

American Society
for
Legal History



2002

Annual Meeting
U. S. Grant Hotel
San Diego, California
November 7-9, 2002

PROGRAM

Registration

Thursday, November 7
3:00-6:00 p.m.

Friday, November 8
8:30 a.m. - 3:00 p.m.

Saturday, November 9
8:30 a.m. - noon

Thursday, November 7th

3:00-6:00 pm
Registration Pavilion Foyer

4:30-5:30 pm
Graduate student reception Garden Room

5:30-7:00 pm
ASLH reception Garden Room

7:30-10:00
Board of Directors meeting Horton A & B

Friday, November 8th

7:30-8:45 am
continental breakfast Crystal Room

Future Projects Committee Executive 1

8:30 am-3:00 pm
registration Pavilion Foyer

Session #1
8:45 am - 10:15 am

**Civil Liberties in Time of War:
A Roundtable** Garden Room

Chair: Sanford Levinson, University of Texas

Papers:
"The Civil War"
Michael Kent Curtis, Wake Forest University

"World War I and the Aftermath"
John E. Semonche, University of North Carolina

"World War II and the Aftermath"
Mary Dudziak, University of Southern California

Commentator: Sanford Levinson

✓ **Law and Legislation in Greece
and the Near East** ✓

Horton A

Chair: Michael Gagarin, University of Texas

Papers:
"Inscribing Laws in Greece and the Near East"
Michael Gagarin

"Solon and the Spirit of Early Greek Law"
Edward M. Harris, City University of New York

Commentator: Eva Cantarella, University of Milan

**Struggles Over Sexual Speech and
the Regulation of Obscenity in
Nineteenth-Century America**

Horton B

Chair: Leslie J. Reagan, University of Illinois

Papers:
"The New York Sporting Press of the 1840s and
Obscene Libel"
Helen Lefkowitz Horowitz, Smith College

"Obscenity Regulation and Its Consequences in the
Nineteenth-Century United States"
✓ Donna I. Dennis, Rutgers University, Newark

Commentators: Patricia Cline Cohen, University of
California, Santa Barbara
Leslie J. Reagan

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

Horton C ✓

Chair: Joanna L. Grossman, Hofstra University

Papers:
"Capax and Incapax in the Civil Law of Eighteenth-
Century Scotland"
Rab Houston, University of St. Andrews

"Gender, Rights Talk, and Local Knowledge: Non-Compos Mentis Guardianships as Legal Process in New England, 1725-1830"

Cornelia H. Dayton, University of Connecticut

Commentators: Lloyd Bonfield, Tulane University
Joanna L. Grossman

Session #2
10:30 - noon

**The Constitution Outside the Courts:
History and Theory** Garden Room

Chair: Laura Kalman, University of California, Santa Barbara

Papers:
"The Transformation of Popular Constitutionalism"
Larry Kramer, New York University

"Constitutional Imagination in Progressive America"
William Forbath, University of Texas

"Judicial Supremacy? Reflections on Judicial and Popular Constitutionalism in the Aftermath of *Brown*"
Robert Post, University of California, Berkeley
Reva Siegel, Yale University

Commentator: Keith Whittington, Princeton University

Citizenship in Comparative Perspective Horton A

Chair: Richard Wetzell, German Historical Institute, Washington, D.C.

Papers:
"Citizenship in Emerging Nation-States: The Practical Definition of Nationality in Europe Around 1800"
Andreas Fahrmeir, University of Frankfurt

"Citizenship in the Confrontation of Nation-States: Germany and France at the End of the 19th Century"
Dieter Gosewinkel, Free University Berlin

"Political Rights and Ethnic Duties: Citizenship Regimes and the Nationality of Married Women in Germany, France, and the United States, 1900-1930"
Eli Nathans, Albion College

Commentator: Kenneth Ledford, Case Western Reserve University

**Religion and Law in
Roman Republican Society** Horton B ✓

Chair: W. Jeffrey Tatum, Florida State University

Papers:
"Dictator Interregni Causa"
Christoph Konrad, Texas A&M University

"Restraints on Assembly: Religious and Legal Aspects of Nocturnal Conspiracy in Ancient Rome"
Hans-Friedrich Mueller, University of Florida

"The Role of the People in the Legislation of Roman Religion"
W. Jeffrey Tatum

Commentator: Peter Oh, Florida State University

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

Chair: William Eckhardt, University of Missouri-Kansas City

Papers:
"Political Manipulation of Military Justice – The Nixon White House and the Calley Court Martial, 1970-1974"
Michal Belknap, California Western School of Law

"Recent Trends in Appellate Military Justice, Civilian Control of the Military, and Legal Scholarship – Why the Deafening Silence?"
Jonathan Lurie, Rutgers University, Newark

"Chains of Command: Some Recent Examples of the Uneasy Relationship between Reforms in Military Justice and Court-Martials, 1951-1973"
Beth Hillman, Rutgers University, Camden

Commentator: Diane H. Mazur, University of Florida

Noon-1:30 pm

H-Law Committee lunch Executive 1

Law & History Review Committee lunch
Executive 2

2003 Program Committee lunch Executive 3

Noon-1:30

**California Supreme Court Historical Society lunch
Pavilion Room**

(Speaker will be Ray E. McDevitt, Esq., author of *California Courthouses: An Illustrated History*, and partner at the San Francisco firm of Hanson, Bridgett, Marcus & Vlahos. The title of his presentation will be "Courthouses and Communities: Doing Justice, Past and Future.")

Session #3

1:30 pm - 3:00 pm

**The New Departure: Social Movements and
the American Constitutional Order** Garden Room

Chair: Gretchen Ritter, University of Texas

Papers:

"The New Departure in the Constitutional Canon"
Jack Balkin, Yale University

"The New Departure and the Construction of American
Citizenship"
Gretchen Ritter

Commentator: Ellen Carol DuBois, University of
California, Los Angeles

**Regulation, Manumission, and the Legal Culture
of Slavery in the United States and Cuba** Horton A

Chair: Walter Johnson, New York University

Papers:

"Between 'Race' and 'Nation': Black/Indian Identity in
the Southern Courtroom, 1780-1840"
Ariela Gross, University of Southern California

"Constructing 'Rights' and 'Respect': African-
Americans in the Legal Culture of Antebellum
Baltimore"
Martha Jones, University of Michigan

"Slave Law, Claims-Making, and Citizenship in Cuba:
The Tannebaum Debate Revisited"
Alejandro de la Fuente, University of Pittsburgh

Commentator: Walter Johnson

**Social Engineering and the Law:
Postwar Japan and China** Horton B

Chair: Harry Scheiber, University of California,
Berkeley

Papers:

"Japanese Legal Reform in Historical Perspective"
Thomas Ginsburg, University of Illinois

"Visions of Socialist Utopia: China's Penal System as
the Model for 'New China'"
Glenn Tiffert, University of California, Berkeley

Commentators: Sayuri Shimizu, Michigan State
University
Paul Pickowicz, University of California, San Diego

**The Constitutional and Legal Implications
of the Long Parliament** Horton C

Chair: Allen Dillard Boyer, Trial Counsel, New York
Stock Exchange, Inc.

Papers:

"D'Ewes' Diary of the Long Parliament and English Constitutional and Legal History"

Michael Mendle, University of Alabama

"Impeachment in Early Stuart Parliaments, 1621-1641"

Robert Zaller, Drexel University

"Which Law? Common and Civil Law in Mid-Seventeenth-Century England"

Maija Jansson, Yale University

Commentator: Allen Dillard Boyer

Plenary Session

Address:

"Law, Theology and Social Practice: The Story of Medieval Marriage Law"

Charles Donahue, Jr.

Paul A. Freund Professor of Law, Harvard Law School

University of California, San Diego

4:00 pm

Reception follows

(buses will provide transportation between the U. S. Grant Hotel and the University buses depart hotel beginning 3:15; return beginning 6:30)

Saturday, November 9

7:30-8:45 am

continental breakfast

Crystal Room

Publications Committee breakfast Executive 2

Hurst Committee breakfast Wine Cellar

8:30 am - noon

registration

Pavilion Foyer

Session #4

8:45 am - 10:15 am

Law and Statebuilding in Modern America

Garden Room

Chair: Jim Wooten, State University of New York at Buffalo

Papers:

"The Sympathetic State: Disaster Relief in the 19th and Early 20th Centuries"

Michele Landis Dauber, Stanford University

"The Legal Origins of the Modern American State"

Bill Novak, University of Chicago

"'Saint George and the Dragon.' Courts and the Administrative State in 20th Century America"

Reuel E. Schiller, Hastings College of Law

Commentator: Jim Wooten

Morality, Economics, Community, and Gender in the Fault/Strict Liability Debate

Horton A

Chair: Susanna Blumenthal, University of Michigan

Papers:

"Holmes on Strict Liability and its Rationale"

Thomas Grey, Stanford University

"Moral and Economic Rhetoric in the Adoption of Strict Liability"

Jed Handelsman Shugerman, Yale University

"Women and the Embodiment of Product Liability, 1890-1930"

Barbara Y. Welke, University of Minnesota

"Law and Neoclassical Economics Theory: A Critical History of the Distribution/Efficiency Debate"

James R. Hackney, Jr., Northeastern University

Market Forces in the Marketplace of Ideas: Business-driven First Amendment Change, 1900-1950

Horton B

Chair: Norman L. Rosenberg, Macalester College

Papers:

"Free Enterprise and Free Speech During the Progressive Era"

John W. Wertheimer, Davidson College

"Business Strategies and the Development of First Amendment Rules on Print and Film after 1930"

Charles F. Bethel, University of California, San Diego

"Suing Henry Ford: Rhetorics of Persuasion and Conversion Narratives in Antisemitism and Libel, 1920-1927"

Victoria Saker Woeste, American Bar Foundation

Commentators: Alison M. Parker, SUNY Brockport
Norman L. Rosenberg

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

Horton C

Chair: Aviam Soifer, Boston College

Papers:

"Power over this Unfortunate Race": *United States v. Rogers*, Race, Power, and Indian Law

Bethany Berger, University of Connecticut

Law and Order on Indian Reservations: A History of Broken Promises

Dalia Tsuk, University of Arizona

Commentators: Aviam Soifer

Carole Goldberg, University of California, Los Angeles

The Conceptualization of Change in English Legal History: Evolution, Transformation, Revolution, 1300-1700

Horton D ✓

Chair: Richard H. Helmholz, University of Chicago

Lecture: Robert C. Palmer, University of Houston

Commentators: Richard H. Helmholz
Stephen D. White, Emory University

Session #5
10:30 am - noon

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

Garden Room ✓

Chair: Gillian Lester, University of California, Los Angeles

Papers:

"The Constitution of American Accident Law: *Ives v. South Buffalo Railway* and the Employers' Liability Cases"

John Witt, Columbia University

"'A New Charter of Rights for Women': Supporting Widows in the Age of Dower's Demise"

Ariela R. Dubler, Columbia University

"'Who They Are – or Were': Delivering Public Relief to the White-Collar Unemployed in the Early Years of the New Deal"

Deborah Malamud, University of Michigan

Commentator: Gillian Lester

**New Directions in the Cultural History
of Lawyers**

Horton A

Chair: David Sugarman, Lancaster University,
England

Papers:

"Bush Lawyers and Kangaroo Courts"

Rob McQueen, Victoria University, Melbourne,
Australia

"Liberals, Vampires, and Empires: Issues in the
Cultural History of Legal Professions"

W. Wesley Pue, University of British Columbia,
Vancouver, Canada

"From Idealistic to Realistic Surroundings for Swedish
Legal Actors: Iconography and Architecture in Swedish
Courthouses 1900 - 1970"

Kjell Å Modéer, University of Lund, Sweden

Commentator: David Sugarman

**Giving Substance to Legal Freedom:
Emancipation, Property and the Recognition of
Rights in Cuba and the United States**

Horton B

Chair: Hendrik Hartog, Princeton University

Papers:

"Taking Kin to Court: The Renegotiation of Property
and Family Relationships after Emancipation in the U.S.
South"

Dylan Penningroth, University of Virginia

"The Right to Have Rights: The Oral and the Written in
the Claims-Making of Former Slaves. Cuba,
1872-1907"

Rebecca Scott, University of Michigan

Michael Zeuske, University of Cologne, Germany

Commentator: Hendrik Hartog

**The Work of Anthony Lewis: Journalism in
History and History in Journalism**

Horton C

Chair: Pnina Lahav, Boston University

Papers:

"Anthony Lewis as a Supreme Court Reporter"
Scot Powe, University of Texas

"Anthony Lewis: History, Journalism, and Civil
Liberties in the United States"

Philippa Strum, Woodrow Wilson Center, Washington,
D.C.

"Anthony Lewis and the Burger Court"

Pnina Lahav

Commentator: Lincoln Caplan, Yale University

Annual Luncheon

12:15 - 1:45 pm

Garden Room

Session #6

2:00 pm - 3:30 pm

**The Twentieth Century as
Legal History**

Garden Room ✓

Chair: Risa Goluboff, University of Virginia

Papers:

"Comment on Nelson, The Legalist Reformation: Law,
Politics, and Ideology in New York, 1920-1980"
Lawrence Friedman, Stanford University

"Comment on Friedman, American Law in the
Twentieth Century"

William E. Nelson, New York University

Commentator: Risa Goluboff

✓ **"Others" in Medieval Courts: Jews, Muslims,
and Slaves in Medieval Iberia** Horton A

Chair: Claire Valente, Independent Scholar

Papers:

"In Pursuit of Justice: the Prosecution of Informers in
Jewish and Royal Courts in Medieval Spain"
Elka Klein, University of Cincinnati

"Complicated Subjects: Muslims and the Law in the
Medieval Crown of Aragon"
Brian Catlos, University of California, Santa Cruz

"Cosa de mal exemple: Slave Plaintiffs before the
Courts"
Debra Blumenthal, University of Kansas

Commentator: Teofilo Ruiz, University of California,
Los Angeles

**Globalization in Law and History: Comparative
Perspectives in Time and Space** Horton B

Chair: Robert W. Gordon, Yale University

Papers:

"Globalization and European Community Law Since the
1950's: Comparative Perspectives in Time and Space"
David J. Gerber, Chicago-Kent College of Law

"American Praxis: Globalization and Antitrust in
Twentieth Century America, Japan, Europe, and
Australia"
Tony A. Freyer, University of Alabama

"Organizational Choice and Economic Development: A
Comparison of France and the United States during the
Mid-Nineteenth Century"
Jean-Laurent Rosenthal, University of California, Los
Angeles
Naomi R. Lamoreaux, University of California, Los
Angeles

Commentator: Robert W. Gordon

✓ **Victorian Law Reform Revisited** Horton C

Chair: Richard A. Cosgrove, University of Arizona

Papers:

"Politics and Principle in Chancery Reform 1830-1860"
Michael Lobban, Queen Mary College, University of
London

"Private Litigation and Public Spectacle: The Making
of the Criminal Trial 1848-1898"
Lindsay Farmer, University of Glasgow

Commentator: David Lieberman, University of
California, Berkeley

3:00-4:00

Coffee sponsored by
Woodrow Wilson Center
Georgian Room

Session #7
3:45 pm - 5:15 pm

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

Chair: Ariela Gross, University of Southern California

Papers:

"Bastards Out of North Carolina, Law, Illegitimacy and
the Subversion of Civil Rights in the Most Progressive
Southern State"
Anders Walker, Yale University

"Separate But Equal? Sex Segregation, Racial
Desegregation, and the Law, 1969-1977"
Serena Mayeri, Yale University

Commentator: Adrienne Davis, University of North
Carolina

Revisiting the Rule of Law in British India Horton A

Chair: Kunal Parker, Princeton University

Papers:

"Evidence, Experts, and the Ethnographic Gaze of Medico-Legal Jurists in Colonial India"
Elizabeth Kolsky, Columbia University

"Enfeebling the Arm of Justice: Perjury, Prevarication and the Role of Law Under the East India Company"
Wendie Schneider, Yale University

"Dower, Divorce and Contract: The Judicial Reshaping of Islamic Marriage Law in late Colonial India"
Mitra Sharafi, Princeton University

Commentator: Kunal Parker

Religious, Scientific, and Legal Authority in Comparative Perspective, 1880-1925 Horton B

Chair: Carolyn C. Jones, University of Connecticut

Papers:

"'More Like An Operation In A Clinic': Law, Medicine, and Juvenile Justice in Germany, 1900-1925"
Edward Ross Dickinson, University of Cincinnati

"The Ethical Economists and the Question of Taxation"
Ann F. Thomas, New York University

"Criminal Responsibility and Sin in the Progressive Era: Justice David Brewer on the Freedom of the Will"
Linda Przybyszewski, University of Cincinnati

Commentator: Carolyn C. Jones

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

Chair: Cynthia Patterson, Emory University

Papers:

"Private Violence and Social Control in Classical Athens"
David Cohen, University of California, Berkeley

"Self-Help from Hades: The Dying Injunction at Athens"
David Phillips, University of California, Los Angeles

Commentator: Cynthia Patterson

The Dimensions of Imperial Employment Law, 1563-1939

Horton D

Chair: Lauren Benton, New Jersey Institute of Technology and Rutgers University

Papers:


"Taking Statutes Seriously: A Comparative Study of Master and Servant in the British Empire"
Paul Craven and Doug Hay, York University

"Master and Servant in Whitehall: The Colonial Office and Labour"
Mandy Banton, Assistant Keeper, Public Record Office, London

"The Chain of Law in Settler Societies"
Michael Quinlan, University of New South Wales

Commentator: Lauren Benton

6:00 pm - 8:00 pm
Reception
California Western School of Law
(transportation provided)



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STUDIES IN LEGAL HISTORY

C.H.S. Fifoot, *Frederick William Maitland: A Life*
(1971)

Raoul Berger, *Impeachment: The Constitutional*
Problems (1973)

David J. Danielski and Joseph S. Tulchin, eds., *The*
Autobiographical Notes of Charles Evans Hughes
(1973)

John H. Langbein, *Prosecuting Crime in the*
Renaissance: England, Germany and France (1975)

Raoul Berger, *Executive Privilege: A Constitutional*
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William E. Nelson, *Americanization of the Common*
Law: The Impact of Legal Change on Massachusetts
Society, 1760-1830 (1975)

Maxwell H. Bloomfield, *American Lawyers in a*
Changing Society, 1776-1876 (1976)

Morton J. Horwitz, *The Transformation of American*
Law, 1780-1860 (1977)

Robert Stevens, *Law and Politics: The House of Lords*
as a Judicial Body, 1800-1976 (1978)

David Thomas Konig, *Law and Society in Puritan*
Massachusetts: Essex County, 1629-1692 (1979)

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Grievances of the Commonwealth,' 1621-1628 (1979)

Richard A. Cosgrove, *The Rule of Law: Albert Venn*
Dicey, Victorian Jurist (1980)

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Robert C. Means, *Underdevelopment and the Development of Law: Corporations and Corporation Law in Nineteenth-Century Columbia* (1980)

Morris S. Arnold, Thomas A. Green, Sally A. Scully, and Stephen D. White, eds., *On the Laws and Customs of England: Essays in Honor of Samuel E. Thorne* (1981)

Lawrence M. Friedman and Robert V. Percival, *The Roots of Justice: Crime and Punishment in Alameda County, California, 1870-1910* (1981)

William E. Nelson, *Dispute and Conflict Resolution in Plymouth County, Massachusetts, 1725-1825* (1981)

John Phillip Reid, *In Defiance of the Law: The Standing-Army Controversy, the Two Constitutions, and the Coming of the American Revolution* (1981)

A. G. Roeber, *Faithful Magistrates and Republican Lawyers: Creators of Virginia Legal Culture, 1680-1810* (1981)

Hendrik Hartog, *Public Property and Private Power: The Corporation of the City of New York in American Law, 1730-1870* (1983)

Robert Stevens, *Law School: Legal Education in America from the 1850s to the 1980s* (1983)

R. Kent Newmyer, *Supreme Court Justice Joseph Story: Statesman of the Old Republic* (1985)

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Marylynn Salmon, *Women and the Law of Property in Early America* (1986)

Michael Grossberg, *Governing the Hearth: Law and the Family in Nineteenth-Century America* (1988)

Emily Zack Tabuteau, *Transfers of Property in Eleventh-Century Norman Law* (1988)

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Eileen Spring, *Law, Land, and Family: Aristocratic Inheritance in England, 1300 to 1800* (1994)

Peter W. Bardaglio, *Reconstructing the Household: Families, Sex, and the Law in the Nineteenth-Century South* (1995)

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2004
Dates & Hotel TBA
Austin, Texas

November 10-12, 2005
Hilton Netherland Plaza
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