Law and History Review

Volume 26, Number 3

Fall 2008

Published three times a year by the University of Illinois Press for the American Society for Legal History

Editor

David S. Tanenhaus University of Nevada, Las Vegas Department of History 4505 Maryland Parkway Las Vegas, NV 89154-5020 702.895.3549 FAX: 702.895.1782 E-Mail: david.tanenhaus@ unlv.edu

Associate Editor (Book Reviews, Americas)

Alfred L. Brophy University of North Carolina School of Law 160 Ridge Road, CB #3380 Chapel Hill, NC 27599-3380 919.962.4128 FAX: 919.962.1277 E-Mail: abrophy@email. unc.edu

Associate Editor (Book Reviews, Non-Americas)

Amalia D. Kessler Stanford Law School 559 Nathan Abbott Way Stanford, CA 94305-8610 650.725.5800 FAX: 650.725.0253 E-Mail: akessler@law.stanford. edu

Editorial Board

Edward J. Balleisen Duke University David A. Bell Johns Hopkins University

Girish Bhat SUNY, Cortland

Mary Sarah Bilder Boston College

Bettina Bradbury York University, Toronto

Peter C. Caldwell *Rice University*

Andrew Wender Cohen Syracuse University

Jane Dailey Johns Hopkins University

Elizabeth R. Dale University of Florida

Adrienne Dale Davis University of North Carolina

Thomas J. Davis Arizona State University

Christine A. Desan Harvard University

Charles R. Donahue Harvard University

Markus Dirk Dubber SUNY, Buffalo

Mary L. Dudziak University of Southern California

Laura F. Edwards Duke University

Daniel R. Ernst Georgetown University

William E. Forbath University of Texas, Austin Thomas P. Gallanis University of Minnesota Sarah Barringer Gordon University of Pennsylvania

Ariela J. Gross University of Southern California

Sally E. Hadden Florida State University

Daniel J. Hulsebosch New York University

Nancy Isenberg University of Tulsa

Bruce Kercher Macquarie University

Diane Kirkby La Trobe University

Daniel M. Klerman University of Southern California

Mindie Lazarus-Black University of Illinois, Chicago

Kenneth F. Ledford Case Western Reserve University

Sanford V. Levinson University of Texas, Austin

Thomas B. McAffee University of Nevada, Las Vegas

M. C. Mirow Florida International University

Mae M. Ngai University of Chicago

William J. Novak University of Chicago James C. Oldham Georgetown University Ruth Paley

History of Parliament, Wedgwood House, London

Pablo Piccato Columbia University

W. Wesley Pue University of British Columbia

Gerry R. Rubin University of Kent, Canterbury

Lucy E. Salyer University of New Hampshire

Reva B. Siegel Yale University

Robin Chapman Stacey University of Washington

Robert J. Steinfeld SUNY, Buffalo

Emily Z. Tabuteau Michigan State University

Eric M. Tucker York University, Toronto

Michael Vorenberg Brown University

Barbara Y. Welke University of Minnesota

James Q. Whitman Yale University Martin J. Wiener

Rice University

Michael Willrich Brandeis University

John Fabian Witt Columbia University

Contents

Law and History Review	Vol. 26, No. 3, Fall 2008
Full text available at www.historycooperative <i>LHR</i> home page at www.press.uillinois.edu/jc	•
In This Issue	vii
Articles	
Part I. The Conduct of War in the Ancien Early Islamic History	nt World and
The Laws of War in Ancient Greece Adriaan Lanni	469
Aliens, Ambassadors, and the Integrity o Clifford Ando	f the Empire 491
Early Islamic Legal-Historical Precedent Lena Salaymeh	ts: Prisoners of War 521
Part II. Religious Thought in the Protest and the American Civil War Rights, Resistance, and Revolution in the Western Tradition: Early Protestant Four John Witte, Jr.	e
Sovereign Silences and the Voice of War Conflict over Slavery David F. Holland	in the American 571
Part III. Governing Space in Internation From International Law to Imperial Con The Problem of Quasi-Sovereignty, 1870 Lauren Benton	stitutions:
The Origins of the Concept of Belligeren Eyal Benvenisti	nt Occupation 621
Taking Legal Realism Offshore: The Con Joseph Walter Bingham to American Jur the Reform of Modern Ocean Law	
Harry N. Scheiber	649

Part IV. Law, War, and Human Rights A New Deal for the Nuremberg Trial: The Limits of Law in Generating Human Rights Norms	
Elizabeth Borgwardt	679
Exceptionalism Again: The Bush Administration, the "Global War on Terror," and Human Rights Rosemary Foot	707
Book Reviews Political Foundations of Judicial Supremacy: The Presidents, the Supreme Court, and Constitutional Leadership in U.S. History —Keith E. Whittington reviewed by Walter Murphy	727
History of the Supreme Court of the United States. The Birth of the Modern Constitution: The United States Supreme Court, 1941–1953—William M. Wiecek reviewed by Sanford Levinson	730
Dark Speech: The Performance of Law in Early Ireland— Robin Chapman Stacey reviewed by Lisa Bitel	732
Law, City, and King: Legal Culture, Municipal Politics, and State Formation in Early Modern Dijon—Michael P. Breen reviewed by Gail Bossenga	733
Bridges, Law and Power in Medieval England, 700–1400 —Alan Cooper	725
reviewed by Victoria D. List Power over the Body, Equality in the Family: Rights and Domestic Relations in Medieval Canon Law—Charles J. Reid, Jr.	735
reviewed by Kenneth Pennington Law Courts and Lawyers in the City of London, 1300–1550	737
—Penny Tucker reviewed by Daniel Klerman	738
Poynings' Law and the Making of Law in Ireland, 1660–1800 —James Kelly reviewed by T. C. Barnard	740
Public Passions: The Trial of Shi Jianqiao and the Rise of Popular Sympathy in Republican China—Eugenia Lean	
reviewed by Matthew H. Sommer	741

New York Burning: Liberty, Slavery, and Conspiracy in Eighteenth-Century Manhattan—Jill Lepore reviewed by T. J. Davis	743
Unruly Americans and the Origins of the Constitution —Woody Holton reviewed by Robert G. Parkinson	745
Originalism, Federalism, and the American Constitutional Enterprise: A Historical Inquiry—Edward A. Purcell, Jr. reviewed by Calvin Massey	746
The Story of Cruel & Unusual—Colin Dayan reviewed by Elizabeth Dale	748
Rural Protest on Prince Edward Island: From British Colonization to the Escheat Movement—Rusty Bittermann reviewed by Thomas J. Humphrey	749
Slavery on Trial: Law, Abolitionism, and Print Culture —Jeannine Marie DeLombard reviewed by Sarah Nelson Roth	751
 An Honest Calling: The Law Practice of Abraham Lincoln —Mark E. Steiner reviewed by Polly J. Price 	753
Lincoln the Lawyer—Brian Dirck reviewed by Mark Steiner	754
In the Wake of Slavery: Civil War, Civil Rights, and the Reconstruction of Southern Law—Joseph A. Ranney reviewed by Timothy S. Huebner	755
The Failure of Corporate Law: Fundamental Flaws and Progressive Possibilities—Kent Greenfield reviewed by Kenneth M. Rosen	757
Under Cover of Science: American Legal-Economic Theory and the Quest for Objectivity—James R. Hackney, Jr. reviewed by Dalia Tsuk	759
Deportation Nation: Outsiders in American History —Daniel Kanstroom	
reviewed by Hiroshi Motomura Street Justice: A History of Police Violence in New York City —Marilynn S. Johnson	760
reviewed by Mae C. Quinn	762

Prophet of Innovation: Joseph Schumpeter and Creative Destruction —Thomas K. McCraw reviewed by Ron Harris	764
Wives without Husbands: Marriage, Desertion, and Welfare in New York, 1900–1935—Anna R. Igra reviewed by Joanna Grossman	766
The Enigma Woman: The Death Sentence of Nellie May Madison —Kathleen A. Cairns reviewed by Sara Manaugh	767
Magistrates, Police, and People: Everyday Criminal Justice in Quebec and Lower Canada, 1764–1837—Donald Fyson reviewed by Bruno Aubusson de Cavarlay	769