolina: Law, Illegitimacy and the Subversion of Civil Rights in the Most Progressive Southern State." He discussed legislative efforts to prescribe mandatory sterilization for mothers who had illegitimate children, as part of the Southern movement of resistance to integration. To counter *Brown*'s reliance on social science data, Southern segregationists used social science data, including politically-manipulated black illegitimacy rates, to show that integration threatened harms to whites and blacks. He described the way a "moderate" governor, Luther Hodges, helped to advance white racial domination not through overt violence but through "civil" resistance like the regulation of illegitimacy. SERENA MAYERI presented her paper, "Separate But Equal? Sex Segregation, Racial Desegregation, and the Law, 1969-77," a fascinating discussion of the role of sex-segregation plans as a reaction to racial desegregation orders in the 1970s. Because so many segregationists had used fears of interracial sex to fight integration, sex segregation seemed to be a legally legitimate way to forestall white flight from racially integrated schools. Everyone assumed before the 1970s that sex segregation was constitutionally unproblematic; sex segregating school boards justified separation by reference to sex distractions, sex differences, and damage to boys from coed schools. At first, opponents fought sex segregation primarily because it "perpetuated racial segregation by subterfuge." But in the 1970s, the legal discourse had shifted so that some feminists were arguing that sex segregation was actually sex discrimination. PROFESSOR ADRIENNE DAVIS commented on the papers, noting the way that race has been used to shrink or expand the state's role in regulating sex and the family, and the way that sex was used to motivate racial discrimination. She urged the authors to go beyond an intersectional account of race and sex to one that is "co-synthetic," illuminating the ways race and gender constitute each other. And she urged a longer view of the way that battles over the regulation of sexuality and family life have always been civil rights struggles implicating race throughout the course of U.S. history.

Self-Help, Social Control, and Public Order in Classical Athens

Cynthia Patterson <cpatt01@emory.edu>
David Cohen <djcohen@socrates.berkeley.edu>
David Phillips <phillips@history.ucla.edu>

CYNTHIA PATTERSON reports: The panel was originally entitled "Self-Help, Social Control and Public Order in Classical Athens," with papers by DAVID COHEN on "Private Violence and Social Control in Classical Athens," and DAVID PHILLIPS on "Self-Help from Hades: the Dying Injunction at Athens." As it happened, however, David Cohen withdrew and STEVE JOHNSTONE stepped in as a "pinch-hitter" with a paper entitled "Women, Property and Surveillance in Classical Athens." The common theme in the two papers was in fact not so much "social control" as the legal capacity (or lack thereof) of Athenian women; in my comments I offered the new title "Litigation, Revenge, and the Legal Capacity of Athenian Women." Phillips' paper looked at examples of victims of untimely death who call upon their family or others to take revenge – and the way this theme is used in the law courts. He pointed out that although a wife might receive and pass on the injunction, only a son would in fact be expected to carry it out – a situation Philips found analogous to women's relationship to property in Athens, in particular the position of the epikleros ("heiress") who transmitted her father's property to her sons. Phillips' last example was Socrates' last request (the cock to Asclepius) which he interpreted as a clear refusal on Socrates' part to ask for revenge. Johnstone's paper (actually an oral summary of a paper of some 40 pages) discussed the way in rhetoric (in law courts or assembly) provided male citizens with a way to "cooperate without personal trust, knowledge or affection," *i.e*, it provided a king of impersonal public speech with which male citizens would run their public business without the constraints of personal or familial interests or claims. Women, however, were excluded from this public "discourse" – and were thus forced, if need be, to use those very family relationships for the protection of their interests. For example, a daughter would need to "use" her relation with her father to protect her position in her marriage – while a man would "use" the public courts and their discourse. In my comments I suggested that Philips might look at real "self-help from Hades" – the power of ghosts and the "restless dead." My comments on Johnstone's papers focused on the problem of taking Athenian rhetoric as social reality. Unfortunately, the panel was the very last on the last day of the meetings. The audience was small (perhaps 5 or 6) and the discussion limited. One audience member wondered how "impersonal" the Athenian courts really were – and this produced some further comments from others.

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