

UNIVERSITY OF MINNESOTA LEGAL HISTORY SEMINAR/WORKSHOP
FALL 2008

Schedule of Speakers

All sessions will be held on Thursdays, from 3:30 to 5:30 in Room 45 of the Law School.

September 18

Douglas Baynton, History, University of Iowa

Title: Defectives in the Land: Disability and American Immigration Law, 1882-1924.

Abstract: One of the fundamental imperatives behind the first federal immigration laws in the United States in the late nineteenth century was the exclusion of disabled people, or those termed defective. The concept of defect then figured significantly in the enactment of quotas based on national origin in the 1920s, when a rhetoric of defective races, rooted in claims that certain nationalities were prone to congenital defects, became a crucial element in configuring the image of the undesirable immigrant. Historians of immigration have given little attention to disability, overlooking both the cultural presuppositions behind these laws and the prominence of disability stereotypes in immigration restriction literature.

In this workshop we will explore why disabled immigrants came to be seen as a threat to the nation during the early development of federal immigration law. The barring of defective immigrants was not an isolated development, but rather one aspect of an era that saw the segregation of disabled people into institutions, the sterilization of the unfit under eugenic laws, and a growing willingness to exclude disabled people from social life. Understanding the place of disability in American culture is essential, I will argue, to making sense of anti-immigrant sentiment and the debates over immigration policy during this period.

September 25

Amalia D. Kessler, Law, Stanford University

Title: Deciding Against Conciliation: The Nineteenth-Century Rejection of a European Transplant and the Rise of a Distinctively American Ideal of Adversarial Adjudication

Abstract: A sizeable body of literature suggests that informal methods of dispute resolution and, in particular, conciliation flourish only in societies marked by extensive social hierarchy. Given this literature, it is quite surprising to discover that in the mid-nineteenth century, the United States embarked on an extensive debate regarding whether to adopt conciliation courts, whose primary function was to reconcile the disputants by persuading them to embrace an equitable compromise.

First created by the French Revolutionaries in 1790, conciliation courts were widely established throughout continental Europe. Observing this development, leading

American lawyers and politicians anxious to respond to public complaints about the costly nature of litigation and the growing power of the legal profession, and seeking a solution to the deep social rifts threatened by new forces of urbanization and industrialization pondered seriously whether the United States ought to follow suit. Debate over whether to embrace such institutions occurred at the very highest of levels including at the New York Constitutional Convention of 1846, now more famously remembered for giving rise to the Field Code. And a series of states enacted constitutional provisions authorizing their legislatures to create conciliation courts. Ultimately, however, despite the widespread interest in such institutions, these were never meaningfully established except in the notable case of the Freedmen's Bureau courts of the Reconstruction south.

This paper explores this largely forgotten episode in American legal history. It examines why a nation that was radically egalitarian by standards of the time would seriously consider embracing an institution that we tend more commonly to associate with inegalitarian, strongly hierarchical societies and why, after coming so close to adopting conciliation courts, it ultimately failed to do so. In the process, by situating the debate over conciliation courts in a broader social and legal context, the paper also excavates the origins of the modern, quintessentially American commitment to the virtues of formal, adversarial legal process.

October 2

Jennifer Mnookin, Law, UCLA

Title: Machineries of Truth: X-Rays and Experts in the American Courtroom

Abstract: This is a chapter from a book in progress on the rise of new kinds of evidence in the late nineteenth and early twentieth century courtroom. The book examines how the rise of expert evidence, along with new technologies of proof -- like the photograph, the x-ray, and the fingerprint -- transformed ideas about what evidence ought to be adduced, and what evidence ought to persuade. This chapter, which focuses on the early reception of the x-ray as legal evidence, shows how the x-ray made explicit certain deep tensions about the nature of experts and their instruments, and brought to the fore ambiguities about which evidence was more central, the x-ray image itself, or its interpretation by the expert. I also argue that courts' response to the x-ray revealed a novel willingness to recognize the authority of machine-generated instruments. In addition, I suggest that the rise of the x-ray modified, to some extent, the idea of the appropriate standard of care in fracture cases, from 'function' (did your limb work?) to alignment, as represented on the x-ray. This, however, was no simple progress story, for the x-ray made it possible to be concerned about an aesthetic category -- alignment -- that was quite literally unavailable until the technology brought it into sight.

October 16

Adriaan Lanni, Law, Harvard University

Title: Social Norms in the Ancient Athenian Courts

Abstract: Ancient Athens was a remarkably peaceful and well-ordered society by both

ancient and contemporary standards. Scholars typically attribute Athens success to internalized norms and purely informal enforcement mechanisms. This article argues that the formal Athenian court system played a vital role in maintaining order--even though the Athenian legal process was the antithesis of the rule of law. Athenian court verdicts often turned on the extent to which the litigants conformed to social norms. The high volume of litigation meant that the average Athenian could anticipate being involved in a legal proceeding during which the jury would consider aspects of his character and past behavior unrelated to the legal issue in the case. As a result, the court system provided concrete incentives to conform to a host of extra-legal norms. This peculiar approach to norm enforcement compensated for apparent weaknesses in the state system of coercion. It mitigated the effects of under-enforcement in a private prosecution system by encouraging litigants to uncover and punish their opponents past violations. Court enforcement of extra-legal norms also permitted the Athenians to enforce a variety of social norms while maintaining the fictions of volunteerism in military and public service and of limited state interference in private conduct.

This article aims to contribute not only to our understanding of ancient Athens, but also to the academic literature on the interaction between social norms, law, and society. The Athenian case is particularly interesting for two reasons. While much of the norms literature focuses on the choice between informal and formal norms and institutions, in Athens informal norms were enforced through the formal court system. Second, I argue that the Athenian rejection of the rule of law in its court proceedings paradoxically promoted public order and compliance with both formal laws and informal norms.

October 30

Daniel Smal, History, Harvard University

Title: Goods and Debts in Late Medieval Mediterranean Europe

Abstract: In the wake of the commercial revolution of the twelfth century the quantity of goods available for consumption in Mediterranean Europe began to soar. By the fourteenth century, inventories after death and other legal records reveal households stuffed with a range of utensils, tools, and other essential items, along with luxury wares, fine chests and bed sets, and household linens. Above all, we find an astonishing assortment of clothes, the product of the fashion revolution of the fourteenth century. The broader consumer revolution was spurred by a growing money supply, but even more significant was a legal transformation, namely, the growing availability of consumer credit. The flip side of credit, of course, was debt, for there is no credit where there are no legal mechanisms for enforcement. Historians working with judicial sources are beginning to realize that the major business of late medieval courts of law was not, in fact, the suppression of violence. It was the recovery of debt. Evidence from court registers in Marseille and Lucca in the fourteenth century massively supports the argument that the personnel of the courts were more engaged in debt recovery than in anything else. Above all, they spent more time in the coercion and humiliation of the goods of debtors than in the coercion and humiliation of the bodies of felons, through the highly publicized seizure and transport of household goods and the sale of goods at public auction. The massive scale of these processes of debt recovery casts doubt on our

long-standing tendency to view the control of violence as the central goal of the courts and the states that sponsored them. For this seminar, I plan to circulate a short introductory chapter from the book I am writing on goods and debts in Mediterranean Europe, along with a more substantive chapter, "The Seizure of Goods," which will be based on my ongoing research on the inventories of goods seized by the courts in fourteenth-century Marseille and Lucca.

November 6

Rebecca J. Scott, History and Law, University of Michigan

Title: Rosalie of the Poulard nation (co-authored with Jean Hebrard)

Abstract: This essay traces the Atlantic itinerary of a woman called "Rosalie of the Poulard nation" from her captivity in West Africa in the late 18th century, through her deportation as a slave to Saint-Domingue, her multiple and ambiguous emancipations during the Haitian revolution, her emigration to Cuba in 1803, and her return to Haiti thereafter. Although illiterate, the woman who would later call herself Rosalie Vincent found ways to use various kinds of writings to try give legal form to the liberty and standing that she sought for herself and her children. Through a close reading of several of the documents that Rosalie Vincent helped to bring into being, Scott and Hebrard examine a dimension of the operation of law on the ground, and the ways in which public notaries and local administrators could become the unwitting allies of a woman who sought to build for her family a file of freedom papers that could leverage up their fragile claim to standing. Over three generations these papers, in turn, became part of a family strategy of self-definition in a sequence of societies, from slaveholding Saint-Domingue, Santiago de Cuba, and New Orleans, to Reconstruction Alabama and, finally, the world of cigar merchants in Antwerp in Belgium.

November 20

Deborah Malamud, Law, New York University

Title: "Letting in the Company: White-Collar Unionization in the Long New Deal"

December 4

Nicholas Parrillo, Law, Yale University

"The Rise of Non-Profit Government in America: The Case of Tax Collection"

Abstract: Tax collectors at the federal and state level in the United States during the eighteenth and much of the nineteenth century received most of their income in the form of percentages on collections, seizures, and penalties, plus fees for certain services. The paper examines (1) how this "for-profit" system of paying tax collectors operated, and (2) why legislators ultimately abolished it and instituted fixed salaries. This is part of a book-length project on the decline of fees and commissions and the rise of salaries in American public offices more broadly.