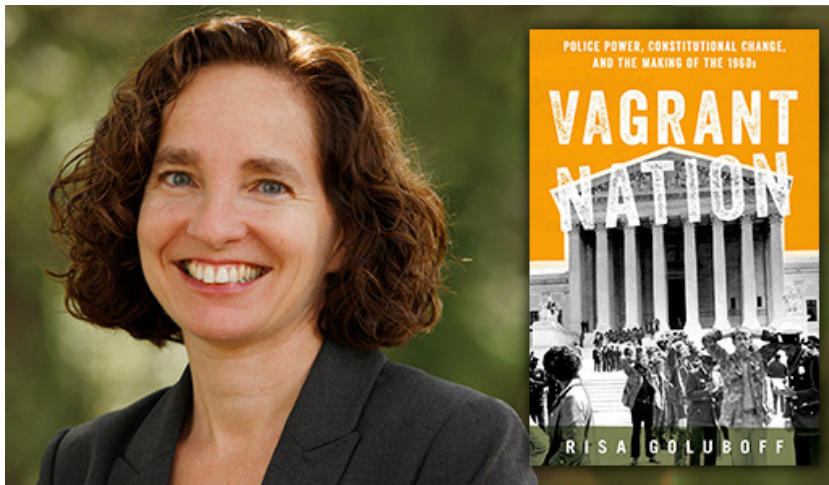




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Goluboff's "Vagrant Nation" Uncovers Rapid Revolution in Nation's Laws, Police Power



"One of the most exciting things about being a law professor is teaching students how much creativity there can be in the law," Professor Risa Goluboff said of the cumulative effect of the many lawyers who challenged vagrancy laws.

Alongside massive social changes during the 1960s, a similar revolution took place in the nation's vagrancy laws that shifted the balance of power between police and individuals, says University of Virginia School of Law professor [Risa Goluboff](#) in her new book.

In "Vagrant Nation: Police Power, Constitutional Change and the Making of the 1960s," published by Oxford University Press, Goluboff explores how and why vagrancy laws that had been on the books for hundreds of years rapidly collapsed in the span of two decades.

"This is a story that's always going to be relevant, because there's always going to be a tension between how much power the police have and how much liberty individuals have," she said.

Goluboff, a legal historian who will [become dean](#) of UVA Law in July, said vagrancy laws date back to the American colonial period and originate in medieval and Elizabethan England.

"They were used for hundreds of years to regulate, arrest, surveil [and] control all kinds of people who didn't fit in different ways," she said. "In part, police turned to vagrancy laws when it was hard to arrest people for other things."

Vagrancy laws made it a crime to be idle and poor, or to "wander about with no purpose," or live a dissolute or immoral life.

"You didn't actually have to engage in any particular conduct in order to be arrested and convicted for vagrancy," Goluboff said. "You had to be a certain kind of person, and there was an enormous discretion in the eyes of the police as to whether a particular person was a vagrant, and who counted in that category."

UVA Law Professor Risa Goluboff Discusses "Vagrant Nation"



The list includes hippies in the 1960s, beats in the 1950s, civil rights activists, Vietnam War protestors, prostitutes, racial and sexual minorities, political dissidents, and people generally considered "out of place."

"If southern planters wanted African Americans with industrial jobs to do agricultural labor, they had them arrested for vagrancy and put them to work on a plantation," she said.


As the Supreme Court, under the leadership of Chief Justice Earl Warren, revolutionized criminal procedure and placed more strictures on policing, law enforcement also turned increasingly to vagrancy laws as a loophole around the requirement that police have probable cause to make an arrest.

A suspect might be arrested for vagrancy and be held while an investigation for a more serious crime was underway, for example.


"It was often called a safety valve for the probable cause requirement."

The police also used vagrancy laws against less-serious crimes of vice, often called "victimless" crimes. With vagrancy arrests, police didn't have to find prostitution, or "immoral" behavior by gay men or lesbians, in action. "All they had to do was go to a gay bar and arrest everyone for being 'lewd' and therefore a vagrant."

The revolution in changing vagrancy laws came through a series of challenges in courts across the country, starting in the 1950s. Goluboff built up a database of 1,000 cases — and no single actor led the way.



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"We often think of constitutional change as starting at the Supreme Court — we hear about the court's arguments and the court's opinions, but that's not where constitutional cases start," Goluboff said. "They start in everyday life, when people decide that a law is unjust or an arrest is unjust, or some interaction that they've had seems wrong to them and they think there's a legal problem, and ultimately a constitutional problem."

In 1972 the Supreme Court unanimously struck down vagrancy laws through *Papachristou v. City of Jacksonville*, a case from Florida in which two white women and two black men were arrested for being out on the town in 1969, essentially for flaunting racial and sexual mores.

"They get struck down under a doctrine called "void for vagueness," [because] they were too vague to let people know that they were committing a crime, and they were too vague to let the police know whom they should be arresting under that law — they didn't give enough guidance to police and to the lower-level judges."

Though the Supreme Court had hesitated over taking such action for years, a dozen cases that they had considered to one extent or another — plus awareness of lower court cases invalidating vagrancy laws — educated them about how extensively vagrancy laws were being used nationwide. Social and cultural change also brought an air of inevitability to the decision.

"At the same time, because there were so many of these laws and they were used so frequently and ubiquitously, their invalidation was still perceived to be a big deal," Goluboff said. "Similar laws in cities and towns across the country became vulnerable."

"Going forward, the invalidation of vagrancy laws means the Constitution is now on the side of vagrants and other people out of place, rather than the side of the police, and that's a really significant moment," she said. "There continues to be a struggle about how much power the police will have, how much discretion the police will have. That has constitutional dimensions still today, but I think the process of constitutional change and the Supreme Court's decision is a fundamental pivot in how we perceive what the Constitution does, and who it protects, and how it protects them."

After the decision, states and localities turned to a range of laws to fill the gap left by vagrancy laws, including "disorderly conduct" laws, stop-and-frisk laws, panhandling laws, sodomy laws, and more specific loitering laws relating to prostitution or narcotics.

[Read an excerpt from Prof. Risa Goluboff's "Vagrant Nation" in Time.](#)

"There's a whole patchwork of laws that have to be more transparent because they have to address particular kinds of conduct, and in so doing it becomes clear which people are being targeted by which laws," she said. "The vagrancy laws made a huge target that all of these different groups could accumulate power against, and in certain ways work together to challenge. They gained arguments and momentum from one another. Once that's no longer there, all that energy splinters into its component parts and different groups have to focus on the particular laws that are targeting them."

Yet now Americans have information on who is stopped or arrested and how many times, and demographics about arrests like race, gender and age.

"They're things we know now only because the end of the vagrancy law regime required greater transparency, because we said that the kind of hidden and flexible power the vagrancy laws licensed was no longer acceptable," Goluboff said.

Even in the eight years she worked on the book, Goluboff said, Americans have changed how they think and talk about policing and mass incarceration, pointing to the rise of the Black Lives Matter movement.

"Change can happen," she said. "Seeing how the process worked in the past really opens up possibilities for how legal change can happen in the future."

And the legacy of the vagrancy laws' demise and the 1960s remains in the more open society the United States has become.

"I think we often forget what the world was like in the 1950s and before. We forget what Jim Crow was like. We forget that wearing a beard got you arrested, or playing guitar in a particular square," she said. "Although there are still limits to our tolerance and our pluralism, there's a lot more space for a lot more difference than there was before the various social movements of the 1960s."

Goluboff, the John Allan Love Professor of Law and Professor of History at the University of Virginia, is the author of the 2007 book ["The Lost Promise of Civil Rights,"](#) which received the Order of the Coif award for best book in the legal field and the James Willard Hurst Prize. She holds a Ph.D. in history from Princeton University, a J.D. from Yale Law School, and a B.A. in history and sociology from Harvard College.

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