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WOMEN'S LEGAL HISTORY: A GLOBAL PERSPECTIVE

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This article examines the involvement of the Marquise de Brinvilliers, Catherine La Voisin, and the Marquise de Montespan, in the scandal “Affair of the Poisons,” during the seventeenth century in France. Through such investigation, this article interrogates the discourse surrounding gender and crime in history, deepening the understanding of women's motivation to commit murder and the strategies they adopted. Moreover, the article examines how the legal system addressed women's crime, differentiated responses based on their class and social rank, and held women accountable for poisoning the country, thus failing to acknowledge the actual shortcomings of the French monarchy, the decline of Catholicism as well as women's constraints in the patriarchal society.

Finding Women in Early Modern English Courts: Evidence From Peter King's Manuscript Reports
Lloyd Bonfield 371

This article constitutes a preliminary report on cases involving women that appear in a manuscript authored by Chief Justice Peter King during the first seven years of his tenure as Chief Justice of the Court of Common Pleas in early eighteenth century England. While the 327 cases he reported in the manuscript run the gamut of the procedural and substantive matters that vexed early modern Englishmen, the cases isolated and discussed hereinafter are the fifty-five cases in which women were a party to the litigation observed. By so doing, isolating cases in which women appeared as litigants, we may catalog the legal issues that touched the lives of women during the period and discern the substantive law that these disputes generated. No sophisticated thesis on the legal position of women during the period can be teased from the cases. Rather, the cases allow historians to derive a more nuanced and textured understanding of the circumstances of women's participation in the early modern English legal order. Moreover, by observing the legal issues and the context in which they arose in cases that involved women
therein, we may relate the narratives illuminated in the cases to the broader role
of women as participants in the economy and society during the earlier years of
Britain’s commercial revolution.

LAW, LAND, IDENTITY: THE CASE OF
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This article presents the case history of Lady Anne Clifford, a seventeenth
century Englishwoman who spent most of her adult life fighting to regain her an-
cestral estates, which she felt her father had unjustly left to her uncle instead of to
her. Although, as the article explains, she had the better of the legal argument,
that was no match for the combined forces of her two husbands and of King James
I, who sought to deprive her of her land. Finally, however, because Clifford out-
lived her uncle’s son, the last male heir, she did inherit the estates.

The article examines Clifford’s struggles to illustrate how property ownership
constitutes the self as a civic subject, one bearing rights and recognized as bearing
those rights. It was through her battles and the ultimate recognition of her rights
to her land that Clifford was able to assert her rights in relation to her gender: only
after she became possessed of her estates, did she make claims that resonate as
“feminist.” What her story shows, I argue, is that property ownership leads to
recognition as a full civic subject for women, and I conclude by suggesting that this
lesson has relevance today.

GLOBALIZATION AND THE RE-ESTABLISHMENT
OF WOMEN’S LAND RIGHTS IN NIGERIA:
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Much has been written on women’s limited legal rights to land in Nigeria and
elsewhere in Africa, which is often attributed to custom and customary law. Per-
sisting biases against women in legal regimes governing land ownership, allocation
and use, result in a situation in which women, in all age groups, are vulnerable to
dispossession and to abuse by male relatives in increasingly patriarchal family and
community governance structures.

This paper raises questions about the genesis of ideas about women’s rights to
land in Nigeria today. It is an analysis of two court cases from South Western
Nigeria in the early twentieth century and some of the commentary that they gen-
erated. Examining how globalization, which included legal and not just economic
processes of integration through colonization, changed the power and gender dy-
namics of colonial society, the paper criticizes the gender-biased processes of de-
velopment of “customary law.” It calls for critical historical and feminist analyses
of law to re-establish women’s social and economic rights in the twenty-first cen-
tury adopting rights based strategies that are grounded in local history and strugg-
gles. Although it focuses on the impact of colonial legal change on the
displacement of women’s land rights, it is a broader commentary on how processes
of legal change are embedded in and should be understood in relation to political
and economic changes in society.

THE GLOBAL “PARLIAMENT OF MOTHERS”: HISTORY, THE REVOLUTIONARY TRADITION,
AND INTERNATIONAL LAW IN THE PRE-WAR WOMEN’S MOVEMENT	Susan Hinely 439

In spite of recent literature that examines late nineteenth and early twentieth
century transnational movements in innovative ways, the largest transnational
movement of that period, the women’s movement, remains lodged in academic
and popular memory as the “suffrage movement,” a single-issue campaign waged
by privileged Victorian women, a foregone development in the march of electoral
progress that ended in victory with postwar enfranchisement. A fresh approach to
the suffrage archive reveals instead a far more radical movement than conven-
tional history suggests, one that explicitly linked its cause with both the revolution-
ary democratic tradition and with anti-colonial activism. Like the non-Western
nationalists with whom they were often allied, suffragists employed an unavoid-
ably paradoxical discourse as they alternately embraced and rejected the political
order that excluded them. To a greater extent than the other radical movements of
the period, the suffrage activists developed creative and provocative tactics that
forced the state to use violence against them, thus revealing the violence underly-
ing the façade of liberal consent and further tying their cause to that of the "sub-
ject races." At the same time, suffragists were devoting enormous energy and
resources to the first institutions of public international law and imagining an al-
ternative concept of global citizenship that would empower them as well as their
anti-colonial allies. The same themes of radical economic and political decentrali-
zation, social equality and human rights that mark women's political tradition on
the national level were re-articulated for a new global order in the pre-war years.
From the perspective of this radical tradition, the postwar bestowal of a limited
franchise as a reward for cooperation in war-making was no victory, and a postwar
international legal regime that re-inscribed the liberal priorities and exclusions of
the nation-state was not a story of progress.

**PUERTO RICAN WOMEN NATIONALISTS VS. U.S. COLONIALISM: AN EXPLORATION OF THEIR CONDITIONS AND STRUGGLES IN JAIL AND IN COURT**

*Margaret Power*

This article examines the legal ramifications experienced by several women
members of the Puerto Rican Nationalist Party as a result of their militant opposi-
tion to U.S. colonialism in Puerto Rico. These women participated in the 1950
uprising in Puerto Rico or, in the case of Lolita Lebrón, the Nationalist Party's
1954 attack on the U.S. Congress. The article explores their sentences and condi-
tions in prison from a gendered perspective. It also suggests that several of the
women were tortured while in prison. The article concludes that the women drew
strength from their political commitment to Puerto Rican independence and their
close bonds with each other. As a result, their time in prison did not diminish their
dedication to establishing an independent nation.

**WOMEN'S RIGHTS, PUBLIC DEFENSE, AND THE CHICAGO WORLD'S FAIR**

*Barbara Babcock*

Women were an important part of the great public meetings held in connec-
tion with the Chicago World's Fair. One of these "Congresses," as they were
called, was devoted to the achievements of nineteenth century women, and
brought together suffragists, club women, society ladies, and activists of all stripes
from around the world. The Congress of Jurisprudence and Law Reform featured
two American women lawyers holding their own on a platform with leading
professors, judges and advocates. With an extraordinary speech based largely on
her own experience in the courts, Clara Foltz launched the public defender
movement.

**WOMEN LAWYERS AND WOMEN'S LEGAL EQUALITY: REFLECTIONS ON WOMEN LAWYERS AT THE 1893 WORLD'S COLUMBIAN EXPOSITION IN CHICAGO**

*Mary Jane Mossman*

In Chicago in 1893, for the first time in history, women lawyers were invited
to participate with male lawyers and judges at the Congress on Jurisprudence and
Law Reform, one of a number of Congresses organized in conjunction with the
World's Columbian Exposition. By the 1890s, women lawyers had achieved con-
siderable success for at least two decades in gaining admission to state bars in the
United States, and their success provided important precedents for women who
wished to become lawyers in other parts of the world. Yet, as Nancy Cott explained, although women’s admission to the professions had been seen in earlier decades as part of the “cause” of women’s equality, by the end of the nineteenth century, professional ideologies were beginning to create divisions between women professionals and the women’s equality movement.

In this context, this paper focuses on the presentations of the four women participants in the Congress on Jurisprudence and Law Reform in 1893 as a “moment in time” to assess the extent to which they reveal this departure from concern with the women’s equality movement and an increasing embrace of professional culture and ideology. Two of the women presenters were American: Mary Greene and Clara Foltz, and the other two included an English woman, Eliza Orme, and an Indian woman, Cornelia Sorabji. Significantly, neither Orme nor Sorabji had succeeded in gaining admission to the bar by 1893, although both had studied law in England. Notwithstanding these differences, the four papers presented at the Congress in 1893 tend to confirm that these women lawyers had already adopted an identity as members of the legal profession, and that their ties to the women’s equality movements were becoming rather tenuous. In this way, the paper seeks to examine the competing identities of gender and professionalism among these women lawyers in the 1890s.


Gwen Jordan

Edith Sampson was one of the leading black women lawyers in Chicago for over fifty years. She was admitted to the bar in 1927 and achieved a number of firsts in her career: the first black woman judge in Illinois, the first African American delegate to the United Nations, and the first African American appointed to the North Atlantic Treaty Organization. Sampson was also a pro-democracy, international spokesperson for the U.S. government during the Cold War, a position that earned her scorn from more radical African Americans, contributed to a misinterpretation of her activism, and resulted in her relative obscurity in the historical record. This paper reexamines the work of Edith Sampson by employing a critical race feminist analysis to her career. This new lens reveals that, rather than a marginal figure, Sampson’s work was an important part of a gendered black activism that sought racial justice for women of color in the United States and around the world.

Understanding Sampson’s career in this context connects the activism of African American women to the issues of race, racial justice, and international relations during the decades before and after the start of the Cold War. Sampson was part of a vibrant and dynamic African American women’s civil rights network that employed a rich diversity of strategies, both domestic and transnational, to secure a gendered racial justice—one that included the concerns and position of black and brown women. Through an examination of Sampson’s work as an attorney and a leader in Chicago and her international work, this article hopes to contribute to recent studies that are beginning to alter our understanding of the role African American women played in the domestic and international civil rights movement from the 1920s through the 1950s. This piece argues specifically that Edith Sampson, and her sister black women lawyers and activists, engaged in domestic and international activism to pressure the United States government and its citizens to end race discrimination as they worked to ensure that the growing civil rights movement in the U.S. included the advancement of the position, rights, and protections of African American women.

PORTIA’S DEAL

Karen M. Tani

The New Deal, one of the greatest expansions of government in U.S. history, was a “lawyers’ deal”: it relied heavily on lawyers’ skills and reflected lawyers’ values. Was it also, as some claim, a “male lawyers’ deal”? This Essay argues that the New Deal offered important opportunities to women lawyers at a time when they were just beginning to graduate from law school in significant numbers. Agencies associated with social welfare policy, a traditionally “maternalist” enterprise, seem to
have been particularly hospitable. Through these agencies, women lawyers helped to administer, interpret, and create the law of a new era.

Using government records and archived personal papers, this Essay examines three under-studied women lawyers of the New Deal. Sue Shelton White, an outspoken feminist from Tennessee, came to the New Deal after a long career as a court reporter, political organizer, and senate staffer. Records of her time in government suggest the difference that gender, and specifically gendered opportunity structures, made to the work of a New Deal lawyer. Marie Remington Wing, a prominent politician and lawyer in her native Cleveland, joined the New Deal as the lead attorney in a regional office. Her biography encourages scholars to remember that just as the New Deal was national in scale, so too was its legal work. Regional outposts of the New Deal provided some women lawyers with a taste of the power that the men in Washington enjoyed. Bernice Lotwin Bernstein was in age, brains, and social networks the equivalent of one of Felix Frankfurter's “Happy Hotdogs.” She joined the New Deal in 1933 and stayed for forty-five years, narrowly surviving a Cold War loyalty-security investigation. Her life offers a case study in the appeal, and the dangers, that government work held for women lawyers. Taken together, these three biographies suggest the need for sustained scholarly attention to the “Portias” of the New Deal.


Mary Ziegler 571

Leading studies argue that Roe itself radicalized debate and marginalized antiabortion moderates, either by issuing a sweeping decision before adequate public support had developed or by framing the opinion in terms of moral absolutes. The polarization narrative on which leading studies rely obscures important actors and arguments that defined the antiabortion movement of the 1970s. First, contrary to what the polarization narrative suggests, self-identified moderates played a significant role in the mainstream antiabortion movement, shaping policies on issues like the treatment of unwed mothers or the Equal Rights Amendment. Working in organizations like Feminists for Life (FFL) or American Citizens Concerned for Life (ACCL), other activists also campaigned for what they defined to be alternatives to abortion: for example, laws prohibiting pregnancy discrimination or funding contraception or sex education. Roe did not undo these important opportunities for compromise. Ultimately, these advocates did lose influence in the movement. Their declining power, however, came as the result of a number of factors beyond Roe itself, including the rise of the Religious Right, the limited resources previously available to the antiabortion movement, and the Republican Party's endorsement of antiabortion goals.

This article offers new perspective on an increasingly rich scholarship on women of the Right. Current studies have not fully done justice to important “pro-woman” abortion opponents who defined themselves as feminists or sympathized with parts of the agenda set forth by the women's movement. These advocates offer reason to rethink the categories used to define women of the Right. To the extent that the history studied here offers an example, as this article suggests, we should not attribute so much of the polarization of the abortion debate to Roe itself. If Roe did not radicalize debate in the way that is conventionally thought, then should criticisms of the opinion's rationale, timing, or scope be reexamined? The history here makes more urgent a reconsideration of this question.

ADULTERY BY DOCTOR: ARTIFICIAL INSEMINATION, 1890-1945

Kara W. Swanson 591

In 1945, American judges decided the first court cases involving assisted conception. The challenges posed by assisted reproductive technologies to law and society made national news then, and have continued to do so into the twenty-first century. This article considers the first technique of assisted conception, artificial insemination, from the late nineteenth century to 1945, the period in which doctors and their patients worked to transform it from a curiosity into an accepted medical technique, a transformation that also changed a largely clandestine medi-
cal practice into one of the most pressing medicolegal problems of the mid-twentieth century. Doctors and lawyers alike worried whether insemination using donor sperm was adultery by doctor, producing illegitimate offspring. Drawing upon the legal and scientific literatures, case law, popular sources and medical archives, I argue that insemination became identified in medicine and law as a pressing problem at mid-century after decades of quiet use because of the increasing success of the technique, increasing patient demand, and increasing use—three interrelated trends that led to increasing numbers of babies whose origins were "in the test tube." In examining the history of a medical procedure becoming a legal problem, I also trace the development of a medical practice in the face of legal uncertainty and the shifting control of the medical profession over assisted conception. I argue that doctors modified the way they treated patients in response to perceived social and legal condemnation of artificial insemination, keeping tight control over all aspects of the procedure, but that doctors' persistence in meeting patient demand for fertility treatments despite such condemnation helped make artificial insemination into a medicolegal problem. Once it became identified as a medicolegal problem, artificial insemination became the subject of a broad social discussion, in which medical voices did not receive automatic deference, and medical control was challenged.

**STUDENT NOTES**

**LEBRON v. GOTTLIEB AND NONECONOMIC DAMAGES FOR MEDICAL MALPRACTICE LIABILITY: CLOSING THE DOOR ON CAPS, BUT OPENING IT TO NEW POSSIBILITIES**

Jacquelyn M. Hill 637

In Lebron v. Gottlieb, decided in February of 2010, the Illinois Supreme Court struck down Public Act 94-677, finding that its cap on noneconomic damages violated the Illinois Constitution's separation of powers clause. The Court primarily relied upon the remittitur doctrine to come to its conclusion. This case comment addresses the Lebron decision and its rationale, particularly its focus on the remittitur doctrine. Additionally, this comment addresses the following concepts: 1) the background and history of attempts to limit common law liability in tort law in Illinois; 2) other jurisdictions' responses to statutory caps; 3) the Lebron majority's distinctions regarding the General Assembly; and 4) alternatives to the tort system of medical malpractice liability which might receive more attention after Lebron.

**DUELING VALUES: THE CLASH OF CYBER SUICIDE SPEECH AND THE FIRST AMENDMENT**

Thea E. Potanos 669

On March 15, 2011, William Melchert-Dinkel, a Minnesota nurse, was convicted of two counts of assisted suicide, based solely on things he said in emails and online chat rooms. This note examines whether cyber speech encouraging suicide, such as Melchert-Dinkel's, should be protected by the First Amendment. States have compelling interests in preserving life, preventing suicide, and protecting vulnerable persons from abuse, and the majority of them have assisted suicide statutes that could be applied to cyber-suicide speech. However, because cyber-suicide speech does not fit neatly into recognized categories of "low-value" or unprotected speech, punishment may be foreclosed by the First Amendment. Nevertheless, because counseling suicide was a felony at common law, speech encouraging suicide—including cyber-suicide speech—should be identified as a "traditional" category of unprotected speech. Alternatively, an assisted suicide statute as applied to cyber-suicide speech has a good chance of surviving strict scrutiny.
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