

## 1. Session Proposal for ASLH 2009

“Exceptional Women in the Medieval Courtroom”

Chair: James Brundage, University of Kansas  
Respondent: Susan McDonough, University of Maryland at Baltimore  
Presenters: Marie Kelleher, University of California at Long Beach  
              Jamie Smith, Alma College  
              Sara McDougall, Yale University

Medieval law codes and legal procedure set standards for behavior and outcomes in continental courtrooms. However, law and normative procedure could not account for every case a court might hear. This panel explores some of the special circumstances women faced in late-medieval court actions, and how the courts and lawmakers handled these exceptional cases. Were the courts bound by the letter of the law? Did lawmakers intervene or provide space for judicial discretion? Was procedure the same across Europe or did it vary by region or by court? Marie Kelleher will focus on a complicated case from fourteenth-century Barcelona that involved contradictory witness testimony from a female slave and a Jewish woman. Kelleher explores the exceptional treatment of these minority women in the court’s attempt to administer justice when forced to consider witnesses of unequal status. Jamie Smith explores the special circumstance of “absence” and how wives used their husbands’ absence to maneuver in the civil court of late fourteenth-century Genoa. Smith will demonstrate that lawmakers relegated absence to an exceptional status in order to respond to the needs of mercantile families without compromising the integrity of the laws. Sara McDougall examines the behavior of abandoned wives who sought to remarry in fifteenth-century northeastern France. According to canon law, no wife of an absent husband could remarry without first proving that her missing husband had died. Diocesan officials in the Champagne region maintained high standards for proof of a missing spouse’s death, these women faced particularly high hurdles in their efforts to remarry. As McDougall will argue, these women responded to these rules in a number of strategic ways. This panel examines women in diverse legal circumstances to illustrate the rich complexities and variations of late-medieval court practice in continental Europe.

## 2. Abstracts

“Facing off from the Margins: Female Slaves and Jews in Medieval Procedural Law”

Marie A. Kelleher

Assistant Professor of History

California State University, Long Beach

In areas of the medieval West where not all inhabitants were equal in the eyes of the law, procedural rules had to be adapted to account for the differing condition of litigants and witnesses. Women could be one such group, but courts in the medieval Mediterranean also had to account for the frequent necessity of incorporating the testimony of non-Christians and slaves. This paper examines one such case from fourteenth-century Barcelona, in which part of a case turned on the testimony of two women – one a slave, the other a Jew – whose accounts directly contradicted each other. In attempting to understand how judicial officials would have unraveled this problem, I will begin by outlining how Romano-canonical procedural rules recommended resolving conflicting testimony in general. Next, I will examine what procedural rules existed in both Romano-canonical and local procedure for dealing with the testimony of religious minorities and slaves individually, attempting to reconcile these with the innovative solution that the judicial authorities hit upon in this case where both witnesses were members of different, yet equally legally disadvantaged classes. Finally, I hope to use this case to illuminate the situation of "doubly differenced" women with respect to a legal culture in which the default legal person was free, Christian, and male.

“Avoiding great harm, danger, and absurdity: legal protection for wives with absent husbands.”

Jamie Smith

Assistant Professor of History

Alma College

*Civis Januensis ergo mercator* (A Genoese, therefore a merchant). Overseas travel shaped medieval Genoa, affecting the port city's politics, economics, and even laws. This paper explores the legal repercussions that traveling men imposed upon their wives in conjunction with lawmakers subsequent manipulation of the city statutes to protect mercantile families. Not only would a wife need to assume many of her husbands' duties, such as acting as the legal guardian for their children, she also had to manage her own affairs which placed her in a legal quandary. According to the laws, a married woman needed the permission of both her father (*pater familias*) and husband to commit a legal act. Rather than incapacitate wives whose husbands traveled, however, lawmakers created the exceptional case of absence to facilitate women left behind. Women whose husbands were listed as “absent from the commune” in the notarial records had access to the court that they otherwise would have been denied. As both the laws and the notarial records reflect, time played a crucial role in determining the kind of recourse a woman had. Six months meant that she could act without his permission,

three years resulted in her extracting sustenance from his goods, six years saw restitution of the full dowry monies. A *consilium* of Baldo degli Ubaldi regarding a case in Pavia proves that other fourteenth-century communes faced the same problem with traveling husbands. Baldo's explanations for allowing a wife to act as if her husband supported her actions reveal the jurist's understanding of the intention of the laws; the idea of intention allowed lawmakers and judges discretion in exceptional cases.

“Abandoned Wives and the Law in Late-Medieval Champagne”

Sara McDougall

PhD. Candidate

Yale University

The Hundred Years' War inflicted great devastation upon the Champagne region of Northern France. Whole villages were burned and populations uprooted. Amid this destruction and uncertainty, a substantial number of people disappeared. Some disappeared unwillingly, some quite willingly, eager to begin a new life in a new place with the new opportunities brought by ever-changing circumstances. What happened to those left behind? In particular, what was left for those wives married to absent and missing husbands? In theory, the canon law of the medieval west provided few options for women in these circumstances. A man or woman whose spouse was absent could never legally remarry unless they could first offer definite proof of the death of their spouse. Such proof, however, might not ever be found. On a local level, ecclesiastical courts did not always enforce such high standards. The officiality of Troyes, however, seems to have upheld this law with rigor and with energy. Caught in such uncertain and difficult circumstances, how did the abandoned wives of Troyes respond? This paper explores the legal and extrajudicial means employed by the women left behind in fifteenth-century Champagne who sought to remarry in spite of their uncertain circumstances. To remarry with the authorization of the bishop's ecclesiastical court, these women had to establish their status as widows, both in the community and in the courtroom. If the legal avenues to a new marriage and a new life seemed too difficult, these women also had recourse to a number of extrajudicial strategies. Examining the legal and illicit behaviors of these women, this paper will examine the strategic behavior employed by abandoned spouses of the Champagne region of France in their efforts to remarry despite being already married to a man who had gone away to war, and might never return.

### 3. Curriculum Vitae

#### **MARIE A. KELLEHER**

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#### **ACADEMIC EMPLOYMENT**

2003-present Assistant Professor, Department of History, California State University, Long Beach  
2001-2003 Graduate Instructor, Humanities and Western Civilization Program, University of Kansas  
1996-2001 Graduate Instructor, Department of History, University of Kansas

#### **EDUCATION**

Ph.D., Medieval History, University of Kansas, 2003.  
Dissertation: *"The Fragility of the Female Sex": Women and the Law in the Fourteenth-Century Crown of Aragon.*  
Fields of Concentration: Medieval Europe; Women & Gender; Early Modern Europe; Ancient Rome  
M.A., Medieval History, University of Kansas, May 1997.  
Thesis: *Custom, Law and the Land: A Court Case in Eleventh-Century Catalonia.*  
B. A., History, Lewis and Clark College, Portland, OR, June 1994.

#### **GRANTS, AWARDS AND HONORS (selected)**

- American Council of Learned Societies Fellowship – 2007/08
- Solmsen Fellowship, Institute for Research in the Humanities, University of Wisconsin (Madison, WI) – 2007/08
- American Fellowship, American Association of University Women – 2007/08 (declined)
- Research Grant, Program for Cultural Cooperation between Spain's Ministry of Education, Culture and Sports and U.S. Universities – 2004
- Breck Award (best paper by an untenured scholar), Rocky Mountain Medieval and Renaissance Association annual meeting – 2001
- James Falls Prize (best graduate student paper), Mid-America Medieval Association, 25th annual meeting – 2001
- Heckman Research Stipend, Hill Monastic Manuscript Library – 2000

## PUBLICATIONS

### Monograph:

*In progress*: "The Measure of Woman: Law and Female Identity in Medieval Spain." (Full proposal avail. at: <http://www.csulb.edu/~mkellehe>)

### Articles:

"Hers by Right: Gendered Legal Assumptions and Women's Property in the Medieval Crown of Aragon." Forthcoming in the *Journal of Women's History*.

"Law and the Maiden: *Inquisitio, Fama*, and the Testimony of Children in Medieval Catalonia." *Viator* 37 (2006): 351-367.

"'Like Man and Wife': Clerics' Concubines in the Diocese of Barcelona." *Journal of Medieval History* 28 (2002): 349-60.

"Boundaries of Law: Code and Custom in the Legal Practice of Early Medieval Catalonia," *Comitatus*, vol. 30 (1999): 1-10.

### Invited Publications:

"Clerical Celibacy and Concubinage," for Margaret Schaus, ed., *Women and Gender in Medieval Europe*. Routledge Press: 2006: 117-119.

### Book Reviews:

Albert, Pere. *The Customs of Catalonia between Lords and Vassals*. Donald J. Kagay, trans. and ed. Medieval and Renaissance Texts and Studies, volume 243. Tempe, Arizona: Arizona Center for Medieval and Renaissance Studies, 2002. Reviewed online at the *Bulletin of the American Academy of Research Historians of Medieval Spain* (<http://libro.uca.edu/aarhms/reviews/AlberttransKagay.html>)

Leslie Brubaker and Julia M. H. Smith, *Gender in the Early Medieval World: East and West, 300-900*. (Cambridge: Cambridge University Press, 2004). Reviewed for *Canadian Journal of History/Annales canadiennes d'histoire* 41 (spring-summer 2006): 105-107.

Adam Kosto, *Making Agreements in Medieval Catalonia: Power, Order, and the Written Word, 1000-1200* (Cambridge: Cambridge University Press, 2001). Reviewed in *The Historian* 65:4 (2003): 1043-44.

## RECENT SCHOLARLY PRESENTATIONS (selected)

"Legal Culture and the Formation of Female Identity in Medieval Spain."  
Presentation to the fellows of the Institute for Research in the Humanities,  
University of Wisconsin, Madison, WI, November 26, 2007.

"Miscarriages of Justice: False Accusations and Judicial Corruption in the  
Medieval Crown of Aragon." American Historical Association annual meeting,  
Atlanta, GA, January 4-7, 2007. American Association of Research Historians of  
Medieval Spain sponsored session.

"El discurso legal del género en la Alta Edad Media" [The Legal Discourse of  
Gender in the High Middle Ages]. XIII Coloquio Internacional de la Asociación  
Española de Investigación de Historia de las Mujeres, Barcelona, October 2006.

"Re-gendering Law in the Medieval Mediterranean: the Case of a Catalan  
*Materfamilias*." 41st International Congress on Medieval Studies (Medieval Club  
of New York sponsored session), Kalamazoo, MI, May 2006.

"Sexual Transgression and the Legal Taxonomy of Women." California  
Medieval History Seminar, Huntington Library, Pasadena, CA, February 2006.

"Living with the Law: Medieval Women and the Legal Categories of the *Ius  
Commune*." American Historical Association annual meeting, Philadelphia, PA,  
January 5-8, 2006.

"The Power to Hold: Women and Property in the Catalan Courts." 40<sup>th</sup>  
International Congress on Medieval Studies (North American Catalan Society  
sponsored session), Kalamazoo, MI, May 5-8, 2005.

"Inquisitorial Procedure and the Testimony of Children." American Society of  
Legal Historians, Annual Meeting, Austin, TX, October 28-31, 2004.

## **FOREIGN LANGUAGE PROFICIENCY**

Spanish, Catalan, Latin, German, and French

## **PROFESSIONAL ACTIVITIES**

### **Collaborative Projects:**

- Assistant Editor for "Matrix," an on-line resource for medieval women's  
monasticism (<http://monasticmatrix.org>): 1997 – present (assistant editor  
since 2003)

### **Conference-related:**

- Panel organizer, “Reform and Women Religious” (2 panels), sponsored session for 42nd Annual International Medieval Congress, Kalamazoo, MI: May 10-13, 2007.
- Panel chair, "New Trends in Spanish Social and Cultural History," sponsored session for American Historical Association annual meeting, Atlanta, GA, January 4-7, 2007.
- Panel organizer, “Breaking Old Habits: New Approaches to Female Monasticism in the Middle Ages,” sponsored session for 40<sup>th</sup> Annual International Medieval Congress, Kalamazoo, MI: May 5-8, 2005.

**REFERENCES:** On request.

## Curriculum Vitae

Jamie Adelia Smith  
207 1/2 Hastings St  
Alma, MI 48801  
smith@alma.edu

### Education:

Ph.D. University of Toronto	2000—2007
M.A. University of Toronto	1999—2000
A.B. Colby College	1995—1999

### Positions Held:

Assistant Professor of History, Alma College	2007—present
Co-Direct of Women's Studies, Alma College	2007—2008
Visiting Instructor, Alma College	2006—2007
Instructor, University of Toronto	Summer 2006

### Dissertation:

*Navigating Absence: Law and Family in Genoa, 1380-1420.*

### Academic Awards and Prizes:

Instructor for AHA International in Macerata, Italy	Winter 2010
Faculty Development Grant	2008
Phi Sigma Sigma's Faculty of the Month	2007
Teaching Assistants' Excellence Award (One of four winners out of more than 4,000 teaching assistants university-wide.)	2004—2005
University of Toronto Fellowship	2000—2005
School of Graduate Studies Travel Grant, University of Toronto	2002—2003
Germaine Warkentin Fund Travel Grant, University of Toronto	2002—2003
University of Toronto Open Fellowship	1999—2000

### Visiting Fellow:

Centre for Reformation and Renaissance Studies, Toronto	2007—present
Dipartimento di Storia Moderna e Contemporanea, Università di Genova	Spring 2004
Dipartimento di Storia Moderna e Contemporanea, Università di Genova	Spring 2003

### Publications:

*Historical Atlas: A Comprehensive History of the World* (Australia: Millennium House, 2008), s.vv. "European Economic Growth 1300," "Holy Roman Empire," "Hundred Years' War," "Spanish Armada."

### In-Progress:

"The Paradox of Travel: Late Medieval Genoese Merchants and Their Families"

“Legal Protection for Wives of Absent Husbands”  
“Maritime Women: The Influence of Ports on Family Structure”

### **Book Reviews:**

- Luciano Venzano, ed. *Confraternite genovesi all'alba del terzo millennio*. Genova: Erga Edizioni, 2004. Forthcoming in *Confraternitas*
- Paolocci Claudio, ed., *La Veneranda Compagnia di Misericordia dal Medioevo al Terzo Millennio*. In *Confraternitas* Fall 15:2 (2004): 65—66.
- Giovanna Casagrande, ed. *Donne tra Medioevo ed Età Moderna in Italia. Recherche*. In *Confraternitas* Fall 15:2 (2004): 57—58.
- Marinella Mazzei Traina, ed., *L'Oratorio dell' Annunziata di Ferrara. Arte, storia, devozione e restauri*. In *Confraternitas* 14:2 (2003): 31—32.
- Nicholas Doumanis, *Italy*. Inventing the Nation Series. In *Quaderni d'italianistica* 23:2 (2002): 134—136.
- Francesco Santucci, *Il passaggio dei Bianchi in Assisi (1399)* In *Confraternitas* 13:2 (2002): 27—28.
- Cynthia Polecristi, *Preaching Peace in Renaissance Italy: Bernardino of Siena & His Audience*. In *Confraternitas* 13:1 (2002): 27—28.

### **Conferences and Presentations:**

- “Keeping It Together: Marriage, Family, and the *Albergo*” *To Have and To Hold: Marriage in Pre-Modern Europe 1200-1700*, Centre for Reformation and Renaissance Studies, Toronto (October 16—18, 2009) paper accepted
- “*Albergo* and the Family in Trecento Genoa,” *International Congress on Medieval Studies*, Kalamazoo, Michigan (May 7—10, 2009) paper accepted
- ““Testifying to distance and time as evidence in the civil court of Genoa,”” Mid-America Medieval Association, Kansas City, MO (February 28, 2009) paper accepted
- “From Public to Private: Women as Procurators and Tutors” *Renaissance Society of America*, Chicago (April 3—5, 2008)
- “Deadbeat Dads and (Playing) Hooky Husbands” *Friday Faculty Forum*, Alma College (November 2, 2007)
- “Contractually Obligated: Dowry Restitution against Insolvent and/or Absent Husbands” *Renaissance Society of America*, Miami (March 22—24, 2007)
- “Defending Private Interests for the Public Good: the Role of Procurators in the Genoese Civil Court.” *Renaissance Society of America*, San Francisco (March 23—25, 2006)
- “To Avoid Great Fraud and Illegal Acts: The Role of General Curators” *Friday Workshop Series*, Centre for Reformation and Renaissance Studies, Toronto (February 10, 2006)
- “Expanding Capabilities: Women in the Post-Plague Courts” *Women, Gender, Sexuality Working Group*, Department of History, Toronto (December 2, 2005)
- “Women as Substitute: the legal construction of women in fifteenth-century Genoa” *Creating Women Conference*, Toronto (November 11—12, 2005)
- Chair, Session 4: Law, *Textual Cultures of Medieval Italy Conference*, Toronto (November 4—5, 2005) “Award Winning TAs Talk Back” *Teaching Assistants'*

- Training Program Seminar*, Toronto (September 19, 2005)
- “Wives’ Rights in Fourteenth-Century Italian Juristic Opinion and Genoese Statutory Law” *International Congress on Medieval Studies*, Kalamazoo, Michigan (May 5—8, 2005)
- “Funeral Oration of Leonardo Giustiniani for Carlo Zeno” a translation of an early sixteenth-century Venetian funeral oration presented to *Ad Fontes: the Toronto Neo-Latin Workshop* (November 26, 2004)
- “The Burdens of Absence in Early Fifteenth-Century Genoa” *Sixteenth-Century Studies Conference*, Toronto (October 26—28, 2004)
- “Those Left Behind: Absent Husbands in Early Fifteenth-Century Genoa” *Friday Workshop Series*, Centre for Reformation and Renaissance Studies, Toronto (September 17, 2004)
- “Fleeing Fathers and Hiding Husbands: Absence in Fifteenth-Century Genoa” *Friday Workshop Series*, Centre for Reformation and Renaissance Studies, Toronto (November 21, 2003)
- “Genoese Families in and out of Exile” *Scholars On Duty*, Centre for Reformation and Renaissance Studies, Toronto (May 5, 2002)

**Professional Societies**

- American Historical Association, member June 2005—present
- American Society for Legal History, member Fall 2007—present
- Renaissance Society of America, member June 2005—present
- Sixteenth Century Society, member October 2004—present
- Toronto Renaissance and Reformation Colloquium, member September 2005—present

**Sara McDougall**  
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**Education:**

Yale University, New Haven, CT.

PhD. Candidate, History, degree expected May 2009.

Dissertation proposal: "Bigamy in Late Medieval France"

Committee: Paul Freedman, Anders Winroth, and Charles Donahue (Harvard Law School).

MA, MPhil, History, May 2006.

Examination fields: Medieval European Legal, Church, and Social History; Early Modern Religious, Legal, and Family History.

Boston University, Boston, MA.

MA, History, December 2002.

Master's Thesis: "Small Deceptions: Inquisition and Resistance in Medieval Languedoc." Readers: Barbara Diefendorf, Thomas Glick and Richard Landes.

BA, History, Music Minor, December 2002.

**Future Publication:**

"The Punishment of Bigamy in Late-Medieval France" *Imago Temporis Acti. Medium Aevum* 2 (2009).

**Publication:**

"The Prosecution of Sex in Late Medieval Troyes." *History of Sexuality in the Middle Ages and Renaissance*. Albrecht Classen, editor. De Gruyter, August 2008.

**Book Reviews:**

Two-Part Review of Charles J. Reid, Jr. *Power Over the Body, Equality in the Family: Rights and Domestic Relations in Medieval Canon Law*. (Grand Rapids, Mich.: William B. Eerdmans. 2004); and *Sex, Marriage, and Family in John Calvin's Geneva. Volume 1: Courtship, Engagement, and Marriage*. John Witte, Jr., and Robert M. Kingdon, eds. (Grand Rapids, MI.: William B. Eerdmans, 2005) in *Ecclesiastical Law Journal*, Cambridge University Press, Summer 2008.

Review of *To Have and to Hold: Marrying and its Documentation in Western Christendom, 400-1600*, eds. Philip L. Reynolds and John Witte (Cambridge, Cambridge University Press, 2007) in *Ecclesiastical Law Journal*, Cambridge University Press, Spring 2008.

**Future Presentations:**

“Bigamy in Late-Medieval France.” To Have and To Hold: Marriage in Premodern Europe (1200-1700) The Centre for Reformation and Renaissance Studies, Victoria University in the University of Toronto, Toronto, CA, October 16-17, 2009.

“Proof of Death in Medieval Marriage Litigation” Mid-America Medieval Association 33<sup>rd</sup> Annual Conference, “Urban Life and Culture” Kansas City, MI, February 28, 2009.

**Presentations:**

“The Bishop’s Justice in Late Medieval Troyes.” American Society for Legal History, Ottawa, Canada, November 13-15, 2008.

“How to Punish Bigamy,” talk given at “Medieval Lunch,” Branford College, Yale University, October 28, 2008.

“Saint Anne’s Blood: Matriarchy and Kinship in Late Medieval France.” International Medieval Society of Paris, “Blood” Paris, France, June 24-26, 2008.

“ ‘Non ex lascivia carnis’: The Secret History of Saint Anne.” talk given at “Medieval Lunch,” Branford College, Yale University, October 16, 2007.

“Les officialités dans le nord de la France” presentation made at the seminar of Jacques Chiffolleau, École des Hautes Études en Sciences Sociales, Paris, France, June 7, 2007.

“Problems with Marriage in the Middle Ages,” talk given for the International Medieval Society of Paris, February 7, 2007.

“Marital Breakdown in Late Medieval France,” talk given at “Medieval Lunch,” Branford College, Yale University, February 2, 2006.

“Heretics on the Move” Heretics Without Borders, International Medieval Congress, Kalamazoo, MI. May 2004.

“The Inquisitor and the Deponent: Authorship in Medieval Inquisition Texts.” Heretics Without Borders, International Medieval Congress, Kalamazoo, MI. May 2003.

“The Inquisitor, the Notary, and the Peasant: Authorship in Medieval Inquisition Depositions.” Textual Effects: Graduate Student Medieval Studies Conference at Yale. October 19, 2002.

**Selected Honors and Fellowships:**

Golieb Fellowship in Legal History at New York University School of Law, 2009-2010.

Beinecke Rare Book Library Graduate Research Fellowship, 2007.

Recipient of the Bourse Chateaubriand, France, 2006-2007.

Bourse d’Accueil and Pensionnaire Etrangère, École Normale Supérieure, Paris, 2006-2007.

Dissertation Research Grant, Yale Center for International and Area Studies, 2006.  
Summer Language Fellowship, German, Yale University Summer Programs Grant, 2004.  
Medieval Academy CARA Grant, University of Toronto MA Medieval Latin Course,  
2002.  
Phi Beta Kappa, 2002.

**Teaching Experience:**

Teaching Fellow, History Department, Yale University  
Africa Since 1800, Professor Michael Mahoney, Spring 2009.  
Part-Time Associate Instructor, History Department, Yale University  
Junior Seminar: Marriage in the Western World, Fall 2008.  
Teaching Fellow, History Department, Yale University.  
The Birth of Europe II: 1000-1500, Professor Paul Freedman. Spring 2006.  
Colonial Latin America, Professor Stuart Schwartz. Fall 2005.

Guest Lecturer “Infanticide and Abandonment in Antiquity and Medieval Europe” in  
Infanticide and Child Abandonment in Asia and Europe Before 1900 (HIST 325J/881)  
Professor Fabian Drixler, Yale University, February 4, 2008.

Guest Lecturer “Martin Guerre in Literature, History and Film” in Introduction to the  
Study and Criticism of Medieval and Early Modern French Literature (FR 209) Instructor  
Annelle Curulla, Bowdoin College, October 16, 2008.

**Teaching Interests:**

Medieval and Early Modern Legal, Gender, Cultural, Church, and Social History  
Family Law and Canon Law  
European History  
Colonial Latin America

**University Service:**

Co-Organizer, *Florilegium*: Graduate Student Medieval Studies Conference at Yale  
University, October 29, 2005.  
Group Editor, Yale Journal of Law and the Humanities, 2003-2005.

**Related Professional Experience:**

Session Organizer, American Society of Legal History 2008 “Medieval Canon Law in  
Practice.”  
Research Assistant, Center for Millennial Studies, Boston University, 2002.  
Research Assistant, Center for Medieval Studies at Boston University, 2001-2.  
Research Assistant, African Studies Center, 1999-2001.

**Professional Memberships:**

American Historical Association  
International Medieval Society, Paris  
Medieval Academy of America  
American Society of Legal History

**Languages:**

French, reading knowledge of Latin, German, Italian, and Spanish.

**References:**

Prof. Paul Freedman, Yale University History Department  
Prof. Anders Winroth, Yale University History Department  
Prof. Stuart Schwartz, Yale University History Department  
Prof. Charles Donahue, Jr. Harvard Law School