

2013

**Review, From Industrial to Legal Standardization, 1871-1914:
Transnational Insurance Law and the Great San Francisco
Earthquake**

Sachin Pandya
University of Connecticut School of Law

Follow this and additional works at: https://opencommons.uconn.edu/law_papers



Part of the [Insurance Law Commons](#), and the [Legal History Commons](#)

Recommended Citation

Pandya, Sachin, "Review, From Industrial to Legal Standardization, 1871-1914: Transnational Insurance Law and the Great San Francisco Earthquake" (2013). *Faculty Articles and Papers*. 524.
https://opencommons.uconn.edu/law_papers/524

Slaveholders delivered slaves to jails for the purpose of having them beaten and tortured by jail administrators; the local jail was, in the words of contributor Matthew J. Clavin, “a house of horrors for bondspople, a public institution where at the behest of a small but powerful group of slaveowners, law enforcement officials daily employed violence to discipline intractable black men and women” (262). This scholarship is intriguing and important, as it raises significant questions about the political and social functions of jails and prisons in reifying racial and ethnic hierarchies in the United States and other jurisdictions. During the coming year, which marks the sesquicentennial of the Emancipation Proclamation, it seems especially appropriate to look closely at the role and legacy of chattel slavery in the emergence (and persistence) of carceral institutions in early America.

The essays in this collection have done an admirable job of bringing women, servants, slaves, and the poor to the center of the history of early America. *Buried Lives* will enrich and enliven undergraduate and graduate survey courses in law and history departments. It can be assigned in toto or as individual chapters to supplement monographs and primary sources in the undergraduate and graduate history curriculum. Although none of the contributors are in the legal academy, their use of diverse sources to recount the history of a legal procedure—incarceration—will be of interest to legal scholars and law students. This collection contributes to the scholarship on crime, criminal law, and punishment by demonstrating that neither definitions of crime nor punishments for crime are natural phenomena; crimes and punishments are constructed by the powerful to serve purposes that may occasionally fall entirely outside the legitimate goals of the rule of law. One hopes that *Buried Lives* catalyzes further research and critical analysis of the lives of those whom legal and historical sources on state confinement have all but forgotten.

Taja-Nia Y. Henderson
Rutgers School of Law – Newark

Tilman J. Röder, *From Industrial to Legal Standardization, 1871–1914: Transnational Insurance Law and the Great San Francisco Earthquake*, translated by Frederik Heinemann, Leiden: Martinus Nijhoff Publishers, 2012. Pp. 350. \$136.00 (ISBN 978-9-004-21237-4).
doi:10.1017/S0738248013000205

In April 1906, a massive earthquake hit San Francisco. Buildings fell, gas mains burst and ignited, fires ravaged the city for days, and many buildings still standing burned to the ground. When city property owners filed claims

with their fire insurers, some insurers, fearing insolvency, resisted. They invoked certain standard policy terms: a fallen-buildings clause, which excluded fire losses to a building if that building fell not because of fire; and an earthquake clause, which generally excluded damages caused by earthquakes. Policyholders and their allies fought back, often successfully, by arguing about those clauses' ambiguities: Did not such clauses exclude fire losses directly, but not *indirectly*, caused by an earthquake? And did not the insurer, not the policyholder, bear the burden of proving what the clause required?

In this book, Röder shows how, with the San Francisco experience in mind, the managers of four fire reinsurance companies joined forces in June 1906 to draft, circulate, and encourage adoption of a standard earthquake clause into policies sold domestically and abroad by fire insurers based in Europe. This standard clause, the fire-insurers hoped, would unambiguously exclude both direct and indirect fire damage caused by earthquake and would burden the policyholder, not the insurer, with proving that this clause did not apply. If widely adopted, the fire-insurers believed, they and their fire-insurer counterparts would be far less vulnerable when the next great earthquake came.

Röder is a senior research fellow at the Max Planck Institute for Comparative Public Law and International Law. The book is an English translation of Röder's dissertation, published in German in 2006, now updated to include "the literature available by September 2011" (xvii). Chapters 1 and 4 frame the rise and spread of the fire reinsurers' earthquake clause as a case study of the rise and spread of standard terms in international business contracts before the First World War. Within this frame, the book's middle chapters display the substantial fruits of Röder's primary sources. Chapter 2 describes the fire insurers' experience with the San Francisco earthquake aftermath and the origins of the fire reinsurers' earthquake clause. Chapter 3 compares, by country, how fire insurers reacted to that clause. These chapters show well, and with remarkable breadth, how the San Francisco earthquake affected fire insurer policies and practices worldwide, as well as the significant cross-country differences in fire insurance market structure at the turn of the twentieth century.

How well the study fits its frame—the spread of standard terms in international business contracts—turns largely on the cross-country comparisons in Chapter 3. In some countries, the fire insurers adopted versions of the reinsurers' earthquake clause as a standard policy term (Spain, Portugal, France, Belgium, Germany, Austria-Hungary). In others, they rejected it (Great Britain, Netherlands). In still others, the insurer response is unclear (Switzerland, Denmark, Norway, Sweden, Russia, Italy).

By comparing insurer reactions by country, Röder infers several influences favoring standard earthquake clause adoption (286): insurer perception that they *already* covered enough risk of earthquake-induced fire damage such that an earthquake could endanger company solvency; insurer doubts about

their ability to calculate and price earthquake risk accurately; that general insurance law reforms were already pending and imminent; and how much insurers depended on the fire reinsurers to cover their portfolios. Röder also finds two barriers: fear of losing market share to rival companies who *were* willing to cover fire risk from earthquakes, and market domination by public law insurance institutions or mutual societies:

These causal inferences vary in strength. Consider Germany, Italy, and California, the cases on which Röder spends the most time. For Germany, this is time well spent. The German experience strongly supports the idea that regulatory structure mattered, as did already-imminent insurance law reform. Italy and California, however, reveal far less. In Italy, fire insurers responded to the reinsurers with apparent disinterest, but Röder can only speculate why, because “not a trace of a discussion or any resolutions has survived” (262). When, in December 1908, an earthquake hit near Messina and Reggio, and fires followed, the Italian courts ultimately read the earthquake clauses in existing fire insurance policies in a way similar to the fire reinsurers’ desired reading of their standard clause. This is interesting, but, given his frame, somewhat tangential. Similarly, the California experience, although interesting (211–40), seems peripheral, because the fire reinsurers never really pressed domestic fire insurers in North America to adopt their standard earthquake clause in the first place (209, 235).

Caveats aside, for those interested in early twentieth century insurance and commercial law and legal practice, this book is well worth reading.

Sachin S. Pandya

University of Connecticut School of Law

Mary L. Dudziak, *War Time: An Idea, its History, its Consequences*, New York: Oxford University Press, 2012. Pp. 232. \$24.95 (ISBN 978-0-19-977523-1).

doi:10.1017/S0738248013000217

Dudziak has written an extremely interesting book that engages with two very different groups of scholars who rarely communicate between one another: diplomatic historians and law professors specializing in constitutional theory. The issues she discusses are what Americans (and most of the scholars in these two groups) like to think are the discrete periods in which the United States went to war. Dudziak instead argues that wars are not as easy to define as we think. For example, World War II did not start in December of 1941 with Pearl Harbor and end in September of 1945 on the U.S.S. *Missouri*.