Kellen R. Funk

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EDUCATION

PhD history, Princeton University (2017)

Fields: U.S. 1815–1920; American Legal History; Global Christianity

Dissertation: "The Lawyers' Code: The Transformation of American Legal Practice" (Hendrik Hartog, chair; Daniel T. Rodgers; Sean Wilentz; Amalia Kessler)

JD, Yale Law School (2014)

Yale Law Journal, Emerson Prize (legislation); Parker Prize (legal history)

BA history & MA church history, Bob Jones University (2007 / 2009)

CLERKSHIPS

Honorable Stephen F. Williams (2017–2018)
United States Court of Appeals for the DC Circuit

Honorable Lee H. Rosenthal (2016–2017)
United States District Court for the Southern District of Texas

TEACHING INTERESTS

Primary: Civil Procedure / Advanced Civil Litigation; Remedies; Professional Responsibility; Federal Courts / Federal Jurisdiction; Property

Secondary: Criminal Procedure; Arbitration & ADR; Administrative Law; Legislation / Statutory Interpretation; Legal History (American / Common Law / Comparative)

RESEARCH INTERESTS

Legal and constitutional history (American & comparative); civil institutions, practices, and procedures; legal & religious pluralism; legal empiricism & digital methodologies

ARTICLES & CHAPTERS

The Spine of American Law: Digital Methods and U.S. Legal Practice, with Lincoln Mullen, 132 AMERICAN HISTORICAL REVIEW (2018) (peer reviewed). (SSRN)

Understanding the development of American civil procedure poses a daunting task: early procedure codes consisted of some 30,000 pages of statutes comprising 13 million words. By developing novel techniques of digital analysis, this Article shows how the evolution of law can be studied at a macro level—across many codes and jurisdictions—and at a micro level—regulation by regulation. Applying these techniques to New York's famous Field Code, the Article shows that, by a combination of creditors' remedies, the Field Code exchanged the rhythms of agriculture for those of merchant capitalism. The Code aimed to accelerate creditor actions from two years to twenty days, force admissions about assets up front, and eliminate waiting periods between judgment and enforcement. The political reception of the Code, traced out by following digital clues, poses significant challenges to conventional understandings of administrative lawmaking, federalism, and the substance/procedure divide.

The Handmaid of Justice: Power, Procedure, and the Inferior Courts, *in* CLARA ALTMAN, GAUTHAM RAO & WINSTON BOWMAN, EDS., APPROACHES TO FEDERAL JUDICIAL HISTORY (forthcoming).

The concept of *civil procedure* in the federal courts was forged in response to state procedure codes and the politics of creditor remedies. Procedure was at first coterminous with the substantive law of

civil remedies, and procedural reform was bound up with the legitimacy of the federal district courts. Only after the Civil War, when federal lawmaking and a precisely constrained array of federal remedies became accepted facts of life, could codifiers like Charles Clark begin to conceive of domain called *procedure* that served as a mere "handmaid" to a substantive law of justice.

The Theological Framework of American Codification, LAW & HISTORY REVIEW (in revision) (peer reviewed). (SocArXiv)

Histories of the American debates over codifying the common law uncritically treat nineteenth-century codifiers as the forerunners of modern statutory supremacy. What these accounts miss is the pervasive religious rhetoric and theology underlying the codification debates. American codifiers universally adopted a liberal Protestant approach to the perspicuity of texts and the unmediated authority of individual interpreters that was common to their time (features that distinguished American codification from similar efforts in England and Europe). They were rebuffed by common law lawyers who emphasized the inherent slipperiness of language and the need for authoritative communities of interpreters, critiques that appear prescient today despite the conventional caricature of common law lawyers as antimodern formalists.

Church Corporations and the Conflict of Laws in Antebellum America, 33 JOURNAL OF LAW & RELIGION (forthcoming, 2017) (peer reviewed). (SSRN)

Scholars frequently describe American religious disestablishment using commercial analogies ('privatization' or 'free market competition'), yet this Article demonstrates how churches pioneered some of the corporate devices that would define American enterprise. Lawmakers were less concerned about the similarity of churches to businesses than their similarity to states. The republican fear that churches could be rival sovereignties structured the law of disestablishment by constraining corporate power. But when churches litigated in state courts, judges treated religious doctrine as a foreign legal system with rules that could be ascertained and respected in American courts. Such a move created a positive, corporate right of religious liberty that becomes obscured if one conceives of religious freedom only as a negative right to be asserted against the state.

Shall These Bones Live? Property, Pluralism, and the Constitution of Evangelical Reform, 41 LAW & SOCIAL INQUIRY 742–774 (2016). (Wiley | SSRN)

Recent work argues that twentieth-century progressives embraced a 'living' Constitution by relying on legislative theories crafted by evangelical moral reformers. This Article reverses that path of analysis: instead of applying law and religion studies to constitutional history, it applies property, contract, and corporation doctrine to law and religion literature, broadening the latter's focus far beyond the First Amendment. Rather than simplistic moralism, evangelical moral regulation was derived from antislavery liberalism. Just as evangelical antislavery redefined persons as non-property, it redefined addictive activities such as drinking, gambling, and prostitution as nonproperty, noncontractual nuisances. The legal and religious pluralism that had impeded antislavery, however, also hindered these prohibitions and spurred evangelicals to seek federal remedies to national sins. Thus national antislavery, Prohibition, and morals regulation, no less than New Deal constitutionalism, centered on the American dilemma of how to wield illiberal regulations across state lines to promote and protect human agency as fundamental to a democratic liberal order.

A Servile Copy: Text Reuse and Medium Data in American Civil Procedure, with Lincoln Mullen, *in Forum: Die geisteswissenschaftliche Perspektive: Welche Forschungsergebnisse lassen Digital Humanities erwarten?*, 24 RECHTSGESCHICHTE 341–343 (2016). (RG)

The discursive structure of law is ideal for new techniques of digital analysis. Modern printed legal sources textually signal where discrete propositions and regulations begin and end, allowing computers to track the influence and migration of laws with unparalleled precision and scale.

Equity without Chancery: The Fusion of Law and Equity in the Field Code of Civil Procedure, New York 1846–1876, 36 JOURNAL OF LEGAL HISTORY 152–191 (2015) (peer reviewed). (Taylor & Francis | SSRN)

Despite scholarly claims to the contrary, the Field Code's drafters sought to extend New York's equitable procedures to all civil cases. But the codifiers did not think discovery useful for pretrial investigation—a key feature of modern American practice. Discovery in New York served a function of admission which the codifiers thought 'fact pleading' would replace. They retained discovery only to abolish the disqualification of party testimony at trial, a controversial—and only partially successful—project at the time. The codifiers' ideal was the procedural system of equity, but without the large and costly investigative staff of chancery.

"Let No Man Put Asunder": South Carolina's Law of Divorce, 1895–1950, 110 SOUTH CAROLINA HISTORICAL MAGAZINE 134–153 (2009) (peer reviewed). (JSTOR | SSRN)

South Carolina banned divorce from colonial days until 1948. This Article, originally a senior thesis, explores the state's policy as a problem in the conflict of laws. The state's ban remained legally meaningful so long as the state could refuse to recognize 'foreign' divorce decrees. When the Supreme Court required full faith and credit for foreign divorces in the late 1940s, state lawyers reacted quickly to create divorce policy on South Carolina's terms.

BOOK REVIEWS

Codification, Transplants and History: Law Reform in Louisiana and Quebec, by John W. Cairns, 24 RECHTSGESCHICHTE 480–483 (2016). (RG | SocArXiv)

Making Religion Safe for Democracy, by J. Judd Owen, 31 JOURNAL OF LAW AND RELIGION 103–107 (2016). (Cambridge | SocArXiv)

HONORS

Porter Ogden Jacobus Fellow, Princeton University

highest graduate honor awarded to one student in the social sciences at Princeton

Legal History Fellow, Yale Law School

J. Willard Hurst Fellow, University of Wisconsin Law School

Graduate Research Fellow, Center for the Study of Religion, Princeton University

American Studies Graduate Research Prize, Princeton University

Littleton-Griswold Research Grant, American Historical Association

Hugh Davis Graham Award, Institute for Political History

William Nelson Cromwell Fellowship, American Society for Legal History

Nathan E. Mag Scholarship for Joint-Degree Students, Yale Law School

Shelby Collum and Kathryn Davis Prize, History, Princeton University

Charles Redd Center Graduate Student Summer Award

EXPERIENCE

Yale Law School, Teaching Assistant (Prof. Kristin Collins) (2013–2014)

Civil Procedure (fall semester); Advanced Civil Litigation (spring semester)

Princeton University, Research Assistant (Prof. Martha A. Sandweiss) (2012)
Legal History in the American West (spring semester)

Yale Law School, Research Assistant (Prof. John Fabian Witt) (2010)
Laws of War in American History (spring semester & summer)

Boies, Schiller & Flexner LLP, Summer Associate (2013)
(New York)

Cleary Gottlieb Steen & Hamilton LLP, Summer Associate (2011)
(Washington & Brussels)

Jerome N. Frank Legal Services, Education Adequacy Project (2010–2011)
(New Haven)

INVITED PRESENTATIONS

Workshop on Digital Methods in Legal History, American Society for Legal History, Toronto (2016)

Summer Academy, Max-Planck Institut für europäische Rechtsgeschichte (2015)

Summer Research Seminar at Stanford Law School: Religion and the Constitution, Institute for Constitutional History (2015)

OTHER PRESENTATIONS

Text Reuse for Digital Legal History, with Lincoln Mullen, workshop, American Society for Legal History, Toronto, October 27, 2016.

The American Tradition of the Active Judge, paper presented at the Second Annual Civil Procedure Workshop, University of Washington School of Law, July 2016, Joanna Schwartz, commentator.

A Servile Copy of New York: The Migration of Field's Code, paper presented at the Brown University Graduate Student Legal History Conference, April 2016.

Most Sacred to the Truth: Oaths and Witness Testimony in the Field Code, paper presented at the Religion and Public Life Forum, Center for the Study of Religion at Princeton University, April 2016, Leslie Ribovich, commentator.

No Foundation in the Nature of Things: American Controversies over the Fusion of Law and Equity, paper presented at the Australia & New Zealand Legal History Conference, December 2015.

The Protestant Framework of American Codification, paper presented at the Religion & Public Life Forum, Center for the Study of Religion at Princeton University, September 2015, Michael Thate, commentator.

The Lawyers' Code: The Transformation of American Legal Practice, presented at the Summer Academy for European Legal History, Max-Planck Institut für europäische Rechtsgeschichte, August 2015.

No Foundation in the Nature of Things: The Elusive Union of Law and Equity, paper presented at the Hurst Summer Institute for Legal History, June 2015.

Church Corporations and the Conflict of Laws in Antebellum America, paper presented at the Princeton University Religious History Workshop, November 2014, Kurt Karandy, commentator.

Mere Machinery and Arbitrary Regulation: The Politics of Lawyering and the Creation of Civil Procedure in New York, 1846-1850, paper presented at the American Society for Legal History annual conference, November 2014, Roman Hoyos, commentator.

The Theological Framework of the American Codification Controversy, paper presented at the Modern American Workshop, Princeton University, September 2014, Jane Manners, commentator.

Disestablishment and Religious Corporations in New York, 1784-1854, paper presented at the History Project conference on Commerce, Corporations, and the Law, Princeton University, September 2013, Sunil Amrith, commentator.

Disestablishment and Religious Corporations in New York, 1784-1854, paper presented at the New Worlds of Faith conference, University of Pennsylvania, June 2013, Sarah Barringer Gordon, commentator.

Disestablishment and Religious Corporations in New York, 1784-1854, paper presented at the Religion and Law Conference, Florida State University, March 2013, Ann Duncan, commentator.

Plausibility Pleading After *Iqbal-Twombly*, address to the litigation group at Cleary Gottlieb Steen & Hamilton LLP, Brussels, Belgium, August 2011.

"Let No Man Put Asunder": South Carolina's Law of Divorce, 1895-1950, paper presented at the annual meeting of the South Carolina Historical Association, March 2008, Marcia G. Synnott, commentator.

SERVICE

Reviewer, LAW & HISTORY REVIEW

Steering Committee, Public History Initiative, Princeton University

Digital research projects on American legislation and civil procedure, including open-source r packages and Omeka libraries, available at http://kellenfunk.org/digital-research/.

ADMISSIONS & MEMBERSHIPS

American Historical Association, American Society for Legal History, Conference on Faith and History, Selden Society

New York Bar (2015)